

UNIVERSITY OF WITWATERSRAND

POLICING SEX

An Ethnographic Study of the Policing of Sex Workers in Johannesburg

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**A thesis submitted in fulfillment of the requirements for the degree of
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DECLARATION

I, Isy India Thusi,

declare that this thesis is my own unaided work. It is submitted in fulfillment of the requirements of the degree of Doctor of Philosophy (PhD) in the Faculty of Commerce, Law and Management at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

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ABSTRACT

By adopting a legal ethnographic methodology, this dissertation examines the everyday policing of sex work in Johannesburg, South Africa. Sex work is difficult to regulate and is at the literal and figurative margins of proper society, where legality and illegality often blur into one another. The policing of sex work in Johannesburg, South Africa, straddles the line between formal and informal. On the streets, police often appear to be acting in an informal and ad hoc manner. However, high-level organisational directives intended to regulate the police's obligations and duties toward sex workers also influence police action, and tilt the exercise of discretion to the formal. These obligations themselves reflect the tension between the law and human rights: police must respect the human rights of sex workers, but they also must enforce the laws of the country. Sex work is illegal, but it is also time-consuming to regulate and difficult to prove that a sex work transaction has occurred. Sex work involves activity that occurs in private transactions in spaces that are ordinarily private in nature. But the illegality of sex work make it a matter of public concern.

Meanwhile, discourses and attitudes about sex workers themselves inform how the law is interpreted and enforced, reflecting the fluidity between the formal and informal, and the legal and social. Popular discourses about sex workers' hygiene, impact on public health, and proclivities to upset public order all inform how the police approach them. In this liminal space, this study considers how sex work is policed and how it should be policed. How do discourses about sexuality and gender informally police sex workers, and in turn inform how they are formally policed by the police organization? What is the current relationship between the police organization and sex workers in Johannesburg? These two ethnographic questions about the nature of sex work provide the foundation for determining how sex work *should* be policed. This study reveals that there is the possibility of negotiation between police and sex workers, which can provide provisional security for sex workers through police protection, and this relationship is often formulated in a human rights language, adopting legal language and terms. However, it is never a lasting security because it is unregulated, and police 'greed,' the structural effect of working for an institution that is perceived to be underfunded, can tilt things very quickly. Thus, the law is not the primary issue in the policing of sex workers; these other practices which remain despite changes in the law and are informed by popular discourses and competing rationales, constitute the everyday practices, norms, and understandings that influence the policing of sex workers.

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CHAPTER 1. INTRODUCTION

This thesis is a legal ethnography about the policing of sex work in Johannesburg, South Africa. I was a law clerk working for the Constitutional Court of South Africa the first time I visited the Hillbrow community in Johannesburg. The Constitutional Court is just adjacent to Hillbrow, yet many of my native South African co-clerks had never even entered this area. Several of my colleagues warned me about the danger that lurked right behind us in the Hillbrow community. There is a mythology about Hillbrow, one that is enough to frighten young lawyers from ever daring to enter this space in daylight. Disappointed by the lunch options near the Court, I decided to nevertheless take a walk through this community. Immediately upon entering Hillbrow, I was struck by how much hustle and bustle appeared to be happening in its streets. Hillbrow is filled with high-rise apartment buildings with laundry hanging outside, graffiti sprayed on the sides of the buildings, and the honking of minibus 'taxis' polluting the air. Groups of young men stand outside near apartment building entrances, chatting with each other, and hawkers sell goods as diverse as bananas, chewing gum, and live chickens.

The streets are crowded with Africans from around the continent, and the various vernaculars can be heard as you walk down the street. During this initial visit, I saw no white people and many black African faces on the streets, which were pulsating with an intense energy. Hillbrow is vibrant and full of life. I ended up eating at a fish and chips

spot down the road from the Court. This visit sparked my interest in the area, one clouded by its reputation for illegality and crime. Hillbrow's high-rise buildings include residential high-rise buildings, hotels with transient housing, commercial buildings, strip clubs, bars, and some buildings that have allegedly been 'hijacked' by sophisticated criminal syndicates that charge foreign migrants cheap, daily rents. Hillbrow is one of the most densely populated areas in Africa and has a population of 74,131 situated over 1.08 square kilometres.¹ Hillbrow is well known as a red-light district,² although it is no longer a site for visible street-based sex work. In a survey of Hillbrow hotels, 27 per cent of women admitted to working as sex workers.³



Picture of Hillbrow, taken from Wikimedia⁴

¹ Statistics South Africa, Census 2011.

² T Leggett 'Drugs, Sex Work, and HIV in Three South African Cities' (2001) 32 *Society in Transition* 101.

³ *Ibid.*

⁴ <<https://commons.wikimedia.org/wiki/File:Hillbrow.JPG>>.

The commanding Hillbrow Police Station, a large station that spans multiple buildings, is charged with maintaining public safety in this bustling community. The main police station building has 7 levels, and is 6 stories high. The upper levels of the police station include various offices for ranking police members. There are also meeting rooms on the different floors, and brightly colored flyers that advertise the different police meetings near the elevator for each floor. Once you walk into the main building, there are police officers seated behind the long front counter, addressing community complaints and needs. There are usually around eight police officers behind the counter, and there is an endless flow of community members waiting to file complaints, certify documents, and meet with detectives. During my fieldwork, I met with my police officer partners in this front lobby area to accompany them on their daily patrols of different brothels. One evening, I interviewed Zolo, a young police officer who filed community complaints and certified documents. I began my interview with Zolo by asking about his thoughts on sex work and soon asked him how he thought sex work should be treated.

INDIA (researcher): Should prostitution be illegal?

ZOLO (Hillbrow police officer):⁵ It is legal . . . mostly.

This comment about the ‘mostly’ legal nature of sex work illustrates how sex work occupies a liminal space,⁶ where the State has intruded into the private lives of its

⁵ All names in this study, other than the author’s, which is ‘India,’ have been anonymised.

⁶ J Brewis & S Linstead ‘The Worst thing is the Screwing’ (1): Consumption and the management of identity in sex work’ (2000) 7 *Gender, Work & Organization* 84, 84:

citizens and made a private matter a public concern. Sex work is difficult to regulate and is at the literal and figurative margins of proper society, where legality and illegality often blur into one another. The policing of sex work in Johannesburg straddles the line between formal and informal. On the streets, police often appear to be acting in an informal and ad hoc manner. However, high-level organisational directives intended to regulate the police's obligations and duties toward sex workers also influence police action, and tilt the exercise of discretion to the formal. These obligations themselves reflect the tension between the law and human rights: police must respect the human rights of sex workers, but they also must enforce the laws of the country. Sex work is illegal, but it is also time-consuming to regulate and difficult to prove that a sex work transaction has occurred. Sex work involves activity that occurs in private transactions in spaces that are ordinarily private in nature. But the illegality of sex work make it a matter of public concern. Meanwhile, discourses and attitudes about sex workers themselves inform how the law is interpreted and enforced, reflecting the fluidity between the formal and informal, and the legal and social. Popular discourses about sex workers' hygiene, impact on public health, and proclivities to upset public order all inform how the police approach them. In this liminal space, this study considers how sex work is policed and how it should be policed. This thesis examines the limitations of the

The fact that they are selling something which has not been fully commodified and which is usually associated with the non-commercial private sphere, governed as it is by values of intimacy, love and affect. This liminality arguably means that the place where prostitution happens, whether actual geographical location, part of the body or symbolic location (in terms of its positioning in the prostitute's psyche), is also crucial to the prostitute's sense of self, to their self esteem.

law at the intersection of formal and informal lawmaking, the role of discourses⁷ in policing the bodies of sex workers, and the theoretical underpinnings for a feminist theory about the treatment of sex work, which is grounded in the lived reality of sex workers and sensitive to the multiple forms of oppression sex workers face.

This thesis addresses three research questions about the policing of sex workers. The first two questions are ethnographic questions about how the policing of sex work currently is. The final question is a normative question about how it should be. First, this thesis considers how discourses about sexuality and gender informally police sex workers, and in turn inform how they are formally policed by the police organization. Second, this thesis examines the current relationship between the police organization and sex workers in Johannesburg. These two ethnographic questions about the nature of sex work provide the foundation for answering the final question, which examines how sex work *should* be policed and adopts a feminist lens for assessing an appropriate approach to sex work that respects sex workers' human rights.

This study employs a participant observation method in exploring these questions and reveals that sex workers exercise a limited amount of power in their relationships with police members despite their marginalised status. This thesis explores the history of sex work and reveals the continuities and contradictions between

⁷ Discourse is 'a group of statements which provide a language for talking about – a way of representing the knowledge about a particular topic at a particular historical moment . . . and all practices have a discursive aspect.' S Hall *The West and the Rest: Discourse and Power* (1992) *The Indigenous Experience: Global Perspectives* 165, 165. For the purposes of this study, discourse includes not only the words uttered about sex work but the social practices and meanings used to justify how sex workers should be regulated.

various discourses that have informally and formally influenced the policing of sex workers as well as the current conditions that constitute the contemporary policing of sex workers in the research sites.⁸ The relationship between sex workers and police is dynamic, exposing the complexities of the state's interactions with so-called vulnerable citizens. This study reveals that there is the possibility of negotiation between police and sex workers, which can provide provisional security for sex workers through police protection, and this relationship is often formulated in a human rights language, adopting legal language and terms. However, it is never a lasting security because it is unregulated, and police 'greed,' the structural effect of working for an institution that is perceived to be underfunded, can tilt things very quickly. Thus, the law is not the primary issue in the policing of sex workers; these other practices which remain despite changes in the law and are informed by popular discourses and competing rationales, constitute the everyday practices, norms, and understandings that influence the policing of sex workers.

The primary theoretical framework for examining the policing of sex work in this thesis relies upon a Foucauldian analysis,⁹ examining the role of various discourses in

⁸ Michel Foucault has discussed the role of considering history and conducting an 'archeology' of history to reveal a 'general of theory of productions' that explains the nature of various discourses. Michel Foucault *The Archaeology of Knowledge* (2012).

⁹ Michel Foucault *The History of Sexuality 6* (Robert Hurley trans.1978). Foucault explains how the very act of participating in a discourse may be an exercise of power:

'If sex is repressed, that is, condemned to prohibition, nonexistence, and silence, then the mere fact that one is speaking about it has the appearance of a deliberate transgression. A person who holds forth in such language places himself to a certain extent outside the reach of power; he upsets established law; he somehow anticipates the coming freedom.'

Ibid.

reflecting power dynamics, emboldening vocal participants, and creating rules that are not explicitly reflected in legal doctrines. This approach views discourses as 'ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and relations between them. Discourses are more than ways of thinking and producing meaning. They constitute the 'nature' of the body, unconscious and conscious mind and emotional life of the subjects they seek to govern.'¹⁰ This framework allows for consideration of the power of narratives and social practices in shaping the lived reality of sex workers and the subjectivities that shape this experience. It also allows for the consideration of contested discourses and forms of resistance, reflecting a relationship with the State that is not merely vertical, top-down in power structure, but dispersed and radiating from different sources and forms of power. The discourses reveal the general attitudes toward sex work, and the law is often complicit with these discourses. These discourses also translate into a hierarchalisation of space and the place of sex in different sites throughout the city.

In examining the formal role of the police as actors of the state and implementers of order, this thesis considers Weber's analysis about the police as valid actors of state violence. Weber has described the state as 'a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.'¹¹ In South Africa, this claim to legitimate force appears consistent with what Weber

¹⁰ Chris Weedon *Feminist Practice and Poststructuralist Theory* (1987) 108.

¹¹ Max Weber *From Max Weber: Essays in Sociology* (1946) 78.

describes as ‘domination by virtue of ‘legality,’ by virtue of the belief in the validity of legal statute and functional ‘competence’ based on rationally created rules.’¹² This understanding of the State is reflected in how the South African Police Service (SAPS) interprets its role in post-apartheid South Africa, including its role in policing sex workers in a human rights regime. Like most police departments, SAPS has the power to use force to enforce the law. However, this legitimate use of force is conditioned by the South African legal order, which is explicitly committed to a reverence for human rights. Thus, human rights should limit how police can legitimately enact force. Instead, this commitment to human rights has led to the de facto decriminalisation of sex work by some police departments that have chosen not to charge sex workers for violating the law. This reflects the tension of acknowledging the formal organisational directive to move away from the specific mandates of enforcing the law to respect the rights protected by law (human rights).

These legal contradictions inherent in having police officers act as legitimate enforcers of force in a human rights paradigm demonstrate how police officers perform formal law-making processes and the ways that informal understandings and rules influence the policing of sex workers. In the opening statement by the Hillbrow police officer, Zolo, he states that “sex work is legal . . . mostly.” This acknowledgement of sex work as ‘mostly’ legal reflects the ambiguity of policing a crime that is largely unenforceable and has been de facto decriminalised through the police’s discretion in an effort to respect sex workers’ human rights. While sex work is formally illegal, it is

¹² Ibid 79.

often informally treated as legal as a matter of organisational discretion. This informal decriminalisation of sex work is a manifestation of the tension between formal law-making processes and the informal manners in which discourses 'police' and discipline the populace. In fact, the bulk of the practices that regulate sex workers are inspired by popular discourses and reflect popular understandings about morality, sexuality, human rights, hygiene, public health, and beauty. These discourses are frequently reinforced by the law and in turn work to reconstitute it. The discourses themselves are a form of policing and have successfully affected how sex workers are regulated, at times contributing to their social and spatial marginalisation.

These observations about the nature of the policing of sex workers in Johannesburg illustrate the limitations of the law as a tool for reform and its fluidity at the margins, providing context for considering the final research question about how sex work should be policed. This research question is a normative question that considers what it means to adopt a human rights framework to the policing of sex work. This question goes beyond the formalistic legal treatment of sex work and is concerned with (1) how sex work should be treated from a rights perspective, (2) how it should be treated as a discursive object that reflects popular notions about sexuality and gender, and (3) how it should be treated within the academic literature itself as the subject of the gaze of feminist researchers. The thesis adopts a feminist theoretical approach to this analysis, which is akin to a radical feminist framework insofar as it considers the role of structural discrimination and patriarchy when examining how sex work should be treated. The thesis moves away from an analysis that is solely based upon individualistic liberty interests of atomistic sex workers. However, this thesis arrives at a

very different conclusion from radical feminists, who believe that we should strive for a society where sex work is no longer an acceptable form of labor. This thesis considers how even partial criminalisation of sex work reinforces notions about sexuality that are rooted in patriarchy even within the feminist literature; how women who face various forms of discrimination often manage various risk and have constrained choices and should be allowed to pursue the options available to them that they deem to be beneficial, including the sale of sex; whether the feminist discussion should go beyond questions of criminalisation if it is to be concerned with the lived realities of sex workers because their policing occurs despite the mandates of the actual law; and the relevance of local power dynamics in considering how sex work should be regulated.

1.1 Originality of Research

For the purposes of this study, 'sex work' is defined as the provision of sexual services for monetary reward.¹³ Even within this narrow definition of sex work, there is great diversity in how sex work appears. Harcourt and Donovan describe at least 25 types of sex work.¹⁴ Their typology of sex work highlights the various forms sex work can take, including street-based sex work, brothel-based sex work, escort services, private sex work, and dance hall and hotel sex work, amongst other forms. Each of these forms of sex work occurs in Johannesburg. The following table, drawn from the

¹³ UNAIDS has a commonly adopted definition, which describes sex workers as 'female, male and transgender adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally'. UNAIDS *Technical Update Sex Work and HIV/AIDS* (2002).

¹⁴ C Harcourt & B Donovan 'The Many Faces of Sex Work' (2005) 81 *Sexually Transmitted Infections* 201.

work of Harcourt and Donovan, but summarises the types of direct sex work that are the focus of this study and describes how they appear in Johannesburg.

Table 1

Type ¹⁵	Characteristics in Johannesburg
<p>'Street: Clients solicited on the street, park, or other public places. Serviced in side streets, vehicles, or short stay premises'</p>	<p>Street-based sex workers in Johannesburg operate from various red light districts including the Rosebank and central business district area. The policing of street-based sex workers is generally location-specific and dependent upon the relationship between sex workers and police of the particular locale.</p>
<p>'Brothel: Premises explicitly dedicated to providing sex. Better security than street. Often licensed by authorities' 'Club, pub, bar, karaoke bar, dance hall: Clients solicited in alcohol vending venues and serviced on site or elsewhere,</p>	<p>The brothel-based sex work in Johannesburg actually appears to be a hybrid of the brothel and club-based forms of sex work described by Harcourt and Donovan. While these establishments are brothels in the sense that patrons come to these establishments primarily for the purchase of sex, there are also other activities taking place in these spaces. This includes drinking, strip shows, dancing, dining, and cultural performances. Furthermore, the sex workers at these locations operate as independent contractors, and the establishments are not directly involved in the sex work transactions themselves although they do charge the sex workers rent for rooms where these services occur.</p> <p>Harcourt and Donovan have observed that this form of sex work is 'Preferred where sex work is decriminalised or brothels are 'tolerated'.' This form of sex work operates in Hillbrow where there is de facto decriminalisation that is regulated by a licensing scheme.</p>
<p>'Private: Client contacts sex worker by phone. Similar to escorts except services provided in sex worker's premises. A variant in London and other</p>	<p>Both street-based and brothel-based sex workers may have private clients, who may be previous</p>

¹⁵ See *ibid* for type descriptions.

big cities is 'flat' prostitution—high cost services in clients.
rented, serviced, inner-city units'

This thesis focuses on two of the types of sex work described by Harcourt and Donovan: street-based sex work and brothel-based sex work. The brothel-based sex work in this study actually lies somewhere between the lines of brothel-based and hotel-based sex work and is referred to as hotel–brothel sex work in this study. The hotel-brothels studied in this research project are not brothels per se, in that they do not directly receive a portion of the sex workers' income for services rendered. Instead, they are venues where clients are aware that sex workers are available for hire and where sex workers pay rent to make use of private rooms to render these services. This quasi brothel-based sex work is prevalent in Hillbrow. The street-based forms of sex work were observed in central Johannesburg and on Oxford Road in the suburbs of Rosebank and Illovo

Although sex work in Johannesburg has been explored in these contexts, there is virtually no research on how police members themselves conduct and perceive the task of policing sex workers as a state function. The research on sex work in Johannesburg and South Africa primarily focuses on public health concerns, efforts to rationalise the movement to decriminalise sex work, and studies providing demographic information about sex workers.¹⁶ Much of the research on sex work in South Africa advances public

¹⁶ See note 461 for several studies that primarily focus on sex worker risk factors, HIV, demographic factors and disease of sex workers. See generally JM Wojcicki, 'The Movement to Decriminalize Sex Work in Gauteng Province, South Africa, 1994–2002' (2003) 46 *African Studies Review* 83, 89 (discussing the movement to decriminalise sex work in South Africa).

health discourses and focuses on sex workers' health, social risks, and/or exposure to HIV.¹⁷ A recent study conducted in 2015 estimates that there are between 131,875 and 182,040 sex workers in South Africa, with a low estimate of 11,000 sex workers in Johannesburg.¹⁸ The South African National Aids Council estimated that there are 32,000 sex workers in Gauteng Province, which includes the cities of Johannesburg, Ekurhleni, and Tshwane, and 153,000 sex workers in South Africa.¹⁹ Several studies discuss sex workers' exposure to HIV and condom use,²⁰ and one study conducted between 1996 and 1998 found that 45 per cent of sex workers in Hillbrow were infected with HIV.²¹ Pettifor et al conducted a study in Hillbrow and found that amongst clients' unwillingness to use condoms and lack of access to health care service, police abuse was a primary concern for sex workers.²² Surprisingly, no academic studies have focused primarily on the issue of the policing of sex workers despite the sea of research

¹⁷ ML Richter et al 'Sex Work and the 2010 FIFA World Cup: Time for Public Health Imperatives to Prevail' (2010) 6 *Globalization and Health* 1, 4 ('Decriminalising sex work is at odds with the sensibilities of many political and religious leaders and often raises their indignation and ire. Yet watching a population being decimated by HIV should evoke similar responses and elicit strong action based on evidence. We hope the post-Mbeki administration will attribute more weight to public health goods than an ideology based on sexual moralism—an ideology which, time and again, has been proven ineffective in preventing HIV in South Africa and beyond. Public discourses lamenting the "immorality" of sex work should be substituted for action that prioritizes public health measures and legal frameworks which secure the long-term health of South Africans').

¹⁸ TL Konstant et al 'Estimating the Number of Sex Workers in South Africa: Rapid Population Size Estimation' (2015) 19 *AIDS & Behavior* 3.

¹⁹ South African National Aids Council (2013).

²⁰ Richter (note 22 above).

²¹ H Rees et al 'Commercial Sex Workers in Johannesburg: Risk Behaviour and HIV Status' (2000) 96 *SA J of Science* 283, 283.

²² AE Pettifor, ME Beksinska & HV Rees 'High Knowledge and High Risk Behaviour: A Profile of Hotel-Based Sex Workers in Inner-City Johannesburg' (2000) *Afr J Reprod Health* 35.

on sex workers in South Africa. Nonetheless, the Women's Legal Centre published a paper concerning police abuse of sex workers, finding that one in three sex workers who approached the Women's Legal Centre had been harassed by the police.²³ Although several academic studies employ in-depth interviews and focus group discussions, these studies rarely rely upon extensive ethnographic participant observation or extended fieldwork to explore the experience of sex workers. None of the research is primarily focused on the policing of sex workers, although several earlier studies mention that police abuse is an issue of concern for sex workers.²⁴ This thesis partially focuses on Hillbrow although several earlier studies have focused on sex workers in Hillbrow and police officers there.²⁵ These have provided a rich source of data that informed this project. However, none of the studies adopted a theoretical and methodological approach like that proposed in this project, which will advance current understandings in law and society, urban anthropology, and feminist theory. Accordingly, this research project provides unique insights about this community.

A complete understanding of how sex workers are policed today and how they should be policed benefits from insights regarding the history of the police, the history of policing sex work in South Africa, the everyday policing of sex workers in various field

²³ Manoeke Women's Legal Centre, SWEAT & Sisonke 'Stop Harassing Us! Tackle Real Crime!: A Report on Human Rights Violations by Police against Sex Workers in South Africa' (2012).

²⁴ See e.g. C Mgbako & LA Smith 'Sex Work and Human Rights in Africa' (2010) 33 *Fordham Int LJ* 1178; T Leggett 'Drugs, Sex Work, and HIV in Three South African Cities' (2001) 32 *Society in Transition* 101. See also studies described in note 3.

²⁵ See e.g. J Stadler & S Delany 'The "Healthy Brothel": The Context of Clinical Services for Sex Workers in Hillbrow, South Africa' (2006) 8 *Cult Health Sexual* 451.

sites, and how various social orders and perceptions influence how sex workers are policed. Viewing the 'everyday'²⁶ illustrates how resistance may reveal itself in a potential site of oppression (the relationship between police and sex workers).

Moreover, the description of the relationship between police members and sex workers has been a bit reductionist, categorizing police as mere roadblocks to sex workers' constitutional rights.²⁷ There is undoubtedly plenty of evidence that police exploit sex workers, and this abuse is not to be taken lightly. However, the relationship between sex workers and police is more complicated than the narrative of police as rights-abuser and sex workers as victims would suggest. Researchers have found that sex workers are harshly policed and suffer abuses at the hands of police.²⁸ Some sex workers complain that police officers frequently ask for bribes, and many have been

²⁶ C Macleod & K Durrheim 'Foucauldian Feminism: The Implications of Governmentality' (2002) 32 *J Theory Soc Behav* 41, 43 ('Foucault stressed the importance of formulating and studying the question of power relations in terms of "power at its extremities . . . where it becomes capillary" i.e., in the everyday lives, actions and interactions of people') (internal citations omitted).

²⁷ See, for example, Commission for Gender Equality 'Position Paper on Sex Work' (16 January 2013) ('The criminalization of sex work harms sex workers and denies them access to the rights contained in our constitution. Sex workers are subjected to numerous human rights violations, predominately harassment and abuse at the hands of police officers, and are not able to access and exercise legal or labour rights, or social protections.'). The problem with this approach is that it presupposes that sex workers face police harassment because sex work is illegal and the relationship between sex workers and police is somewhat flat, with police as abusers and sex workers as victims. However, the regulation of sex workers through public nuisance ordinances has a long tradition in South Africa and is connected to understandings of public order and public nuisance (see Chapter 3), the ordering of female sexuality in private and public spaces (see Chapters 5, 6, and 7), and may very well remain regardless of the status of sex work as decriminalised or criminalised. For these reasons, the literature for decriminalisation must move beyond blaming the police-oppressor and protecting the victim-sex worker.

²⁸ See N Fick & Sex Workers Education & Advocacy Taskforce *Coping with Stigma, Discrimination and Violence: Sex Workers Talk About Their Experiences* (2005) (discussing the lived experiences of sex workers and advocating for decriminalisation as a means of harm reduction and exercise of sex work choice in line with liberal feminism (noting that 'sex workers are vulnerable to violence and that they have to deal with tremendous stigma and discrimination').

raped and physically assaulted by police officers.²⁹ However, I also found that sex workers did at times call upon the police for assistance, some sex workers had a patronage relationship with police, and still others viewed them as occasional allies.

By exploring the rich history of social conditions and circumstances surrounding the policing of sex workers, I hope to provide a conceptual framework for understanding how the law is lived and experienced in this peculiar area, which is a space that is influenced by popular norms around gender, sexuality, legality, and space. The debates regarding the criminalisation of sex work are often missing the perspective and depth that one gains from conducting an intensive ethnography and at times appear completely ungrounded by empirical knowledge. This research aims to fill this gap.

Although the research focuses on Johannesburg, it provides globally relevant perspectives on the various expressions of sex work policing, the limitations of the (de)criminalisation of sex work, and the relevance of a theory (and policy) that is grounded in the local realities of sex workers. Within Johannesburg, this is a multi-site study, focused on how sex workers are policed in both indoor and street-based environments. The comparative nature of the research reveals how perceptions of public and private, patriarchy, the visibility of female sexuality, and gender norms influence this peculiar area of policing. This study focuses on both police and sex worker experiences and explores the complexity of the relationship between these two groups. It provides a nuanced explanation for the manners in which sex workers and

²⁹ Ibid.

police cooperate, interact, and treat one another. This study involves an urban inner-city police department, the Hillbrow police station, which is situated near the Johannesburg central business district. It also involves a suburban police department, the Rosebank police station, which is located in the upper-middle-class northern suburbs in Johannesburg. The sex workers in this study operated from street-based hot spots in urban central Johannesburg and suburban Rosebank and inside of hotel–brothels in urban Hillbrow.

1.2 Chapter Outline

Chapter 2 outlines the methodology for this study. This research project has the unique perspective of both the police and sex workers and required careful deliberation on access, ethical obligations, and safety that are not typical in many research projects. This chapter outlines several of these considerations and details how the author’s own positionality became a relevant factor in navigating each of these facets of the research project.

Chapter 3 provides a historical analysis of the policing of sex work in South Africa. This historical background contextualizes contemporary policing challenges and demonstrates the ways that the contemporary policing of sex work reproduces previous social orders regarding sex work. Sex work has generally been treated as a matter of public nuisance rather than as a criminal matter and has been subject to informal policing. The history of the policing of sex workers in South Africa illustrates how contemporary challenges regarding the policing of sex work are linked to past practices.

To provide depth in understanding how the police are currently constituted, Chapter 4 provides an overview on the police organization in South Africa and relevant legal norms for understanding how sex workers should be policed. This chapter highlights the tension between policing that is effective at political suppression while being ineffective at protecting people from ordinary crimes. It also highlights the unique considerations that police face when policing women and policing sex workers in particular.

The development of varying public and private spaces and the appropriate role for female sexuality in the continuum of these spaces also impact on the policing of sex workers, as discussed in Chapter 5 of this thesis. The visibility of deviant sexualities creates a complex geography of sex work as diverse as it is subversive. Sex work frustrates the public and private dichotomy by making the presumably 'private' act of sex somewhat public in its visible solicitation of clients interested in its purchase. The distinction between public and private influences the approaches police adopt to the policing of sex work, as revealed by a comparison of the policing of sex workers in Johannesburg's inner-city area of Hillbrow and its northern suburb of Rosebank. Sex work that occurs in quasi-private spaces, such as brothels, is heavily regulated and subject to varying license agreements and understandings between the police and brothel owners in Hillbrow. However, there is a blanket policy prohibiting street-based sex work in Hillbrow because the police have determined that the sex work is more hygienic, and therefore permissible, where it is less visible. By contrast, street-based sex work is tolerated in Rosebank and Illovo but subject to informal rules negotiated between individual police members, sex workers, and clients as discussed in Chapter 6.

The police members I interviewed acknowledged the legal ambiguity in the treatment of sex work in Johannesburg.

In Chapter 7, I discuss how subjective understandings of the bodily capital of the sex workers and police perceptions regarding beauty appear to be one of several factors in influencing how sex workers are policed. Police have clear views about which brothels and sex workers possess 'beauty' and are influenced by the beauty of the sex worker in carrying forth their policing. In Hillbrow, the police appear to respect brothels with beautiful sex workers, reasoning that these sex workers are 'true professionals'.³⁰ In Rosebank, highly demanded street-based sex workers appear to be more vulnerable to police sexual exploitation. The final chapter, Chapter 8, discusses how these empirical findings can contribute to current feminist legal debates concerning the criminalisation of sex work and considers whether the fetishisation of legal remedies ignores the lived reality of sex workers. This chapter argues that the ethnographic findings show that women have agency and the ability to act in resistance, even within a patriarchal systems and structures. Based on the ethnographic findings, the analysis of the feminist scholarship, and the context of the history of policing and sex work in South Africa, Chapter 9 recommends that we move beyond the law as a remedy for addressing the concerns of sex workers and think more creatively about how discourses and narratives shape their lives.

³⁰ During the course of my fieldwork with the Hillbrow police, various officers repeatedly used the term 'true professionals' when discussing certain classes of sex workers.

CHAPTER 2. METHODOLOGY

Introduction

This dissertation adopts a qualitative methodology to address the research questions of (1) how the policing of sex work currently occurs (ethnographic questions about the nature of sex work at the research sites) and (2) how the policing of sex work should occur (normative question).³¹ Studying the policing of sex workers presented unique challenges because sex work is illegal; the police frequently engaged in illegal and corrupt activities while policing sex worker; I faced particular challenges discussing what is often considered a taboo topic, the sale of sex and sexual desires; I was working with two groups that appear to be antagonistic with each other, complicating my relationships with the participants and ability to gain access; and there are dominant social norms that dictate how people are supposed to act when talking and thinking about sex and sexuality that make them hesitant to discuss this topic openly with a researcher, who is essentially a stranger to the research participants. Because of these challenges, I adopted a legal ethnography as the primary methodology. This methodology allowed me to consider temporal shifts in the treatment of sex work in the research sites and gave me adequate time to establish trust with research participants who might have been hesitant to participate in the research project, given the frequent

³¹ I chose this approach because 'research methodology that looks at the everyday work of policing is more likely to be attuned to capturing de facto realities of sovereignty than a methodology operating within the formalized and institutionally reified version of the police as seen, for example, from a perspective of international relations'. J Hornberger 'Human Rights and Policing: Exigency or Incongruence?' (2010) 6 *Annual Review of Law & Social Science* 259, 275.

illegality of their conduct and the embarrassment many people experience when discussing a topics related to sex and sexuality. Legal ethnography also facilitates observation of the gap between what research participants state is the nature of a research object and their actual behaviours in connection to the research object.

Ethnography is 'iterative-inductive research . . . drawing on a family of methods, involving direct and sustained contact with human agents, within the context of their daily lives (and cultures), watching what happens, listening to what is said, asking questions, and producing a richly written account that respects the irreducibility of human experience, that acknowledges the role of theory, as well as the researcher's own role, and that humans are part object/part subject'.³² The ethnography is legally-based in that it explores the lived experience of the law: policing, human rights norms, and the interpretation of legal norms. I engaged in the three 'archetypal' methods of qualitative research: (1) reading and relying on existing texts, (2) interviewing participants and engaging in conversation, and (3) observing participants.

I adopted several research methods to allow for a multi-faceted analysis. These methods included participant observation, semi-structured interviews, and a focus group discussion. I spent 20 months amongst sex workers and in police stations to appreciate the perceptions, values, behaviours, and norms that govern the relationship between

³² K O'Reilly *Ethnographic Methods* (2005) 3.

sex workers and police.³³ 'To make law a more effective instrument of policy, the argument runs, it is necessary to understand why it develops, what forms it takes, and especially what are its consequences.'³⁴ By spending time with the police, the organ of the State charged with enforcing the law, I was able to understand why the police chose to exercise their discretion to enforce or not enforce prostitution laws at the research sites. This empirical research provides the context for my arguments regarding the policing of sex workers in South Africa and the 'human rights approach' to sex work.

An ethnographic approach is particularly useful in obtaining a greater understanding of the policing of sex workers because deeply engrained cultural values inform the policing of sex workers. Police members often incorporate their personal moral and cultural values into the policing task. Understanding how and whether these values influence the policing of sex work, a research object subject to value-based judgments and cultural marginalisation, was significant. 'If culture is to mean "deep level assumptions", then it cannot be read off structural arrangements or quantifications of police attitudes. Instead, researchers need to take an ethnographic approach, whereby

³³ M Marks 'Dancing with the Devil? Participatory Action Research with Police in South Africa' (2009) 30 *SA Crime Quarterly* 27, 27 (noting that there have been new reforms to remilitarise the police service and that 'new proposals for "beefing up policing" are not informed by evidence-based research,' 28–29): 'Research optimally should feed into social change. Effecting social change is only possible when worldviews come together, especially between unlikely collaborators like police officers and academic researchers. What has this meant in real terms? It has meant being present with the police in good and bad times. It means having to prove yourself as a researcher who is knowledgeable about your field, but also open to learning from the police. It means creating an environment where police and researchers are open to learn from one another.'

³⁴ R Schwartz 'Field Experimentation in Sociological Research' (1961) 13 *J Legal Education* 401, 401.

they prioritise the social actor and his/her subjective orientation.’³⁵ Ethnography allows the researcher to explore how subjective values influence policing by allowing the researcher to participate in and observe the everyday occurrences that form policing. I was able to study how popular discourses about sex workers, including perceptions of public health and public hygiene, influenced the everyday policing of sex workers. Ethnography provides data for the actuality of policing and allows the researcher to observe the inconsistencies between police practice and police policy. It provides understandings that can only be reached through in-depth observation of the research object over time and allows for the observation of how time influences police.

2.1 Qualitative Research

Qualitative research excels at revealing the nature of relationships and everyday behaviour. There are two underlying assumptions in qualitative research: ‘The first is that behaviour is influenced by the physical, sociocultural, and psychological environment—this is the basis for *naturalistic* inquiry. The second assumption is that behaviour goes beyond what is observed by the investigator. Subjective meanings and perceptions of the subject are critical in qualitative research, and it is the researcher’s responsibility to access these.’³⁶ In other words, the qualitative researcher observes both the objective behaviors of the research subjects as well as the subjective

³⁵ See M Marks ‘Researching Police Transformation, the Ethnographic Imperative’ (2004) 44 *British J of Criminology* 866, 870.

³⁶ L Krefting ‘Rigor in Qualitative Research: The Assessment of Trustworthiness’ (1991) 45 *American Journal of Occupational Therapy* 214, 214.

understandings and interpretations of this behaviour. Descriptions of the relationship between police and sex workers err towards the side of being reductionist without exploring the culture, history, and complexities of the relationship. Qualitative research reveals that relationships have multiple dimensions, allowing the investigator to fully appreciate the complexity of a relationship. Qualitative research is based on watching people 'in their own territory'.³⁷ Accordingly, a qualitative approach is suitable for exploring the details of a phenomenon, particularly in relation to intimate relationships. This thesis explores the intricacies of the relationship between police and sex workers. Its qualitative approach uncovered the surprising contradictions in the relationship between police and sex workers, while capturing the fine details of this relationship. While some quantitative and mapping data are incorporated into the study, the research is overwhelmingly qualitative in orientation.

This study focuses on three geographical locations and thus adopts the qualitative research method of case study. The case study method is appropriate for exploring a phenomenon within a wider context.³⁸ This approach allows the researcher to understand how social context impacts behaviour. This research project was concerned with exploring police and sex workers' own understandings of their relationship and with describing the historical policing of sex workers to understand the contemporary policing of this population. The study strives for contextualised knowledge

³⁷ J Kirk & ML Miller *Reliability and Validity in Qualitative Research* (1986).

³⁸ See generally R Gomm, M Hammersley & P Foster (eds) *Case Study Method: Key Issues, Key Texts* (2000).

and therefore benefits from the depth and description available through the case study methodology. This case study involves five³⁹ research sites in three geographic locations. These research sites represent a fraction of the typology of the sex work that is in Johannesburg but are sufficiently unique to highlight the diversity of the industry. I gathered the observational data through field notes, which I recorded the day following each nighttime observation. I also took minimal notes during the observation times, as needed.

2.2 Epistemological Approach

This research thesis adopts an epistemological approach consistent with subtle realism, which is 'a marker of an approach to social research that takes the view that, although we always perceive the world from a particular viewpoint, the world acts back on us to constrain the points of view that are possible'.⁴⁰ It recognizes the subjectivity of the research process and views research as studying 'transitive objects'.⁴¹ Throughout this thesis, I incorporate my personal experiences with the research object and comment on how perceptions of my personal identity shaped the research object, reflecting a conscious choice to interfuse reflexivity within the text. This allows for consideration of how the knowledge was being produced and acknowledges that my

³⁹ The five general research sites are (1) Rosebank Police Station, (2) Oxford Road, (3) Hillbrow Police Station, (4) Hillbrow brothels, and (5) central Johannesburg. However, there were actually multiple corners on Oxford Road, six brothels in Hillbrow, and multiple street corners in central Johannesburg. The study was thus a relatively fluid multisite case study.

⁴⁰ C Seale 'Quality in Qualitative Research' (1999) 5 *Qualitative Inquiry* 465, 470.

⁴¹ Ibid.

unique positionality influenced the type of data I was able to collect. Reflexivity often adopts first-person accounts of the experience during research and is a method for understanding how the 'historical, socially constructed reality in a partial, provisional sense through an intensive, experimental encounter with people who live by these cultural constructions of reality'.⁴² This approach recognizes the multiple subjectivities that may occur during the research process and rejects a methodology premised on singular objectivity. I recognize that especially in studying a topic such as sex work, which relies upon trusting relationships with actors engaged in a range of illegalities, my identity influenced my access, and ultimately provided unique insights in exploring the research questions. However, subtle realism also recognizes that the rubric of experiences during research are limited by the environment and the nature of the research object. I often triangulated my data by asking multiple sources, referring to police work schedules and outlines, reviewing official policies and manuals, or reviewing newspaper accounts of stories that participants shared with me, recognizing that certain pieces of data are verifiable. Accordingly, this study recognizes my unique positionality in relation to the research participants,⁴³ the shifting temporalities while studying the

⁴² DE Foley 'Critical Ethnography: The Reflexive Turn' (2002) 15 *Int J Qualitative Studies in Education* 469.

⁴³ See discussion on my experiences as a black, American researcher studying sex work in South Africa in section 2.4.

research object,⁴⁴ and the subjectivities in interpreting how the urban landscape is mapped.⁴⁵

2.3 Adoption of Ethnographic and Participant Observation Methods

Ethnography is often used to help describe and interpret human behaviour as situated within larger social structures.⁴⁶ It typically investigates a particular case or cases to explore complex social constructs to advance theoretical development.⁴⁷ I chose ethnography because this method allowed me to consider questions such as how discourses about female sexuality and how the history of policing sex in South Africa manifested itself in the actual policing of sex workers in Johannesburg. I was not only able to observe the behaviours of the police members and sex workers at my research sites, but I was able to understand and interpret their behaviours in light of the legal, historical, and social contexts in which they were taking place. Ethnography studies the natural setting of the research object and interprets the subjective interactions that occur within it.⁴⁸ It allows for the empirical to become theoretical through the interpretation of the ethnographic data and explanation of why certain behaviours occurred. I collected ethnographic data collection through participant observation, a

⁴⁴ See the timeline of the dynamic relationship between police and sex workers in section 5.43.

⁴⁵ See discussion on the mapping of desire in the city in chapter 5.

⁴⁶ See generally Brewer *Ethnography* (2000).

⁴⁷ Krefting (note 36 above) 215.

⁴⁸ HF Wolcott *Ethnography: A Way of Seeing* (1999).

method for collecting data that requires the researcher to both actively participate in and observe the natural environment of the research subjects. Although time consuming and not always specific to the research aim, participant observation is critical in revealing the distinctions between expressed conduct and actual conduct. It is capable of exposing biases, routine behaviours, and understandings that research participants would rather not explicitly express. It requires more than sitting back and watching. It requires that the researcher actively participate in the conduct of the informants, observe both the spoken and unspoken conduct and circumstances of informants, and continuously engage in data collection through extensive field notes. Through participant observation, I observed the gaps between what police officers said the law required, and how they actually practiced their roles as enforcers of the law. Moreover, sex work can be such an uncomfortable subject for strangers to discuss. I expected that police officers might be less willing to openly share how they really felt about the topic and might feel judged if their opinions deviated from dominant social mores. With a topic like this, and with an institution reputed to be insular and secretive, participant observation became a tool to pierce the blue veil. Law is socially situated, and participant observations provided a tool to see how law was actually expressed and lived.

I joined police members during their routine patrols of sex workers, and I came to appreciate the exhaustion police members experience during 12-hour shifts that stretch between 6:00 PM and 6:00 AM. This appreciation gave me empathy for them and allowed me to see how quickly an acrimonious encounter with a sex worker could turn into an instance of harassment or worse. I also spent significant time within the police stations to contextualise the policing of sex workers within the larger policing task and to

understand how they worked with their communities. Although I did not literally participate in policing by directly responding to community complaints or carrying a firearm, I did accompany police members during routine patrols to respond to complaints and during traffic stops. I attempted to maintain as much proximity to the policing task as legally permissible.

Participant observation proved to be the most appropriate methodology for exploring the sensitive subject of how sex workers are policed. The police were initially hesitant to speak candidly with me about their experiences with sex workers. They were suspicious of me, a black American woman, and speculated about my intentions. They would frequently question me about my origin and my family background in an attempt to 'place' me. Several of them thought I was young and would speak to me as if I were their child. They frequently questioned the purpose of my research and often told me that I would learn nothing from joining them on their patrols. In many respects, this was an exercise of masculinity, as these male police members thought it was their right to put me in my place and lecture me about my research object.⁴⁹ Some police officers worried that I would place myself in danger. They would frequently put on a

⁴⁹ See R Morrell et al 'Hegemonic Masculinity/Masculinities in South Africa: Culture, Power, and Gender Politics' (2012) *Men and Masculinities* 11,14 (discussing the expressions of various forms of South African masculinities, including a black, urban form) ('Forty percent of households are female headed'). 'The mean age of marriage for women is twenty-eight years, whereas the majority of women have their first child before the age of twenty-one. Fathers often have little or no role in the upbringing of their children. In 1993, some 36 percent of children had absent (living) fathers and 57 percent had fathers who were present. By 2002, the proportion of children with absent (living) fathers had jumped to 46 percent, while the proportion of present fathers dropped to 39 percent.' Ibid (internal citations omitted). The female homicide rate is . . . highly elevated, at six times higher than the rate worldwide, and at least half of female victims are killed by their male intimate partners. The country also has an alarmingly high level of rate of rape. Fifty-five thousand rapes of women and girls are reported to the police every year, which is estimated to be at least nine times lower than the actual number. In a population-based survey, 28 percent of men interviewed disclosed having raped.' Ibid.

performance to assert their masculinity, such as bragging about the danger of the job or displaying their firearms for me.⁵⁰ There was a constant performance of black, urban male masculinity in the form of bravado and displays of their physical strength. Some police members viewed me as a woman who needed protection and would provide their unsolicited guidance during the course of my research project.

However, as the police members grew familiar with me, their concerns dissipated. They became natural with me and would speak casually with each other. They were no longer stiff around me. This evolution occurred rather quickly, and within a few weeks of working together, they had already become comfortable with me. Given the sexual nature of the topic of sex work, police officers often relied on innuendo and suggestion when admitting to unlawful conduct or confirming that they had previously engaged sex workers. They told many dirty jokes, and members became comfortable discussing their perceptions of the various sex workers and brothels with me. While patrolling with the police, I was careful to wear clothing that was dark and loose fitting, as a way of masking my femininity from the officers. I wanted to appear as neutral as possible and did not want them to perceive me as a potential mate. I was a researcher and needed to be perceived as such. This approach allowed me to be perceived as a fellow (albeit nonsexualised) colleague.

Nonetheless, there were uncomfortable moments. One married police member suggested that I act as his girlfriend to protect him against the advances of sex workers.

⁵⁰ See *ibid.*

In moments like this, I would often subtly deflect the conversation because I did not want to appear uptight and did not want the police members to become less comfortable around me. But I also did not want to pave the way for future sexual advances or suggest that my pretending to be his girlfriend would ever lead to a romantic relationship. This required that I constantly negotiate my position and monitor the police members' perceptions of me.

I conducted participant observation with sex workers by adopting the role of a friendly patron, spending significant time at sex work hot spots, drinking at sex work venues, and socialising with sex workers. Negotiating the parameters of participant observation with sex workers proved trickier. Sex workers were initially hesitant to speak with me, and many of them feared that I was a journalist who would expose them to the public. I randomly approached several sex workers near Rosebank, wearing jeans and a dress shirt, and was met with a tremendous amount of suspicion. I believe many of them perceived me as a judgmental female member of their community intending to expose them for their conduct. I do not think many of them had encountered black, female researchers, and they assumed that I was there to harm them in some way. In their minds, if I was not a sex worker advocate, I was a threat. They viewed me as both an insider and outsider. I was an insider insofar as I could pass judgment on them as a black community member and potential acquaintance. But, I was also an insider because I was not a sex worker and did not fit into the roles they attributed to women within that world.

At the advice of a retired sex worker, I wore “sex work attire” to adapt to the surroundings and then approached sex workers regarding my research. In response, several sex workers were hostile toward me and perceived me as potential competition. I received very little participation adopting this approach, and I felt uncomfortable. I only received favorable feedback from sex workers when I began dressing in a ‘masculine’ uniform of baggy jeans and oversized plaid shirts. Soon after this shift in wardrobe, sex workers began to approach me and participate in the research project without prompting. The sex workers treated me as a potential client and were more receptive to me because I found a role in their world that made sense for them and was nonthreatening. They were no longer suspicious of me and were incredibly friendly and receptive to my research. By adopting this uniform, I positioned myself within a group that sex workers view rather favorably—clients—rather than suspiciously, as they would a journalist or female community member. Although some researchers might be offended by my approach, my particular identity and positionality as a black female American researcher required that I adopt this uniform and approach to receive a favorable response. Gaining meaningful access to sex workers was practically predicated by my negotiating how I could fit into their world without offending⁵¹ them. As a friendly patron, I ‘made sense’ to them.

In addition, participant observation strives for partial immersion. I achieved this by living within a block of one of the sex work hot spots in Rosebank. This allowed me

⁵¹ At the outset of my research, there were a couple of insinuations when offended sex workers demanded that I dress “like a lady of the night” before daring to approach them.

to make frequent visits to sex workers while they were working and to promptly respond to calls concerning issues during the evening working hours. However, because this was a multi-site project, I did not live near all my research sites during the course of my project and only had this level of immersion in Rosebank. This proximity to Rosebank often made it difficult to establish clear boundaries, and I was often fielding calls from sex workers in the middle of the night in response to some encounter they had with the police.

Furthermore, I was juggling two different types of relationships, which required I adopt two different types of personas and lexicons. With sex workers, I referred to their work as sex work, with police it was prostitution. To do otherwise would be a distraction. More fundamentally, I had to internally shift my perspective during my different encounters because I formed personal relationships with the participants and thus was considered a confidant. While the police and sex workers were more closely aligned than I anticipated, there were still moments when I felt I had to take sides and decide my loyalty. It was difficult to manage this process of back and forth and split identity. But, this constant shifting also allowed me to gain a holistic perspective on the issues and factor in matters that would otherwise seem irrelevant.

Initially, I did not plan to interview sex workers for this project and intended to focus on the policing aspect of the interaction, from the police's perspective. However, that quickly shifted as I became informally acquainted with several sex workers in the Rosebank area and later introduced to several more. Maintaining the trust of two groups of participants who are antagonistic with each other was challenging because

ethnography requires some form of friendship or intimacy with the research participants because you spend so much time together. There is a contradiction in forming this close relationship with two groups that are somehow in opposition to each other. Managing both the police and the sex worker relationships required that I focus on one group of participants at a time, recall the appropriate social cues for my audience (such as, lexicon, wardrobe, slang), and deepen the relationships through casual interactions and time spent together. Given the nature of the research, this often happened over drinks and in bars. Working with one group may be interpreted as a form of taking sides. I tried to assure the research participants that my research questions were guiding my approach and that I was not an advocate for one side or the other. This type of communication often happened in casual settings. This relationship building also happened over meals and informal rap sessions, where they would talk with me about work conditions, salary, family life, and the general challenges of living in Johannesburg. These personal or informal interactions became important ways of maintaining close relationships with the participants as well as obtaining relevant information about other aspects of their lives.

2.5 Incorporation of Semi-Structured Interviews

After spending approximately five months in the field building rapport with the police member and sex work participants, I began conducting semi-structured interviews with research participants. This included semi-structured interviews with 25 police officers focused on their everyday interactions with sex workers, their attitudes about the legal rules concerning sex workers, and their observations about how sex

workers are policed. The interviews covered several major research questions, but they also allowed for flexibility in the discussion. This approach allowed the interviews to be open-ended and encouraged the participants to determine the direction of the conversation. Interviews with the 25 police members were audio-recorded with the permission of the participants and later transcribed by a professional transcription company.

Likewise, I conducted 36 semi-structured interviews with sex workers about their interactions with police officers, their expectations of the police, and their observations about how sex workers are policed. In addition to these 36 interviews, I conducted informal interviews during the course of my ethnography with more than 50 sex workers in Johannesburg to build rapport, get a general sense of the working conditions, and introduce myself to sex workers. Although research participants are at times reluctant to be completely forthcoming in interviews, depending on rapport and perceived expectations, interviews are helpful in revealing expressed motivations and informant understandings of conduct.

I took copious notes during my interviews with sex workers to ensure accuracy. The semi-structured interviews with sex workers were generally 10–60 minutes in duration and took place while the sex workers were working. I attempted to be as brief as possible to respect the sex workers' workspace and to avoid interrupting their business transactions. For sex workers, time is quite literally money, and I had to narrowly tailor my research questions for the sex workers. Data from interviews with sex workers were generally all handwritten during the interviews, and key points were later

transcribed. These interviews were not audio recorded to encourage trust from the participants.

Longer interviews occurred when sex workers seemed interested in having a lengthy discussion to share their experiences. I chose a sub-set of five of the sex worker participants for in-depth interviews based on their interest in the project, availability, and their showing up for the interviews. These interviews were helpful in identifying temporal changes in the relationship between the police and sex workers as well as other factors that influence how participants experienced the policing of sex work. The in-depth interviews were each longer than two to seven hours in duration. One of these interviews was audio recorded with the permission of the participant and later transcribed by a professional transcription company. I met with the five sex workers outside of business hours to conduct semi-structured in-depth interviews that explored information outside the scope of my research questions. I was able to gain additional depth about the individual sex workers' stories and their entry into the sex industry. All of these interviews proved helpful in gaining the trust of sex workers because interviewed sex workers would vouch for me on the streets and in brothels when other sex workers were hesitant to speak with me.

I had only begun speaking to sex workers in the Oxford Road area and in central Johannesburg after spending several months patrolling with the police. I would drive around the red-light district in Rosebank in a red scooter and would stop to chat with sex workers who were not actively engaged in any transactions and seemed receptive to me as I slowly drove by. I did this for three months, while I was also patrolling with the

police, to allow the sex workers to become familiar with me with the aim of facilitating future introductions. After seeing me on the streets a few times, sex workers began yelling for me to stop while I drove by, and I began to form relationships with the sex workers in Rosebank.

2.6 Obtaining Informed Consent

Each research participant was provided with a description of the research project and the parameters of informed consent in the form of an information sheet and informed consent form. Although I made physical copies of these sheets available, all research participants opted to receive this information orally because the sheets of paper would interfere with their working conditions. Both police and sex workers' working environments require mobility, and they would be offended when I offered them paper information sheets. Instead, I opted to explain my research study orally. I explained that I was a researcher from Wits and that I was conducting research on the policing of sex workers in Johannesburg. The interviews were topical and designed to cover key issues relating to the research object, while allowing flexibility to build rapport and to address unexpected topics.

All participants were promised confidentiality, and they chose or were provided pseudonyms to aid in masking their identities. I also provided ranking officials within the South African Police Service with information regarding confidentiality. However, I informed them that although a pseudonym would be used to conceal their identities, it was nevertheless possible that they could be identified given their unique ranking and

other identifying information that would be provided in the research report. All the participants in the study indicated that their participation in sex work was not coerced and that they knowingly and freely entered into the sex work trade. All participants were aged older than 18 years.

2.7 Participant Sampling

I conducted semi-structured interviews with 36 sex workers and 25 police members regarding the relationship between police and sex workers. The sample is relatively small, but as Sandelowski has argued, 'qualitative analysis is generically about maximizing understanding of the one in all of its diversity; it is case-oriented, not variable oriented.'⁵² Accordingly, smaller samples are typical of qualitative research, which is concerned with depth and rich description. 'An adequate sample size in qualitative research is one that permits—by virtue of not being too large—the deep, case-oriented analysis that is a hallmark of all qualitative inquiry, and that results in-by virtue of not being too small—a new and richly textured understanding of experience.'⁵³ Qualitative research is concerned with achieving depth and providing description and need not be generalizable.⁵⁴

⁵² M Sandelowski, S Docherty & C Emden 'Focus on Qualitative Methods' (1995) 18 *Sample Size in Qualitative Research in Nursing & Health* 179, 179.

⁵³ Ibid 183.

⁵⁴ Ibid.

The sampling for the Hillbrow police interviews was convenience sampling. The ranking captain on the shifts during which I conducted my interviews would introduce me to the visible policing officers on shift. I would then interview all officers who were willing to participate in the study. I mitigated for the convenience sampling by randomising the shifts during which I interviewed police officers. After interviewing 20 Hillbrow police officers, I had interviewed a little over five per cent of the officers charged with visible policing and complaints. These visible policing officers are the first line of contact for many sex workers in Hillbrow and thus had relevant knowledge regarding my research questions.

By contrast, the Rosebank police station is much smaller, but it took much longer to conduct the interviews there. The Rosebank police repeatedly informed me of their capacity constraints. Accordingly, the interviews there were pushed back on several occasions, and the sampling approach was convenience sampling. The Rosebank police members were reluctant to participate in semi-structured, pre-scheduled interviews. After much pushback, I managed to conduct semi-structured in-depth interviews with five police officers from the Rosebank police station. However, during the course of my ethnography, I conducted informal interviews with an additional 12 police members about their duties and their perception of sex work.

The research sampling for sex workers was in large part respondent-driven sampling or snowball sampling. This sampling technique is a form of network sampling driven by the network of existing research participants. It is a sampling technique

frequently used to research 'hard-to-reach' populations.⁵⁵ I also employed targeted sampling and was able to penetrate the sex worker community by becoming a frequent presence in sex work hot spots by cruising around the Oxford Road area in the evening, frequenting brothel hotels during strip shows and sex shows, and becoming a known presence in central Johannesburg.⁵⁶

2.8 Accessing Sex Workers

My participant observation with the sex workers comprised three different approaches corresponding to my three research sites. In Rosebank, I would spend time outside with sex workers when they were in between clients, parking my scooter at a discreet location to avoid interfering with their business. Any evening I was on Rosebank patrol, I would interview every sex worker I encountered within the designated geographic space on which I was focused for the evening. Interviewing the sex workers in their work environment was beneficial because many of their concerns were fresh on their minds as they were working. Additionally, I was able to observe their interactions with each other, and chatting in a group setting amongst colleagues encouraged sex workers who were hesitant to talk to a stranger to speak up. However, because of the nature of sex work and of my research, I was unable to obtain a truly

⁵⁵ See generally LG Johnston & K Sabin 'Sampling Hard-to-Reach Populations with Respondent Driven Sampling' (2010) 5 *Methodological Innovations Online* 38.

⁵⁶ FM Shaver 'Sex Work Research Methodological and Ethical Challenges' (2005) 20 *J Interpersonal Violence* 296.

random sample. Obtaining a random sample for sex workers is challenging, and purposive sampling is generally adopted when researching this 'invisible population'.⁵⁷

I mitigated for this by interviewing all sex workers who were present within a given location⁵⁸ and regularly switching the location for the evening. This allowed me to obtain some level of randomness in my sample, although the primary sampling technique was convenience sampling. I adopted the same approach in central Johannesburg. I would spend time outside, casually chatting with sex workers and observing as clients interacted with them. I would then conduct semi-structured interviews with sex workers who were interested in participating in the research project. Several of the sex workers I met on the streets had previous experience in brothels and were able to share their insights about working in brothels as well.

To explore sex work in Hillbrow brothels, I relied heavily upon my key informant, Emily, whom I met through a friend who frequents brothels. She had previously worked in Hillbrow Inn and retired from sex work to work as a domestic worker. We visited Hillbrow brothels together, and she introduced me to sex workers whom she knew. I also visited these establishments alone to become acclimated with the scene and meet additional sex workers. Most of the brothel-based sex workers had very limited

⁵⁷ Ibid.

⁵⁸ I would define location by selecting certain street corners on which to focus. This would frequently mean focusing on street locations on Oxford Road that were between Houghton and Rosebank Mall or between Thrupps Shopping Centre and Rosebank Mall.

interactions with police. In general, the brothel-based sex workers I encountered were suspicious and mistrusting of strangers.

2.9 Accessing the Police

Not surprisingly, the Hillbrow police force is one of the largest police forces in the country, with 498 members. I gained access to the police by submitting a research request to the national office of the South African Police Service to conduct research at both the Rosebank and Hillbrow police stations. Obtaining this approval was a challenging process. I submitted a formal research request application to the national office and then waited for a lengthy bureaucratic process before receiving the final research approval. I called the police on several occasions and spoke to the head of the research department, and after the national department granted its approval, the request was submitted to the provincial police. After the provincial police received my request, the approval was submitted to a similar lengthy bureaucratic process requiring signatures from various officers, some of whom were on vacation or on sick leave. I submitted my initial application on 12 November 2012, and I received final approval to begin my research on 14 May 2013. The request was approved after approximately six months, with some gentle nudging from me. The fieldwork research was conducted between June 2013 and February 2015. The majority of the participant observation was conducted between June 2013 and August 2014, whereas follow-up interviews were conducted until February 2015.

2.9 Ethical Considerations

Several ethical concerns arise when conducting research on human subjects. All participants in the research provided informed consent before participating in the study. I fully informed participants about the nature and purpose of the research, and I took additional steps to ensure that the sex workers' identities were protected, including using pseudonyms in written products about the project. Both the police officers and sex workers chose or were provided with pseudonyms for the purpose of recording interview data. All of the research data are stored on a secure laptop computer that is password protected. In the event of theft, the hard drive from the laptop can be wiped to protect all confidential data. The real names of participants have not been stored, and all participants have been provided designated pseudonyms.

Sex workers are generally considered to be a vulnerable group, and discussing their concerns regarding police may expose them to psychological damage. I had to be sensitive to this fact during my questioning and was able to refer sex workers who required therapeutic services to outside providers. However, maintaining a respectful researcher–participant relationship was tricky. The sex workers began to view me as a friend, and the boundaries began to get blurry. It was important to maintain our professional relationship without sacrificing their hard-earned trust and our natural rapport. I sometimes received phone calls from sex workers in the middle of night, and they relied upon my immediate response. The research was blurring into my personal life, and it became difficult to maintain my personal space. I wrestled with the difficulties of doing research with a vulnerable population, particularly when sex workers came

across financial difficulties and viewed me as a friend. I also had similar challenges with the police.

I had to be sensitive to the illegal nature of sex work. When working with the police, I did not want to encourage unnecessary interactions with sex workers that would not have occurred in my absence. For example, when I first began my research with the police, one of the police officers asked me whether he should arrest some sex workers and question them for the research project. After arresting them, he promised to allow me to interview the sex workers. I vehemently opposed the suggestion because I did not want to create harm for the sex workers or promote unnecessary friction in the relationship between police and sex workers. However, I also had to be sensitive to the fact that in exploring the everyday interactions between police and sex workers, I could not shy away from interactions that would have occurred in my absence. I had to walk a fine ethical line.

I also was sensitive when observing the illegal conduct of the police members. On several occasions, police members solicited illegal bribes, admitted to patronising sex workers, or explained the rationale for either behaviour while engaged in police work. These occurrences presented ethical challenges for me, because as a concerned individual, I may have wanted to report the police members' misconduct. As a researcher, the police members had confided in me and trusted me to protect such confidence. I even observed an incident of extreme police abuse as the police tortured

an arrestee by cutting off the circulation to his hands by tightening his handcuffs. I was casually informed that this was routine, presenting a challenge for me in my research. I had to ask myself serious ethical questions. Do I report the police misconduct? Do I jeopardise this and future research projects by compromising their trust in me? Have I placed the police in a compromising position by creating a relationship that is so transparent that they believe that torturing an arrestee in my presence is appropriate? How should my ethical obligations as a researcher guide me? I regularly consulted my research supervisors as ethical challenges presented themselves, and we discussed suitable approaches. We were continuously engaged in a dialogue about the appropriate methods for conducting this type of sensitive research.

2.10 Safety Issues

I adopted safety protocols to ensure that I was not at risk while in the field. While patrolling with the police, I was provided with clear safety instructions, signed a waiver that detailed the risks of observing police work, and followed the instructions of my partner officer during the patrols. Police work is inherently dangerous, and on several occasions, I accompanied police members as they responded to complaints unrelated to sex work. I also accompanied the police members on high-speed chases and routine traffic stops.

Given the nature of my research, safety was an issue while I was in the field without police protection.⁵⁹ During my visits to Hillbrow brothels, I brought companions who were already familiar with the Hillbrow brothel scene to ensure my safety during nighttime visits. I would only make evening visits to the brothels with at least two companions. This ensured that I would not be a target for robbery and also provided me with comfort. During my daytime visits, I dressed as a patron and left the venue by 3:00 PM, while it was still daylight outside, to avoid travelling alone in the evening through Hillbrow. During my visits to central Johannesburg, an escort always accompanied me. In Rosebank, I was much more casual, because of its close proximity to my home. I felt comfortable in the neighbourhood but still exercised reasonable caution while there. I frequently interviewed sex workers in Rosebank and would spend time on Rosebank street corners without any escort at all times of the evening.

2.11 Data Analysis

I personally transcribed all the ethnographic field notes. This allowed me to fully immerse myself in the topics that were discussed in the previous evening and to begin the process of interpreting the data. In reviewing the data collected during interviews and focus groups, I used critical discourse analysis to decode 'the role of discourse in the (re)production and challenge of dominance (or) . . . the exercise of social power by elites, institutions or groups, that results in social inequality, including political, cultural,

⁵⁹ Shaver (note 56 above) 296.

class, ethnic, racial and gender inequality'.⁶⁰ Critical discourse analysis provides a mode for interpreting raw data that aims to place the data within their structural context and elucidate what the data reveal about underlying inequality.

I reviewed the data frequently and used open coding to pull out themes that naturally arose from the data. These themes provide the organising structure for this dissertation and are included in the subject headings for Chapters 4–7.

⁶⁰ T van Dijk 'Principles of Critical Discourse Analysis' (1993) 4 *Discourse & Society* 249, 249–50.

CHAPTER 3. THE HISTORY OF REGULATING SEX WORK

Introduction

This chapter tracks the history of the policing of sex work in South Africa by analyzing discourses that have contributed to the formal and informal policing⁶¹ of the sex worker's body.⁶² As later chapters will show, the history of the policing of sex work in South Africa provides insights for interpreting contemporary issues in this area, uncovering a history of the present. Some of the discourses that have contributed to the policing of sex workers in South Africa include the public health discourse, the morality discourse, the racial morality discourse, and the public nuisance discourse, and the hygiene discourse, each of which share continuities and contradictions with the contemporary policing of sex workers. The actual criminalisation of sex work has often not been as significant as the everyday policing of sex work, which often belies de jure criminalisation and has instead been informed by these discourses. These discourses have often relied upon the exercise of bio-power, which is 'concerned with subjects as members of a population, in which issues of individual sexual and reproductive conduct interconnect with issues of national policy and power.' They have policed the sex worker body by requiring: the mandatory physical examinations of sex workers, public nuisance

⁶¹ I am employing a Foucauldian definition of 'policing', which is expansive and includes all the methods of controlling the populace, gaining information about and access to the population and strengthening a society. Here this definition includes both policies and practices that intend to regulate the public and private activities around sex work. This chapter is a genealogy in that it 'does not look for causes and points of origin so much as map how things and ideas are possible within a given context'. Catherine Driscoll *Girls: Feminine Adolescence in Popular Culture and Cultural Theory* (2013).

⁶² Michel Foucault 'The Body of the Condemned' *The Foucault Reader* 170, 178 (1984).

regulations that determine when and where the sex trade can take place, and prohibitions against interracial sex that transformed racial hierarchies into laws that attached additional penalties for compromising racial purity.

Section 3.1 of this Chapter discusses the perception of sex work as a ‘necessary evil’ under the Dutch East India Company in the early Dutch colony based at the Cape, and Section 3.2 outlines British colonial rule and the influence of the Victorian era on the policing of sex work and the rise of the public health discourse. Section 3.3 focuses on the Union of South Africa and the mass hysteria following the rise of the ‘black peril’ and the racial morality discourse. Section 3.4 discusses the apartheid era and the impact of the Immorality Act on the policing of sex workers.

3.1 Dutch East India Company and Slavery

The Dutch East India Company established a settlement in the Cape in 1652⁶³ as a refreshment station for vessels travelling between the Netherlands and Batavia.⁶⁴ This small refreshment station eventually grew into a settler colony as company employees first sought land and then began to retire to the colony. Company employees could lease plots of land from the company, which could be used for labor-intensive farming.⁶⁵ From about 1658, slaves were imported from Madagascar, east Africa, and Asia, to

⁶³ T Davenport & C Saunders *South Africa: A Modern History* (2000) 21.

⁶⁴ *Ibid* 28.

⁶⁵ *Ibid* 30.

meet the labour requirements of the settlement, thus increasing the number of inhabitants of the colony.⁶⁶

The influx of passing Company seamen through the Cape port meant that sex work naturally evolved as a method for entertaining these temporary visitors near the port.⁶⁷ '[T]housands of single Company soldiers and sailors disembarked each year at Cape Town for ten days to three weeks of recreation.'⁶⁸ Sex workers catered to both the seamen, who were temporary visitors, and the settlers of the colony.⁶⁹ A lively community of taverns and houses of ill fame developed near the dock, which catered specifically to the passing seamen at the Cape Colony's port.⁷⁰

Several factors contributed to the active sex trade in the Cape Colony. Firstly, there was a gross imbalance in the gender population of the Colony.⁷¹ Sex work provided an opportunity for enterprising women to capitalise on the lonely situation of the relocated men.⁷² In many ways, sex work was viewed as a necessary evil. Engaging

⁶⁶ Ibid 25.

⁶⁷ See H Trotter 'Dockside Prostitution in South African Ports' (2008) 6 *History Compass* 673.

⁶⁸ Ibid 675.

⁶⁹ See *ibid* 676.

⁷⁰ See *ibid* 677.

⁷¹ *Ibid*.

⁷² *Ibid*.

sex workers boosted the morale of seamen after their long voyages.⁷³ The Cape hosted many Dutch and, later, British seamen who would frequent 'houses of ill fame', many of whom arrived to the Cape without their wives.⁷⁴ Although there is scant information about Khoi Khoi women engaging in sex work, records clearly indicate that slave women routinely participated. The Company Slave Lodge, which was described as the 'finest little whorehouse', employed slaves who also worked as sex workers.⁷⁵ Company employee Otto Mentzel described the Company Slave Lodge:

Female slaves are always ready to offer their bodies for a trifle; and towards evening, one can see a string of soldiers and sailors entering the Lodge where they misspend their time until the clock strikes 9. After that hour no strangers are allowed to remain in the Lodge. The Company does nothing to prevent this promiscuous intercourse, since, for one thing, it tends to multiply the slave population, and does away with the necessity of importing slaves.⁷⁶

Mentzel claimed that the motto of the slave sex worker was 'Kammene kas, kammene kunte', or 'No cash, no cunt,'⁷⁷ and sex work became a means for some of

⁷³ Ibid.

⁷⁴ Ibid 677 ('Cape Town was host to Dutch and, later, British troops, most of whom were without wives, and was a busy port of call for European fleets. The numerous canteens and "houses of ill fame" near the waterfront and garrison (and elsewhere in The town)').

⁷⁵ Ibid 676.

⁷⁶ R Ross *Status and Respectability in the Cape Colony, 1750–1870: A Tragedy of Manners* (1999) 128.

⁷⁷ Ibid.

these sex workers to purchase their freedom.⁷⁸ During this period, there was no formal policing or legal regulation of sex work. 'On the whole, apart from some legislation to control disorderly conduct in public, the authorities did little to interfere with the practice of prostitution. . . ' in the Cape Colony.⁷⁹

In fact, there are reports of opportunistic sex workers and madams lining the ports to welcome passing Company seamen upon their arrival at the Cape and to direct them to their respective establishments.⁸⁰ Sex work became a mode for these women to transform their economic realities and provide an income that was higher than what could be earned through other available opportunities. It also enabled widowed women to provide for themselves and their families. Historian Henry Trotter has discussed the Cape Colony sex trade, which frequently catered to passing seamen:

After months at sea in an all-male environment, many seafarers desired female companionship when they reached Cape Town. For a long time, there were few women to provide this service. Only when the society stabilised and grew did a notable prostitution sector emerge. White women were initially scarce at the

⁷⁸ See Trotter (note 67 above) 677.

⁷⁹ See generally EB van Heyningen 'The Social Evil in the Cape Colony 1868–1902: Prostitution and the Contagious Diseases Acts' (1984) 10 *J SA Studies* 170, 171.

⁸⁰ See *ibid* 678.

settlement, but some ended up prostituting themselves due to the loss or absence of their husbands.⁸¹

3.2 British Colonial Rule

In 1795, and again in 1801, the British took control of the Cape Colony and abolished slavery in 1834. Soon thereafter, the British annexed Natal, and the 'ports of Cape Town, Port Elizabeth, and Durban were then all under imperial control. During this time . . . "prostitution remained a casual profession. It had become an offence, but was relatively rarely prosecuted."⁸²

3.2.1 *Colony of Cape of Good Hope*

In her seminal piece on prostitution in the Cape Colony in the 19th century, historian Elizabeth B. van Heyningen argues that government officials viewed sex work as 'inevitable in a seaport town [as it] provided a form of controlled release for the antisocial energies of unruly sailors'.⁸³ The sexual appetite of these 'unruly sailors' was a concern in several of the British colonies as the empire expanded. For example, in the Dutch colony, Gombong, an officer warned about the potential for unrestrained homosexuality, where there were restrictions on male seamen's sexual interactions,

⁸¹ Ibid 675.

⁸² Ibid.

⁸³ Ibid.

stating: 'Far more than half of the young men quartered [in a barrack that banned concubinage] were guilty of practicing unnatural vices [including male–male sex].'⁸⁴ In general, European colonists worried about the sexual morality of seamen, and '[t]he dangers of a homosexual European rank and file were implicitly weighed against the medical hazards of rampant heterosexual prostitution: both were condemned as morally pernicious and a direct threat to racial survival.'⁸⁵

Throughout the British Empire, sex work was in this way encouraged, although feared, because colonial authorities did not want men to resort to homosexuality as they were not provided with an alternate form of sexual release. As in the Dutch colony, sex work was thus considered necessary and was largely tolerated. Engaging sex workers ensured that men would not lose all their 'sensibilities' by delving into homosexual behaviours due to their prolonged absence from Europe.⁸⁶ The irony in this tolerance of sex work is that the very act of engaging in sex work was viewed by many as the very loss of 'sensibilities' that was so highly prized in the colonial state. The result of this approach was a regulatory scheme that treated the sex worker as deviants while turning a blind eye to the men who engaged sex workers. This reproduced deeply entrenched

⁸⁴ A Stoler 'Educating Desire in Colonial South-East Asia: Foucault, Freud, and Imperial Sexualities' in L. Manderson & M. Jolly (eds) *Sites of Desire, Economics of Pleasure: Sexualities in Asia and the Pacific* (1997) 36.

⁸⁵ L. Bryder 'Sex, Race, and Colonialism: An Historiographical Review' (1998) 20 *Int Historical Review* 806, 814.

⁸⁶ *Ibid* ('[T]he provision of prostitutes was thought necessary because sexual passions were heightened in the tropical heat: denied prostitutes, soldiers could turn to rape or, worse, one another: "The constant haunting fear of homosexuality, the presence of which would undermine the manly adventure of imperial conquest, underscores the whole debate on prostitution throughout this era. . . . In the politics of empire, there was no room for even a hint of the effeminacy assumed to exist among subject men"').

sexual double standards in which men were expected to be sexual beings, whereas women who were engaged in 'deviant' sexual conduct, such as sex work, were viewed suspiciously.

3.2.2 Moral Regulation and Public Health

The years of British colonial rule were heavily influenced by the Victorian era, which occurred during Queen Victoria's rule from 1837 until 1901.⁸⁷ The Victorian era has been widely discussed as a period marked with sexual repression and sexual purification.⁸⁸ As historian Malherbe argues:

Victoria's sixty-four-year incumbency would see the elevation of "moral regulation" as a social policy in Britain and its (erratic) emulation at the Cape of Good Hope. From its foundation by the Dutch East India Company as a place of European occupation and, soon afterwards, settlement in 1652, Cape Town experienced spasms of official outrage against the sexual transgressions.⁸⁹

Nonetheless, the discourses around sex work at the time do not necessarily highlight the sexual repressiveness of the Victorian era; they demonstrate the desire to

⁸⁷ NG Hale *Freud and the Americans: The Beginning of Psychoanalysis in the United States, 1876–1917* (1971) 42.

⁸⁸ *Ibid.*

⁸⁹ VC Malherbe, 'Family Law and "The Great Moral Public Interests" in Victorian Cape Town, c.1850–1902' (2010) 36 *Kronos: J of Cape History* 7, 13–14.

police 'deviant' sexualities.⁹⁰ Foucault describes these sexual deviants as the 'other Victorians.'⁹¹ These 'other Victorians' expressed sexuality outside the confines of the traditional Victorian standards, which were limited to the marital relationship, and included those who engaged sexual discourses with psychiatrists or prostitutes.⁹² This included sex workers and those who frequented them.⁹³ By highlighting the conduct of sex workers, this discourse contributed to the social marginalisation of sex workers and was an act of regulation in and of itself.⁹⁴

Social norms treated male and female sexualities differently.⁹⁵ Women were expected to remain pure bastions of chastity that required protection from the male sexual appetite.⁹⁶ This approach to sexuality encouraged women to suppress their sexual desires and, in some situations, even encouraged women to be asexual.⁹⁷ By contrast, although men were encouraged to remain sexually chaste, it was entirely

⁹⁰ Ibid.

⁹¹ See Foucault (note 9 above).

⁹² S Marcus *The Other Victorians: A Study of Sexuality and Pornography in Mid-Nineteenth-Century England* (2008).

⁹³ Ibid.

⁹⁴ Ibid 5-7.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

expected for them to have larger sexual appetites than women.⁹⁸ They were the more primal and sexual of the sexes, and thus sexual inequality was assumed.⁹⁹

Consequently, it was hardly unusual, and even encouraged, for men to turn to 'less moral' women or sex workers to meet their unfulfilled sexual needs.¹⁰⁰ Turning to sex workers was viewed as a necessary aspect of the social order.¹⁰¹ Men were expected to have unsavory sexual desires that were beyond the reproach of a respectable lady.¹⁰² Sex workers were viewed as an acceptable release for these desires that would otherwise go unmet by their wives. This tolerance of sex work in Victorian society also protected wives from the unsavory desires of their husbands. The *Cape Argus*, a prominent liberal newspaper from the Cape Colony, warned its readership of the necessity of sex work:

Harlotry, as an institution, with all its fearful evils to mind and body, is of so ancient an origin, that we can hardly now hope to put it down entirely; and perhaps, too, it is not quite desirable, while society is constituted as it is, that it

⁹⁸ Ibid.

⁹⁹ See e.g. BM Ahlberg 'Is There a Distinct African Sexuality? A Critical Response to Caldwell' (1994) 64 *Africa* 220, 224 (discussing the double standard in understanding male and female sexuality during the Victorian era: 'the period is characterised by the strong belief that man's sexual urge is biologically natural while a virtuous woman should be asexual. This rationalised the double standard whereby unchastity was excusable and understandable in men, but unnatural and unforgivable in women. If the man was not sexually satisfied by his virtuous asexual wife, he could use prostitutes').

¹⁰⁰ Ibid.

¹⁰¹ Ibid ('If the man was not sexually satisfied by his virtuous asexual wife, he could use prostitutes').

¹⁰² Ibid.

should be driven into secret places; for experience teaches us that even where it is not openly allowed by law, as in the Roman states, its evil effects are aggravated. In a measure it must, perhaps, be regarded almost as an institution necessarily attendant on the present state of society; as, in a degree, a safety-valve for public morality, and as some protection to the chastity and purity of our virgins and matrons, guarding them partially from temptations only too seductive!¹⁰³

Accordingly, sex work became a brand of immorality for lower-class women while remaining a tool for protecting the morality of 'respectable' women.¹⁰⁴ The sex workers themselves were merely incidental participants in the preservation of the purity of respectable women. This approach to sex work emphasised sex work as a necessity to protect respectable women from the insatiable male sexual appetite that could only be satisfied through encounters with deviant prostitutes.

However, some people protested this inequality. Although there was very little formal policing of sex work at the time, civil society began to morally police sex work, particularly the conduct of 'immoral men'. During the Victorian era, women's groups launched wide-reaching campaigns against male sexual immorality.¹⁰⁵ Women's groups

¹⁰³ Van Heyningen (note 79 above) 173–74.

¹⁰⁴ Ibid.

¹⁰⁵ See generally K Shear "'Not Welfare or Uplift Work': White Women, Masculinity and Policing in South Africa' (1996) 8 *Gender & History* 393.

disparaged sex work as a form of male sexual immorality, while portraying sex workers as victims of circumstance.¹⁰⁶ The men were portrayed as opportunistic, immoral actors violating the proper moral order.¹⁰⁷ These groups organized protests about the prevalence of brothels and visible street prostitution. However, this morality discourse was unable to motivate formal state action against sex work and, at times, even provided the rationalization for the inevitability of sex work.

It was the emergence of public health discourses that eventually triggered the widespread regulation of the sex worker body. Efforts to suppress sex work were bolstered by a syphilis pandemic that resulted in the deaths of thousands of people in England and its colonies,¹⁰⁸ and which created paranoia about the treatment of venereal diseases.¹⁰⁹ Within this social context, sex workers were quickly constructed as carriers of contagion and largely blamed for the spread of venereal diseases.¹¹⁰ They were perceived as outcasts in society and made easy targets.¹¹¹ As historian Henry Trotter

¹⁰⁶ Ibid 395.

¹⁰⁷ Ibid.

¹⁰⁸ K Jochelson 'Sexually Transmitted Diseases in Nineteenth- and Twentieth-Century South Africa' in P Setel et al (eds) *Histories of Sexually Transmitted Diseases and HIV/AIDS in Sub-Saharan Africa* (1999) 217.

¹⁰⁹ Van Heyningen (note 79 above) 177, 179, 182.

¹¹⁰ Ibid 179.

¹¹¹ Ibid.

has observed, 'polite society now worried that their laundry women and domestic servants might be moonlighting as prostitutes, polluting their hearths with diseases.'¹¹²

Doctors and medical professionals blamed sex workers for infecting respectable wives with disease by sleeping with their husbands.¹¹³ Sex workers' bodies represented a threat to their quality of life and basic hygiene. This gave rise to an urgent need to regulate them more thoroughly to prevent the spread of contagion.¹¹⁴ Meanwhile, sex work clients, who were often other women's husbands, were not similarly viewed as carriers of disease.¹¹⁵ Proper society treated men as accidental victims in the public health discourses, coerced by the temptations presented by sex workers.¹¹⁶ The sex worker embodied fears about female sexuality, a sexuality that was primarily exploited for the benefit of female commercial empowerment during the act of sex work. Accordingly, the morality discourse became increasingly connected with the public health discourse, reinforcing and intersecting with each other. This allowed for the moral regulation of women's bodies and sexuality while maintaining a public health rationale.

¹¹² See Trotter (note 67 above) 678.

¹¹³ See JC Martens "Almost a Public Calamity": Prostitutes, "Nurseboys", and Attempts to Control Venereal Diseases in Colonial Natal, 1886–1890' (2001) 45 *SA History J* 27, 32.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid. '[I]n 1889 39 "Native women" presented themselves for treatment for syphilis and even for gonorrhoea. However, in seeking treatment these women unwittingly risked further ill health. In the 19th century, the principal treatment for syphilis was mercury, and the dose required to eradicate the disease was close to being fatal'.

3.2.3 Contagious Diseases Acts

The spread of venereal diseases in England and the colonies created a fervor to regulate the sex worker body, a perceived site of contagion,¹¹⁷ and resulted in the passage of the Contagious Diseases Act in England in 1864.¹¹⁸ The preamble of this Act states, '[W]ith the peculiar conditions of the naval and military services, and the temptations to which the men are exposed, justifies special precautions for the protection of their health and their maintenance in a state of physical efficiency.'¹¹⁹ This preamble clearly treated men as accidental victims of the contagion-carrying sex worker. It set the tone for treating sex workers as accessories to the protection of male sexual health. Sex work was permissible as a necessity for men, but sex workers themselves were viewed with suspicion.

A similar act was adopted in India in 1868, followed by other colonies, including Malta, Hong Kong, Australia, and Gibraltar. Historian Philippa Levine has discussed the passage of the Contagious Diseases Act throughout the British Empire: 'Enacted principally in the 1860s, at the same time as the British acts, almost every British colony acquired regulations governing the behavior of prostitute women as a measure against

¹¹⁷ See generally P Levine 'Venereal Disease, Prostitution, and the Politics of Empire: The Case of British India' (1994) 4 *J of the History of Sexuality* 579, 580.

¹¹⁸ *Contagious Diseases Acts*, 1864.

¹¹⁹ *Contagious Diseases Acts*, 1864 (emphasis added).

the threat of syphilis and gonorrhoea.¹²⁰ Most versions of the Act had language that was nearly identical to that of the English Act, treating sex workers as temptresses that preyed on male sexual desire.

3.2.3.1 Cape Colony

In South Africa, the first Contagious Diseases Act was enacted in 1868 in the Cape Colony.¹²¹ This Act mandated the registration and regulation of sex workers as ‘common prostitutes’: ‘A common prostitute was described as maladjusted, an unbalanced personality and a menace to society. Included in the category of common prostitute were also latent homosexuals, women who cheat on their husbands and gold diggers.’¹²² The Act required the registration of women suspected of being a ‘common prostitute’,¹²³ and subjected them to routine examinations for venereal diseases. Sex workers found to be infected with venereal disease were confined to Lock hospitals and subjected to involuntary treatment and examinations.¹²⁴

¹²⁰ Levine (note 117 above) 581.

¹²¹ See J Gardner ‘Criminalising the Act of Sex: Attitudes to Adult Commercial Sex Work in South Africa’ M Steyn & M van Zyl (eds) *The Prize and the Price: Shaping Sexualities in South Africa* (2009) 329, 330–31.

¹²² *Ibid* 331 (internal quotations and citations omitted).

¹²³ *Ibid*.

¹²⁴ Levine (note 117 above) 583 (discussing the conditions of Lock hospitals in India).

The Act blatantly discriminated against sex workers, citing the need to protect seamen from the 'temptation' of the sex worker in its very preamble,¹²⁵ and treating the sex worker, but not the client, as the vector of disease. Only sex workers, and not their clients, were subjected to mandatory, invasive physical examinations.¹²⁶ This injustice gave rise to a movement to repeal the Act both in England and those colonies where the legislation had been adopted.¹²⁷ In England, women's groups in particular opposed the Act as it exposed sex workers to physical invasions and tolerated male sexual immorality.¹²⁸ As English feminist Josephine Butler famously stated:

I never myself viewed this question as fundamentally any more a woman's question than it is a man's. The Legislation we opposed secured the enslavement of women and the increased immorality of men; and history and experience alike teach us that these two results are never separated.¹²⁹

Butler and others argued against the unfairness of an Act that only focused on the sex worker, whom they viewed as a victim of her circumstances. Moreover, efforts to repeal the Act coalesced well with campaigns to police male sexuality. Women's groups were

¹²⁵ Contagious Diseases Acts, 1864.

¹²⁶ Van Heyningen (note 79 above) 172, 178.

¹²⁷ Bryder (note 85 above) 818 (citing AM Burton 'The White Woman's Burden: British Feminists and the Indian Woman, 1865–1915' in N Chaudhuri & M Strobel (eds) *Western Women and Imperialism: Complicity and Resistance* (1992) 14).

¹²⁸ Ibid.

¹²⁹ P Hollis *Women in Public, 1850–1900: Documents of the Victorian Women's Movement* Routledge rev ed (2013) 209 (quoting J Butler *Personal Reminiscences of a Great Crusade* (1896) 73 (2008)).

strictly opposed to sex work and challenged the morality of men engaging in sexual transactions outside of their marriages.

In the Cape Colony, sex workers themselves became involved in campaigns against the Act. They rioted against the Act¹³⁰ and refused to comply with required examinations, and generally protested its invasive requirement of vaginal examinations for syphilis using a speculum.¹³¹ In addition, the Police's role in enforcing the Act, as first-line responders, created tensions in their relationship with sex workers.¹³² However, it was established white, middle-class men rather than women's groups who took the lead in campaigning against the Act. In particular, the proprietor of the Cape Argus, Saul Solomon, published reports of 'a series of incidents towards the end of 1870 involving illegal police action against prostitutes, [in] . . . the Cape Argus'.¹³³ The Act was repealed in the Cape Colony in 1872, owing to these efforts in response to the police actions.¹³⁴ For thirteen years, sex workers could engage in their activities without the interference of the law.¹³⁵ Eventually, another version of the Act passed in the Cape in

¹³⁰ Van Heyningen (note 79 above) 185 ('Under this Act these girls had mutinied, and they stated that they had done so to get out of the Lock Hospital before their confinement').

¹³¹ Ibid 195 ('The use of the speculum as a diagnostic instrument was still crude and the most usual treatment for syphilis, with heroic dosages of mercury, did more to kill the patients than to cure them').

¹³² Ibid 174.

¹³³ Ibid.

¹³⁴ Ibid 175–76.

¹³⁵ Ibid.

1885, but required lay inspectors rather than police inspectors to avoid the harassment that occurred when police were involved.¹³⁶

Despite the adoption of this new version of the Act in the Cape Colony in 1885, the Act was eventually successfully repealed in England in 1886.¹³⁷ Efforts to repeal the 1886 version of the Act in the Cape Colony were not as effective: 'Members of the Women's Christian Temperance Union were roused to campaign against "the indignity done to women" by the Contagious Diseases Act of 1885 but they failed to sway the lawmakers: the offending Act was only repealed in 1919.'¹³⁸ The language in the Acts and the focus on protecting men from the sex worker as a site of contagion reflects a social order that reproduced ideas of male sexual dominance. The purpose of the Act was, in effect, to protect male sexual expression while simultaneously disempowering commercialised female's sexual expression.

3.2.3.2 *Colony of Natal*

The territory of Natal, which includes Durban and Pietermaritzburg, was proclaimed a British colony on 4 May 1843. Despite the general unpopularity of the Contagious Diseases Act globally, there were efforts to enact a similar act in the Natal

¹³⁶ Ibid 178.

¹³⁷ Bryder (note 85 above) 818.

¹³⁸ Malherbe (note 89 above) 13–14.

Colony from 1885.¹³⁹ Medical professionals were the dominant voice in advocating for the Contagious Diseases Act in Natal.¹⁴⁰ The social conditions of the Natal Colony fed into the fear surrounding the spread of contagion. Sex work was an everyday feature of Natal town life.¹⁴¹ In the absence of overarching legislation, approaches to regulating sex work in the Natal differed.¹⁴² In Pietermaritzburg, the superintendent was flexible in his policing of sex workers, recognizing it as unavoidable, whereas the Durban superintendent took a more hardline approach to sex work.¹⁴³

Despite these variations, the policing of sex work was driven by the medical community, seeking legislation to require the registration of sex workers and force medical treatment for venereal diseases. Medical professionals warned of the dire

¹³⁹ See Martens (note 113 above) 34.

¹⁴⁰ Ibid.

¹⁴¹ Ibid 30–31. Martens provides some background on the features of sex work in the Natal: ‘Prostitution was a feature of Natal town life from the early 19th century. A report on the first sitting of the Pietermaritzburg Magistrate’s Court in 1846 condemned “immorality” and the “contaminating vices of the canteen”. In the late 1860s Pietermaritzburg citizens witnessed scenes of “female infamy”, and “the throngs of children in the streets” told “what share white men have in the vice that elicits no remark”. . . . In 1890, police estimated that there were almost 70 prostitutes working in Pietermaritzburg, just over 50 prostitutes in Durban, over 50 prostitutes in Newcastle and 12 prostitutes in Ladysmith. Most of these sex workers were African women, although there were smaller numbers of white, Indian and “coloured” prostitutes (the latter were usually referred to as “St. Helenas”, “Cape women”, or “Hottentots”).’

¹⁴² Ibid 32.

¹⁴³ Ibid. ‘Pietermaritzburg authorities had the most pragmatic approach. Superintendent Fraser had “no desire to suppress brothels” and so seldom enforced the by-law prohibiting the keeping of brothels in the borough. There were in 1890 “about thirty houses of ill-fame known to the police” in Pietermaritzburg, 10 of which housed white women. Women operated most of these houses and Fraser did not know of a single brothel “with a bully inside”. Moreover, a significant number of the city’s prostitutes lived and worked alone. Superintendent Alexander was far more punitive in his policing of Durban sex workers and he claimed that prostitution and soliciting were prohibited. He reported that there were no brothels in Durban, although there were “a number of huts occupied by Coolies on the Eastern Vlei, which are here and there let to Kafir girls who carry on prostitution.”’

repercussions that would ensue if immediate measures were not adopted to regulate the health of sex workers, thus galvanising the state into action.¹⁴⁴ They warned that syphilis would reach endemic levels in Natal if the Contagious Diseases Act were not passed.¹⁴⁵ Consequently, in 1885, the Pietermaritzburg medical officer persuaded the governor of the need for the Act in Natal. Despite the overwhelming support of the medical community, the Natal Act was met with tremendous opposition as it was proposed during the height of the controversies surrounding similar versions of the Contagious Diseases Act in England and its colonies.¹⁴⁶

Echoing the experience of the Cape Colony, a group of 65 prominent male citizens argued against the gender inequality represented in the Natal version of the Act, suggesting that it would allow ‘unscrupulous persons . . . to cause injury shame and indignity to poor but respectable females’.¹⁴⁷ Opponents also alleged that the Act would be largely ineffective because it focused only on sex workers and ignored the conduct of their clients.¹⁴⁸ In 1886, the Natal version of the Act failed to pass in light of the overwhelming pressure against it.¹⁴⁹ Medical professionals nonetheless persisted in

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid 36.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid 27.

their claims that the Contagious Diseases Act was necessary for the public health of the colony.¹⁵⁰

It was only when the public debate then shifted from gender to race that their proposals gained any traction. Black men were dominant features of the domestic domain in Natal,¹⁵¹ where a large number of black male servants, called ‘houseboys’, worked in white households.¹⁵² Paranoia around the presence of these ‘houseboys’ fueled a second campaign for the Contagious Diseases Act,¹⁵³ based on an increasing fear about what was described as ‘innocent infection’ of syphilis.¹⁵⁴ Medical professionals mistakenly believed that syphilis and other venereal diseases could be spread ‘innocently’ through causal touch.¹⁵⁵ Thus, having black ‘houseboys’ who might engage in morally corrupt behaviours, such as frequenting brothels, posed a direct threat to the white family’s health.¹⁵⁶ Although a ‘houseboy’ may have no mal intent

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid 30 (‘The employment of African “houseboys” who performed “women’s work” in settler homes, as well as African female prostitutes who worked publicly in Natal towns unsettled whites because they subverted settler notions of appropriate domestic behaviour’). See also K Atkins, *The Moon is Dead! Give Us Our Money! The Cultural Origins of an African Work Ethic, Natal, South Africa, 1843-1900* (1993); J. McCulloch, *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia, 1902-1935* (2000) 149.

¹⁵³ Ibid 39–40.

¹⁵⁴ Ibid 41.

¹⁵⁵ Ibid 42.

¹⁵⁶ Ibid 33, 34, 42.

when spreading the disease, he could nevertheless be the carrier.¹⁵⁷ By gently grazing a child's forehead or holding hands with a toddler, he was believed to be an undeniable threat to the household if he had syphilis.¹⁵⁸ This version of the public health discourse in Natal exploited racial anxieties to expand the medical community's power over the sex worker's body.

As a result, the Contagious Diseases Act passed through the Natal legislature with little opposition in 1890.¹⁵⁹ It was primarily the result of strong lobbying by the medical community and increasing fears around the spread of contagion by sex workers and houseboys.¹⁶⁰ However, when the legislation was forwarded to Lord Knutsford, secretary of state for the colonies, he admonished the colonial authorities for 'practically [leading] . . . the official members of the Legislature to vote for a measure which in other Colonies gentlemen holding similar positions had been directed by the Secretary of State to oppose'.¹⁶¹ He accordingly blocked the law in light of the global political pressure to repeal similar legislation in England and its colonies.¹⁶²

¹⁵⁷ Ibid.

¹⁵⁸ Ibid 41–42.

¹⁵⁹ Ibid 50.

¹⁶⁰ Ibid 49.

¹⁶¹ Ibid 52.

¹⁶² Ibid.

Accordingly, sex work was never regulated through the Contagious Diseases Act in the Natal Colony.¹⁶³ In general, sex work was treated as a public nuisance violation and was punishable where there was a public annoyance, as it had been in the Cape Colony.¹⁶⁴ These public health discourses did, however, empower the medical community as arbiters of morality and protectors of both health and civility. As Foucault argues, the power emanated from the very engagement in discourse. Although the Natal community failed to pass the Contagious Diseases Act, it managed to galvanise the legislature on several separate occasions to create legislation that would be explicitly harmful and discriminatory toward sex workers. The public health discourse was particularly effective when coupled with morality discourses about racial hierarchies and female sexuality, and it reified the conception of the sex worker as a threat to public welfare.

3.2.3.3 *From Contagion to Public Nuisance*

The attempts to police the sex worker's body as a site of contagion in both the Cape and Natal colonies evince a form of bio-power. They illustrate the desire to discipline women who threaten dominant sexual norms by expressing female sexuality outside of marital relationships. In this way, the regulation of sex work is linked to the regulation of all female sexuality. Sex work was still tolerated as necessary for male desire but could only be expressed in manners that did not upset the public.

¹⁶³ Ibid.

¹⁶⁴ See e.g. Polices Offences Act, Act No. 27 of 1882.

Accordingly, public nuisance regulations became a formal part of its regulation. These public nuisance ordinances were intrusions on the sex worker's body and prioritised conceptions of public decency and nuisance as central concerns in the regulation of the sex worker.

Although sex work was generally treated as a necessary evil, it was penalized where a public nuisance was present. For instance, by 1882, the Police Offences Act¹⁶⁵ penalised any 'prostitute who loiters or is in any public place for purposes of solicitation or prostitution to the annoyance of the public' as guilty of an offence.¹⁶⁶ The original punishment was a fine of £2 with the alternative of 30 days' imprisonment with hard labour, but by 1898 the fine had increased to £5.¹⁶⁷ As was typical of the time, the legislation only penalised the public nuisance aspect of sex work. Sex work was tolerable only where it did not disturb the public, a theme that would continue throughout South African history.

3.3 The Transvaal and the Mineral Gold Rush

The South African Republic, also commonly referred to as the Transvaal or the ZAR (the Dutch acronym for South African Republic), was an independent country, under white Afrikaner rule, in southern Africa from 1852 to 1902. It occupied the area

¹⁶⁵ Polices Offences Act, Act No. 27 of 1882.

¹⁶⁶ Act No. 44 of 1898.

¹⁶⁷ Ibid.

currently made up by four provinces in South Africa (Gauteng, Limpopo, Mpumalanga and the North-West). After the Anglo-Boer War, it became a colony of the British Empire – the Transvaal Colony – from 1902 until the founding of the union of South Africa in 1910.

In 1886, gold was discovered in the Witwatersrand in the Transvaal, attracting mining companies and workers.¹⁶⁸ During the 10 years following the discovery of gold, there was very little regulation of sex work in the Witwatersrand.¹⁶⁹ The city of Johannesburg grew up at the centre of the 50 miles of gold mines. Unsurprisingly, its population was 80 per cent male, and two-thirds single and primarily comprised of young adults between the ages of 20 and 40 years.¹⁷⁰ Black men migrated there to work on gold mines and as domestic workers in white households because black women were considered to be unreliable and immoral.¹⁷¹ Consequently, black women had limited economic options and frequently engaged in sex work and the sale of liquor to the black mine workers as a form of income generation.¹⁷² Historian Charles van Onselen argues that these economic choices reinforced negative views of whites

¹⁶⁸ C van Onselen 'Who Killed Meyer Hasenbus? Organized Crime, Policing and Informing on the Witwatersrand, 1902–8' (2009) 67 *History Workshop J* 1, 1.

¹⁶⁹ Ibid.

¹⁷⁰ DR Cammac *The Rand at War, 1899–1902: The Witwatersrand and the Anglo-Boer War* (1990) 4.

¹⁷¹ Van Onselen (note 168 above) 1.

¹⁷² Ibid.

towards black women.¹⁷³ The disproportionate number of men, who were mostly single and young, contributed to the persistence of sex work in the Transvaal,¹⁷⁴ which quickly earned a reputation for prostitution, illicit liquor trade, and crime.¹⁷⁵

At the same time, the face of sex work was beginning to whiten with the influx of European sex workers.¹⁷⁶ During the Anglo Boer War, between 1899 and 1902, there was an influx of European women into the Transvaal and the coastal regions for organised sex work as crime cartels also took root.¹⁷⁷ The influx of European sex workers coincided with the rise of brothels, primarily featuring European women. Many of these were lower-income women looking to capitalise on the income that would become available to them in the colonies.¹⁷⁸ Initially, these European women had catered to Cape settlers and black patrons, and eventually, they migrated to the

¹⁷³ Ibid.

¹⁷⁴ Cammac (note 170 above) 4.

¹⁷⁵ C Dugmore 'From Pro-Boer to Jingo: An Analysis of Small Town English-Language Newspapers on the Rand before the Outbreak of War in 1899' (1999) 41 *SA History J* 246.

¹⁷⁶ Trotter has discussed the influx of white women into the Transvaal during the Mineral Revolution:

In the 1880s, the Mineral Revolution ignited a global migration to the Transvaal gold fields. Diggers, pimps and prostitutes passed through the coastal ports, some never going any further. To cater to this boom, European Jewish pimps trafficked thousands of "Continental women" (poor European Jews) to southern Africa.' When the Boer government tightened its laws against prostitution, many retreated to the coast. 'From about 1896 there was an influx into Cape Town of "continental" women which resulted in a professionalization of the trade and ousted many of the local girls.' A brothel explosion ensued.

See Trotter (note 67 above) 679.

¹⁷⁷ Ibid.

¹⁷⁸ See Cammac (note 170 above) 4.

Transvaal where they similarly had black clients.¹⁷⁹ These interracial relations contradicted the colonial agenda that was, in part, premised on the essentialisation of race and the presumed supremacy of the white race.

There were reports of police corruption, as the South African Republic Police colluded with prostitution syndicates.¹⁸⁰ Charles van Onselen provides a detailed account of the collusion between organised prostitution rings and the Morality Squad of the Transvaal Town Police.¹⁸¹ Police corruption was pervasive, as the officers sought to benefit from the substantial revenues of sex work. The police often worked cooperatively with sex workers, although the official policy opposed all 'organized vice'.¹⁸² Van Onselen describes the collusion between police and the sex work industry:

Officially, the administration was implacably opposed to 'organized vice' and, more especially, to large and visible brothels controlled by gangsters and pimps. Unofficially, this publicly-stated policy would be implemented only after due consideration had been given to 'local conditions' that permitted individual

¹⁷⁹ Ibid.

¹⁸⁰ Cammac (note 170 above) 4.

¹⁸¹ Van Onselen (note 168 above) 1.

¹⁸² Ibid 3.

prostitutes—practising their craft in private, with some discretion—to offer sexual relief to ‘single’ working men.¹⁸³

This inconsistent approach to policing sex work reflects the tensions in the conflicting discourses about it. On the one hand, sex work was viewed as a moral vice. On the other hand, it was treated like a necessary evil.

Because of the prevalence of sex work, mining companies grew wary of the absenteeism that the flexible laws and easy access to sex workers and liquor presumably encouraged.¹⁸⁴ This was addressed in two ways. First, they pressured the local government to pass strict laws restricting the movement of blacks and promoting racial segregation. Second, they advocated for regulation of liquor and sex work. They outlawed the sale of liquor within the mines,¹⁸⁵ and supported additional regulations to police sex work more generally. This took the form of laws that penalised the activities of males involved in prostitution and indirectly targeted the criminal syndicates around sex workers. In 1903, Transvaal legislation stated that ‘every *male person* who (a) knowingly lives wholly or in part on the earnings of prostitution . . . shall be guilty of an offence’.¹⁸⁶ It was common throughout the Union as I discuss in the next section.

¹⁸³ Ibid.

¹⁸⁴ See P Harries ‘Symbols and Sexuality: Culture and Identity on the Early Witwatersrand Gold Mines’ (1990) 2 *Gender & History* 318, 323.

¹⁸⁵ Ibid.

¹⁸⁶ Ordinance 46 of 1903 § 21(1)(a) (Transvaal) (emphasis added).

3.4 Morality Acts, White Anxieties, and Union

This targeting of ‘pimps’ and syndicates involved in sex work was found in the corresponding pre-Union legislation in the Cape, Orange Free State, and Natal colonies, except the Natal legislation was not limited to every male person and included females.¹⁸⁷ However, this legislation also contained a new approach to sex work, one that saw the increasing focus on interracial sex and the moral panics that began to accompany this. From the 1900s, a racialised morality agenda became more dominant, as anxieties about the state of white supremacy manifested themselves in a growing ‘hysteria’ and series of moral panics about the perceived threat of black male sexuality to both white women and white masculinity. Much of this hysteria is reflected in the increased censure and regulation of sex work, as sex workers were particularly visible participants in interracial sex, disrupting the dominant racial order. By comparison, there was a similar focus on sex and marriage as a site for racialised morality in the United States. Most states in the United States prohibited interracial marriages at some point, and this “historical prohibition of interracial relationships exemplifies the state’s regulation of intimate life. Anti-miscegenation laws prohibiting interracial sex and marriage predate the Declaration of Independence by more than a century. At one time or other 41 of the 50 states have enacted such legislation”¹⁸⁸

¹⁸⁷ Act 36 of 1902 §33(1)(a) (Cape); Ordinance 11 of 1903 § 13(1)(a) (Orange Free State); Act 31 of 1903 § 15(1)(a) (Natal).

¹⁸⁸ D Thompson ‘Racial Ideas and Gendered Intimacies: The Regulation of Interracial Relationships in North America’ (2009) 18 *Social & Legal Studies* 353, 354.

Timothy Keegan¹⁸⁹ suggests that these sexual anxieties in South Africa emerged 'in the context of the perceived crumbling of racial boundaries' and the threat to white racial dominance. Sex between white sex workers and black men threatened white male masculinity by seemingly dispossessing white men of their sexual ownership of white female sexuality and by suggesting that black men were sexual competitors. Sexual relationships between whites and blacks were generally considered to be immoral by white inhabitants of the colonies, even where consensual, but this was a deeper set of anxieties.

3.4.1 *New Moral Regulation and Race*

Transactions between European sex workers and black mine workers threatened the racial order and led to the 1902 'Betting Houses, Gaming Houses, and Brothels Suppression Act' ('Suppression Act'), which criminalised relationships between African black males and white female prostitutes in the Cape Colony.¹⁹⁰ This legislation was passed in the three remaining colonies, and in 1910, the four colonies united to form one country.¹⁹¹

¹⁸⁹ T Keegan 'Gender, Degeneration and Sexual Danger: Imagining Race and Class in South Africa, ca. 1912' (2001) 27 *J of SA Studies* 459, 464.

¹⁹⁰ 36 of 1902.

¹⁹¹ J Martens 'Citizenship, "Civilization" and the Creation of South Africa's Immorality Act, 1927' (2007) 59 *SA History J* 223, 228.

The perceived ever-present threat of the black man's sexuality and his presumed attraction to the virtuous white woman resulted in a series of moral panics about the 'black peril,' leading to the creation of several 'black peril' committees and task forces.¹⁹² This 'black peril' refers to an 'hysterical' fear amongst different groups that black men's sexual attraction to white women posed a threat to white women's purity. Black men were viewed as a direct threat to white female sexual purity. Indeed, black men were frequently viewed as threatening perpetrators, unable to resist their savage urges to ravish white women. As a result, rape perpetrated by black men against white women was punishable by death.¹⁹³ This was exceptionally clear from reports from the time.¹⁹⁴

Keegan has argued, 'in white imaginations, respectable white women were bound to become the sacrificial prey of the black beast unleashed by the breaching of racial boundaries.'¹⁹⁵ In fact, white women were prominent voices in the discourse regarding the black peril. Shear describes the panic that ensued amongst women's groups:

¹⁹² See generally Shear (note 105 above) 396.

¹⁹³ P Scully 'Rape, Race, and Colonial Culture: The Sexual Politics of Identity in the Nineteenth-Century Cape Colony, South Africa' (1995) 100 *American Historical Review* 335, 336, 346.

¹⁹⁴ Keegan (note 188 above) 464.

¹⁹⁵ Keegan (note 188 above).

A white women's movement coalesced in these years around opportunities to mobilize against the 'black peril'. Not only did Leagues for the Protection of Women and Children emerge specifically in response to urban racial scares, but 'black peril' issues attracted the range of existing women's societies into alliances such as Johannesburg's Standing Committee of Women's Organizations, which brought nineteen associations together 'first of all as a Black Peril Committee' early in 1911.¹⁹⁶

A white Afrikaans woman wrote in 1912 in a local newspaper, responding to charges that veld girls were submitting to their 'passions' towards black men:

[T]he veld girls know exactly where is the place of a black brute. They do not allow a Kaffir any further in their houses than in the kitchen. To their modest minds it is the greatest disgrace to allow a Kaffir to enter their bedrooms to bring in early coffee or to attend to the tidying up of their houses inside. If they haven't a black woman to do it, they do it themselves. Neither would they dream of carrying on a conversation with a Kaffir.¹⁹⁷

The black man was viewed as a moral threat to the white woman vis-à-vis his presumed ability to corrupt her delicate sensibilities, but this account suggests that 'veld girls' knew how to put the 'black brute' in his place.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid 476 (internal citation omitted).

These fears about black male sexuality reflect a general anxiety about interracial sex. Interracial sexual liaisons were treated as morally repugnant and a threat to the purity of the white race.¹⁹⁸ Because of this, the thought of white female sex workers who willfully engaged with black male clients fueled the moral outrage.¹⁹⁹ Accordingly, the threat of black male sexuality came to focus on white sex workers, and the 1913 Commission on Assaults on Women shared its fear:

[F]oreign professional prostitutes allowed, and indeed often invited, intercourse between themselves and natives. Amongst their companions such natives gloried in the fact of having had intercourse with white women, and on their return home the fact was repeated and spread abroad. So desire was stimulated in minds previously innocent of such an idea, and individuals unable to discriminate between one class of women and another were inclined to gauge the standard of morality of white women by the examples presented under such circumstances, and to fancy that they need only make advances to be accepted by white women generally.²⁰⁰

¹⁹⁸ Ibid.

¹⁹⁹ Ibid. '[T]he arrival from the late 1890s in South Africa's urban centres of large numbers of European prostitutes, who, it was feared, were very indiscriminate in the disposal of their favours. After the South African War, a spate of laws was introduced criminalising their entertaining black clients. In the Cape, the law was limited to punishing white prostitutes who accepted "aboriginal natives" as clients, leaving the clients themselves unscathed. In the Transvaal, Natal and Rhodesia, however, legislation was much more stringent, prohibiting all sexual contact between black men (including "coloureds") and white women, whether for gain or not, and imposing heavy penalties on both black men and white women in such relationships.'

²⁰⁰ T Keegan 'Gender, Degeneration and Sexual Danger: Imagining Race and Class in South Africa, ca. 1912' (2001) 27 *J of SA Studies* 459, 465.

There were reports of taverns where black men socialised with white sex workers, subverting the dominant social rules that relied upon racial essentialisation and separation.²⁰¹ This phenomenon was doubly troubling because white women's willingness to engage with black clientele was perceived to be a form of resistance against the dominant white male patriarchal order. Sex workers were already using their bodies for their own personal benefit with little regard for the dominant ethos regarding respectability and morality. On top of this subversion, they were openly entertaining men of a race deemed to be inferior. This was the ultimate violation of the prevailing sexual mores. In some senses, this subversion defied a possibility of future redemption or compliance within white male hegemony. In this way, the black peril was also a moral panic spurred by the threat that black male sexuality posed to the free exercise of white male masculinity, which presumably included exclusive ownership over the white woman's body. White women were rejecting the dominant racial norms and rejecting white male dominion over their bodies in these transactions. The attempts to regulate the transactions between white female sex workers and black male clients was an exercise of bio-power over the white woman's body and an exercise of white male masculinity by allowing for the regulation of white women's sexual partners. White women who chose to resist racialised morality discourses were rejecting white male sexuality and were thus a threat to white men's masculinity. The moral panic was thus not simply the fear of the black man's sexuality—it was hysteria about the white woman's free exercise of her own sexuality. These sexual acts further threatened white male sexuality by treating black

²⁰¹ Trotter (note 67 above) 679.

men as potential sexual partners. In this way, the moral panics reflect the general anxiety of white men in the post-colonial state.

At the same time of the 'black peril,' women's groups began to launch broad-reaching campaigns in the interests of promoting 'social purity'.²⁰² Sex work was targeted as a form of male sexual immorality, and sex workers were portrayed as victims of circumstance.²⁰³ Women's groups, such as the Cape Women's Christian Temperance Union in Cape Town, aimed to save sex workers from a 'damned' life while also ensuring that men would stop seeking sex workers to meet their sexual desires: 'The WCTU had been particularly concerned with issues of 'Social Purity' and the enforcement of local 'Morality' legislation regarding prostitution and inter-racial sex.'²⁰⁴ The WCTU was representative of the many middle-class white women's reformist organizations that actively participated in producing the post-1910 anxiety over South Africa's urban social environment. Central to all were concerns about racial purity and separation, expressed in campaigns to rescue destitute white children, monitor inter-racial sexual contact, and combat prostitution and liquor consumption.²⁰⁵

²⁰² See generally K Shear "'Not Welfare or Uplift Work': White Women, Masculinity and Policing in South Africa' (1996) 8 *Gender & History* 393.

²⁰³ Ibid 395.

²⁰⁴ Ibid 393.

²⁰⁵ Ibid 395. See also AM Burton 'The White Woman's Burden: British Feminists and the Indian Woman, 1865–1915' (1990) 13 *Women's Studies Int Forum* 295, 296 ('Rather than overturning the Victorian feminine ideal, early feminist theorists used it to justify female involvement in the public sphere by claiming that the exercise of woman's moral attributes was crucial to social improvement. . . . The

This paranoia around the risk of the contamination of the white race eventually led to the promulgation of strict anti-miscegenation laws in the newly-formed union. Several legislative measures were adopted to address the issue of non-discriminate sex work. In an effort to curtail the migration of European women for the purposes of sex work, Union Bill 350, No. 553 of 1913 prohibited the immigration of ‘any prostitute, or any person, male or female, who lives or has lived on . . . any part of the earnings of prostitution or who procures or has procured women for immoral purposes’.²⁰⁶ But even before this time, the dynamic forces around race and gender that shaped the passing of those laws were in place at a very early stage in the colonial state.

As historian Jeremy C. Martens has observed, ‘particular standards of behaviour were as important as physical appearance in defining race and nationhood, and that poverty and “moral malaise” in the white population threatened to breach racial boundaries and undermine racial hierarchy, respect and dominance.’²⁰⁷ The regulation of sex work during this time period in the 1910s was very much intertwined with understandings of race, gender, and patriarchy. These moral panics represent a convergence of several of these issues manifest in a singular movement. Miscegenation was considered to be the ultimate violation of the social order, and thus, even the most

maintenance of racial hegemony was a collective cultural aspiration which feminists tried to use for their own ends’).

²⁰⁶ Union Bill 350, No. 553 of 1913.

²⁰⁷ Ibid 226.

casual inter-racial relationships were met with suspicion.²⁰⁸ They were a reproduction of racial anxiety: the anxiety of white men about their masculinity, the anxiety of white men about the sexuality of white women, the anxiety of white women about the sexuality of white women, and the anxiety of the colonial state in the maintenance of a social order that respects an essentialised racial social order. The discourses allowed for the moral regulation of sex work that now focused on a racialised morality that was terrified by the possibility of white sex workers engaging in transactions with black men. It also reproduced a subjective hierarchy of sex workers by prioritising the protection of white female sex workers against the black male while at times ignoring transactions between white men and black female sex workers.

3.4.2 *Sex Worker: The Intersecting Discourses in the Union and the Unreliable Public Nuisance*

The discourses on public health, racial essentialisation, public nuisance and morality intersected with each other, and, at times, reinforced each other. Where there was no racial element, sex work was only problematic to the extent it posed a public nuisance.²⁰⁹ However, sex workers themselves were generally perceived with suspicion and treated as unreliable characters by the legal system. This is reflected in several

²⁰⁸ See Martens (note 113 above) 228. It is worth noting that similar laws have passed throughout the world, including in the British colonies of Virginia, Maryland, North Carolina, and Massachusetts in the United States as early as 1667, while they were still under British imperial rule. W Sollors *Neither Black Nor White Yet Both: Thematic Explorations of Interracial Literature* (1997) Appendix B. Many of the United States prohibitions on interracial marriage persisted until 1967, when the United States Supreme Court outlawed in 1967 them in *Loving v. Virginia* (1967) 388 U.S. 1.

²⁰⁹ See note 216 and accompanying text.

court judgments. In *Rex v Weinberg*,²¹⁰ the Orange Free State Provincial Division court noted that '[e]very Court that tries this kind of case ought to be very careful not to convict a man upon the uncorroborated evidence of a prostitute' in 1913. The same court further held in *Rex v Christo*, 'Therefore before the Court accepts testimony of this kind [by a prostitute] it must be amply corroborated' in 1917.²¹¹ This finding was later affirmed in 1948 in *Rex v Dikant*.²¹² These legal decisions deemed the sex worker as inherently unreliable, encouraging the marginalisation of sex workers in public discourses. The law both constituted and reinforced discourses pertaining to the sex worker as untrustworthy and unreliable.

In Cape Town, volunteer patrols comprising of women formed 'to save foolish women and silly girls from moral danger, to lessen the social evils of [the] streets and other public places and to raise the moral tone of the community, particularly the female portion of it,' in 1915.²¹³ Johannesburg women attempted to enact a similar program in the Witwatersrand but failed, and eventually the Cape Town program was repealed in 1919. In the same year, the Union Public Health Act repealed the Cape Colony's

²¹⁰ 1916 OPD 653.

²¹¹ 1917 OPD 420.

²¹² 1948 (1) SA 693 (OPD).

²¹³ Shear (note 105 above) 398.

Contagious Diseases Act,²¹⁴ creating a uniform method for regulating sex workers' bodies in the newly created South African union.²¹⁵

Black migration from rural areas to urban mines continued in the 1920s to 1930s, which contributed to an increase of sex work in these areas. Historians Peter Delius and Clive Glaser discuss this phenomenon in depth:

During the 1920s and 1930s, as conditions deteriorated in many rural areas and male migrants increasingly 'disappeared', black women flooded into the cities. A large portion were involved in domestic beer brewing and many turned to prostitution in order to survive. Most eventually attached themselves to urban men and, with sex ratios beginning to approach normality, the black urban population gradually stabilised. Urban administrators and welfare workers became alarmed by what they perceived to be a high rate of promiscuity among urban women.²¹⁶

By 1927, relationships between all African blacks and whites were completely prohibited, including relationships between black women and white men. The Immorality Act of 1927 prohibited 'carnal relationships' between African blacks and whites.²¹⁷ The

²¹⁴ Ibid.

²¹⁵ Union Public Health Act.

²¹⁶ P Delius & C Glaser 'Sexual Socialization in South Africa: A Historical Perspective' (2002) 61 *African Studies* 27, 40.

²¹⁷ Immorality Act 5 of 1927.

racial anxieties also affected white men who engaged black sex workers. During the debate for the Act, in 1926, the member of parliament for Barberton of the Afrikaner Party, W. H. Rood, argued that white men who openly slept with black women should be divested of the right to vote, reasoning that if the white man wants 'to become a native, then give him the same rights as the natives in the Transvaal'.²¹⁸ Despite the influx of women into urban spaces, sex workers were only subject to civil penalties under Section 27 of South African Act No. 31 of 1928, which provided that 'loitering or being in any street or public place for the purpose of prostitution or solicitation *to the annoyance* of the inhabitants or passengers' was an offence punishable by fine.²¹⁹ However, running a brothel was subject to six months of hard labour. Again, sex work was only policed where a public nuisance occurred.

The public health of sex workers remained a curiosity. A University of Pretoria research report on European sex workers in Johannesburg conducted from 1939 and 1941 found that '[t]he great majority of all prostitutes in Johannesburg are infected with

²¹⁸ See Martens (note 113 above) 224 ('take away the vote from the man who makes himself guilty of such things'). See also S Klausen 'The Uncertain Future of White Supremacy and the Politics of Fertility in South, 1930-1939' < <http://www.kznhas-history.net/files/seminars/Klausen2002.pdf>> (discussing the 'birth-control movement,' which illustrates 'how white concern for the survival of South Africa's social order inflected, energized and influenced the politics of fertility during the 1930s.'). The birth-control movement further highlights how white women's womb was a contested space for the racialised and gendered morality discourses.

²¹⁹ Act No. 31 of 1928 (emphasis added).

one or other of the venereal diseases.²²⁰ In explaining the political economy of sex work for white women in Johannesburg, the report stated,

71.4 per cent of convicted prostitutes originate from the rural areas. The economic retrogression of many rural towns and areas on the one hand, due largely to depressed agricultural conditions, and the continuous industrial development in cities like Johannesburg. . . . The problem of prostitution in Johannesburg cannot be dissociated from the modern phenomenon of industrialization and urbanization.²²¹

As was the norm, the sex worker as vessel of contagion was highlighted:

Prostitutes are the principal disseminator of venereal disease in the community. The percentage of infected men in Johannesburg who contract their venereal infection—from prostitutes is approximately 64.6 per cent. Over the 19-year period, 1920–1939, approximately 30,000 men in Johannesburg contracted one or other of the venereal diseases.²²²

This report strongly favored decriminalisation, highlighting that even in the years of increasingly authoritarian rule, there were those advocating for a lenient approach to

²²⁰ LF Freed 'The Summarised Findings of a Medico-Sociological Investigation into the Problem of Prostitution in Johannesburg' (1948) 22 *SA Medical J* 52, 53.

²²¹ *Ibid.*

²²² *Ibid* 53–54.

policing sex work.²²³ However, the discourse continued to treat the sex worker as a host for contagion.

3.5 Apartheid

In 1948, the Nationalist Party won the election, beginning the apartheid regime in South Africa.²²⁴ This deepened the existing system of racial segregation in political, economic and social life, and imposed an even more conservative racial and sexual morality on South African society. During this period, sex and sex work regulation focused on the provisions of the Immorality Act, which were largely concerned with a racialised and gendered policing of sex, sexuality and sexual morality. Apartheid legislation strictly prohibited sex between persons of different races and contributed to the discourse of sex workers as suspicious and unreliable. This prioritisation of regulating the racial aspects of sex work is reflected in the criminal penalties of the Sexual Offences Act of 1957.²²⁵ This legislation reflects the racialised morality discourse of the earlier black peril moral panic.

3.5.1 Deepening the Gendered and Racialised Censure of Sex in Law

²²³ Ibid.

²²⁴ CE Kaufman 'Reproductive Control in Apartheid South Africa' (2000) 54 *Population Studies* 105, 106.

²²⁵ Act 23 of 1957.

During apartheid, the courts began to question the legal discrepancies in the regulation of sex work, noting that clients should not be treated more harshly than sex workers. In the 1951 decision *Rex v V*,²²⁶ the Eastern Districts Local Division court noted that South African law should not be lenient in its treatment of sex workers when compared to that of the clients:

[A] prostitute herself whose act in soliciting is not less immoral than that of the accused, and who makes money out of immorality in the ordinary course, is only liable to the £5 fine and not even that if the soliciting by her occurred in a quiet public street where no member of the public is annoyed. That . . . seems a glaring injustice.

The court then reversed a conviction of a man who solicited a coloured sex worker, arguing that the solicitation law was intended to regulate the actions of ‘pimps’ and ‘touts’.²²⁷

The Immorality Act of 1950 (later the Sexual Offences Act of 1957) repealed the 1927 Immorality Act and was the dominant law that regulated South African sex lives during the apartheid era.²²⁸ The Immorality Act prohibited all forms of sex between all races, all aspects of sex work, ‘indecent’ sexual acts, and the creation and management

²²⁶ *Rex v V*, 1951 (2) SA 178 (EPD).

²²⁷ *Ibid.*

²²⁸ See Trotter (note 67 above) 680.

of brothels.²²⁹ It was a great interference into the sex lives of South Africans and represented a brand of morality that was consistent with the beliefs of the Dutch Reformed Church.²³⁰ This brand of morality in many respects perceived women as the property of men and less culpable in the sexual act. For example, the penalties for 'sexual deviance' varied between men and women in the 1957 version of the Immorality Act, which penalised women with four years' imprisonment and men with five years.²³¹ This reflects sexual norms that presumed women's sexual innocence and ignored women's ability to be sexually culpable beings. The Prohibition of Mixed Marriages Amendment Act 21 of 1949 outlawed all mixed-race marriages and was the first time interracial marriage was statutorily prohibited in South Africa.²³²

In fact, even during apartheid, sex work was only a priority for the State when it defied the racialised and gendered social order mandated by apartheid, as reflected by the penalties attached to the Immorality Act of 1957. Section 10 of the Immorality Act of 1957²³³ criminalised the actions of brothel keepers while section 19 targeted the client

²²⁹ Immorality Act 23 of 1957.

²³⁰ See generally S Ritner 'The Dutch Reformed Church and Apartheid' (1967) 2 *J Contemporary History* 17.

²³¹ Immorality Act 23 of 1957.

²³² J Lewin 'Sex Color and the Law' (1963) 10 *Africa Today* 63, 64 (describing the circumstances that prompted the passage of this statute and noting that '[o]ddly enough, for nearly three centuries after white settlement had taken root at the Cape, the Afrikaners made no effort to curb miscegenation by law' and allowed interracial marriage even after anti-miscegenation laws prohibiting intercourse had passed).

²³³ *Ibid.* 'Any person who (a) procures or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer . . . or (b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or (c) procures or attempts to procure any female to become a common prostitute . . . shall be guilty of an offence.'

and criminalised the actions of a person who 'entices, *solicits*, or importunes in any public place for immoral purposes'.²³⁴ Section 20 of the Act criminalised the activities of persons living off the proceeds of sex work.²³⁵ Section 22²³⁶ provided penalties for these crimes and stated that those convicted of living off the proceeds of sex work (presumably mostly female) were subject to 'imprisonment with compulsory labour for a period not exceeding three years'. Those who attempted to procure prostitutes (presumably mostly men) were subject to 'compulsory labour for a period not exceeding two years' and a whipping not exceeding 10 strokes.²³⁷ However, regardless of gender, 'where it is proved that the person convicted kept a brothel and that unlawful carnal intercourse took place in such brothel to his knowledge between a white female and a coloured male or between a coloured female and a white male,' the person will be imprisoned 'for a period not exceeding seven years'.²³⁸ This highlights the shift towards imposing stricter penalties, especially where there was a racial element in the alleged sexual deviance.

The legal system continued to view sex workers with suspicion. In recognizing that there were instances when the uncorroborated testimony of a sex worker may be

²³⁴ Ibid (emphasis added).

²³⁵ Ibid. '(1) Any person who knowingly lives wholly or in part on the earnings of prostitution; or in public commits any act of indecency with another person; or in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person, shall be guilty of an offence.'

²³⁶ Immorality Act 23 of 1957.

²³⁷ Ibid.

²³⁸ Ibid.

relied upon, the Appellate Division ironically further marginalised sex workers in its dicta in *R v Sibande*:

Rape upon a prostitute, for example, though it is the crime of rape, would not ordinarily call for a penalty of equal severity to that imposed for rape upon a woman of refinement and good character. *Prostitutes are not respected members of the community and, generally speaking, one does not expect them to be truthful.* But that is not to say that no prostitute ever speaks the truth; and the question you have to decide here is, was this woman speaking the truth? . . . If you are dealing with a reputable person, that person's evidence is something which you will more readily accept as being that of a truthful witness than if you are dealing with a disreputable person. *Prostitutes are disreputable people, undeniably.*²³⁹

This court decision normalised the view that sex workers were disreputable and should be viewed with suspicion by the legal system. It further normalised rape against sex workers in its flippant remarks that the rape of a prostitute is somehow less problematic than that of 'a woman of refinement'.²⁴⁰ This is a continuation of the discourse of sex workers as unreliable, reflecting social practices that contributed to their continued marginalisation.

²³⁹ 1958 (3) SA 1 (A) at B (emphasis added).

²⁴⁰ Ibid.

3.5.2 Resisting the Immorality Act

Despite this, previous reports had suggested that criminalisation might not be the best mode for regulating sex work. As previously mentioned, a 1948 study found that ‘the penal measures operated by our Criminal Law in respect of both adult and juvenile prostitutes have not reduced the volume of prostitution in the progress of time, nor have they, in the majority of instances, served as a deterrent to prostitutes with previous convictions.’²⁴¹ There were even reports of open defiance of sex work regulations aimed at barring inter-racial transactions:

[I]n the 1950s, anthropologist Sheila Patterson noted that, ‘visiting ships’ crews were said to frequent night-clubs and dives in the more unsavoury streets of the Coloured ‘District Six’ in the centre of Cape Town. So the authorities tried to dissuade the seamen from such ‘immorality’ by handing out notices to the officers of incoming ships which warned: Premises, particularly in the Coloured and Indian quarters of this city, to which contact men, pimps or taxi-drivers, hansom-cabs and rickshas may take you for liquor or women are to be avoided; you are liable to be drugged, assaulted and robbed in these places. SEXUAL INTERCOURSE between white and nonwhites is a serious criminal offence in South Africa. MARRIAGE between whites and non-whites is prohibited by law.²⁴²

²⁴¹ See Freed (note 220 above) 53.

²⁴² See Trotter (note 67 above) 681.

Even with the provisions of the Immorality Act that prohibited interracial sex and legal decisions that encouraged societal views that sex workers were suspicious, unreliable characters, there were still reports of white men engaging black female sex workers during apartheid. One newspaper account details this:

Hundreds of prostitutes are in action in Johannesburg day and night. On the streets, the ladies of pleasure are almost exclusively black . . . and their customers almost totally white. . . . A doctor with consulting rooms in Hillbrow and Berea said, 'Nearly all my patients who come to me for treatment for venereal disease have contracted the illness from crossing the sexual colour line.'²⁴³

This report both exoticised and medicalised sex with black sex workers: it was against the racial hegemony and exposed one to a host of diseases. Some of these acts of racial defiance were quite open, as demonstrated by dockside clubs in Cape Town where black and white patrons would intermingle. There was continued and open sexual integration between seamen and sex workers in Cape Town docks and nightclubs during apartheid.²⁴⁴

²⁴³ Wojcicki (note 16 above) 93.

²⁴⁴ See Trotter (note 67 above) 682: '[A]t least since the 1960s, relations between sailors and prostitutes have been initiated in rough-and-tumble downtown nightclubs: Although these clubs were often violent places, where sex and drugs were sold, they were some of the few institutions in Cape Town that ignored apartheid legislation. The men and women of all "races" who went there, just by drinking and dancing together, were breaking the law, and the clubs were frequently raided by the police. Again, we see that dockside prostitution was highly social in its solicitation phase. It was also beyond the law's concern.

These incidents highlight there has always been some degree of resistance against the sexual hegemony, even during the apartheid era. In fact, there were even efforts to work towards the decriminalisation of sex work. In 1975, the Transvaal Provincial Division began to poke holes in the Immorality Act of 1957 and found that the Act did not apply to the acts of sex workers themselves in *S v F*:

The prostitute who earns money from the man with whom she has had intercourse in the brothel, or the woman who accepts money from the man upon whom she has performed some lewd or indecent act, such as pelvic massage, does not receive 'moneys taken in a brothel' in the sense contemplated [by the Immorality Act].²⁴⁵

The Court held that the Act does not apply to the actions of the sex worker.

In 1977, the Cape Town medical officer of health, Reg Coogan, the city's top health official at the time, supported the decriminalisation of sex work for public health reasons, stating, 'Prostitution will always be with us. If it is legalised it will be brought into the open, and allow the authorities to more effectively combat not only the occurrence and spread of VD, but other associated evils like pimping and blackmail.'²⁴⁶

Though clubs were raided, they were not closed, despite the ceaseless law-breaking. And even with the high levels of violence right in the heart of the city, the clubs were not targets of moral campaigns or police clamp-downs.'

²⁴⁵ *S v F*, 1975 (3) SA 167 (TBD).

²⁴⁶ See Wojcicki (note 16 above) 94.

In the same year, Professor Hilton Watts, head of the University of Natal's Department of Sociology, argued, 'No advanced society has managed to stamp out prostitution and it is unrealistic to pretend it does not exist.'²⁴⁷

In 1988, there was a parliamentary debate concerning the decriminalisation of sex work. D J Dalling, a member of parliament for the Progressive Federal Party argued in favour of this, largely for public health reasons:

When one talks of immorality, of sex, of soliciting, of prostitution and the like, apart from everyone pricking their ears up there is always the argument that the law should not be tightened up at all, but that it should be relaxed, if not abolished completely. This view is bolstered by the fact that worldwide, over a period of hundreds and hundreds of years, no laws have ever succeeded in stamping out prostitution. This argument maintains, therefore, that the unequal struggle should be abandoned. It maintains that prostitution, far from being criminalised, should be legalised and controlled, thus at least ensuring standards of health and so helping the fight against venereal diseases and against AIDS.²⁴⁸

In *State v Horn*, South Africa's highest court at the time, the Appellate Division, held that the 'proper interpretation of sec 20(1)(a) [confirms that it] was not intended that

²⁴⁷ Ibid 93 (quoting Hilton Watts *Sunday Tribune* (11 June 1997)).

²⁴⁸ Ibid 95 (quoting *Debates* col 14768 (15 February 1998)).

criminal liability should attach to the prostitute involved'.²⁴⁹ This 1988 decision thereby confirmed that the activities of sex workers were not to be treated as criminal under the Immorality Act, the only moment in South Africa's most recent history when sex work was unambiguously, fully decriminalised. Despite what appeared to be a wave of support towards decriminalisation, the legislature responded to the Appellate Division decision by amending the Act²⁵⁰ to clearly criminalise the actions of sex workers and any person who 'has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward'.²⁵¹ Thus, the practice of sex work was only firmly criminalised in South Africa by the inclusion of Section 20(1)(aA) in 1988.²⁵²

The discourses around sex work during apartheid era were focused on its moral regulation in a racialised social order. The sex worker was most threatening where she deviated from the racialised moral order in apartheid. The penalties were harsher where there was an interracial element in the sex work relationship. This encouraged a discourse that exoticised interactions between black female sex workers and white men, and reflected subjective understandings about hygiene and bodily capital that were racialised as reflected in the previously mentioned newspaper account about white male patrons with black sex workers.

²⁴⁹ *S v Horn*, 1988 SA 46 (AD) at 59 (S Afr).

²⁵⁰ Immorality Amendment Act 2 of 1988.

²⁵¹ *Ibid.*

²⁵² *Ibid* § 20(1)(aA).

Conclusion

This chapter shows that the primary ‘policing’ of sex work is not simply carceral in nature, or modeled on extending forms of State punishment and imprisonment, but rather social and political. It is interwoven with moralistic norms; understandings of gender, race, and ethnicity; perceived threats to masculinity; and accepted expressions of female sexuality. A ‘policing of sex’ occurs in public and private discourses,²⁵³ and power emanates, not from the repression of sex, but from the discursive technologies of sexuality. The discourses around sexuality do not serve to repress it but rather place the state’s gaze upon it; and the regulation of sex work and its connection to maintaining white racial dominance in South Africa illustrates the power of discourses to discipline sex workers for deviating from the racialised moral order of the time. These discourses include the public health, public hygiene, public nuisance, racialised morality, and sexual morality discourses. How do these understandings of past discourses influence the contemporary policing of sex workers?

As discussed in section 3.2 of this Chapter, the public health discourse has been the site of some of the most repressive practices, including forced vaginal examinations and mandatory imprisonment in lock hospitals. This fact of history suggests that feminists should be cautious of attempts to medicalise the rights of sex workers. While relying upon public health arguments can be particularly potent and effective in advancing sex workers’ rights, the public health discourse has also been a dangerous

²⁵³ Ibid.

weapon in their oppression. By contrast, the public nuisance discourse has been viewed as a site of oppression and the fact that sex workers are prosecuted under nuisance offenses has often been raised as evidence of bias. However, sex workers could practice their trade when complying with public nuisance norms, and they did not face criminal sanctions. Perhaps, this possibility should be further explored as a potential avenue for securing their rights.

This genealogy of sex work also reveals that the body of the sex worker has been the site for the exercise of bio-power concerned with disciplining female sexuality. It is through morality discourses about the appropriateness of sex work that norms about the contours of male and female sexuality are spelled. Men are presumed to be more sexual and in less control of their sexual appetites as reflected in the preamble of the Contagious Diseases Act and the treatment of sex work as a necessary evil during the Victorian era. Contemporary discourses reproduce, resist, and adapt historical social orders and norms. As I will demonstrate in the following chapters, the content of many of these discourses is very much the same. Both radical feminists who pioneer against the false consciousness of sex workers, as discussed in Chapter 8,²⁵⁴ and well-intentioned public health officials who focus on sex workers as hosts for disease while ignoring the sex workers' clients, reproduce a value system that essentialises sex, treats male and female sexuality asymmetrically, and subjectively evaluates the female body. These discourses also inform the way that the police organisation interprets into role as protectors of human rights and enforcers of popular norms in contemporary society.

²⁵⁴ Chapter 8 discusses the radical feminist movement more thoroughly.

CHAPTER 4. POLICING IN SOUTH AFRICA

Introduction

In this chapter, I explore the history of the police organisation in South Africa and the contemporary challenges it faces. The South African Police Service has an extensive history of violence and was the enforcement arm of the colonial and apartheid regimes. 'From the start of European settlement in 1652, the country's history has been marked by a brutal, violent, struggle over land, with forcible dispossession of the indigenous population . . . [and after apartheid a] well-developed state security apparatus.'²⁵⁵ The colonial police forces retained a highly militarised approach because they were protecting 'a social order and enforced a system of law based, not on the will of the indigenous population, but on that of an alien power.'²⁵⁶ The colonial forces used torture, the coercion of witnesses, and the routine use of lethal force.²⁵⁷ The *ad hoc* colonial police forces amalgamated into the national South African Police in 1913,²⁵⁸ and the paramilitary culture of the colonial police forces persisted following this amalgamation. The police maintained a similar command structure and relied upon many of the same abusive practices.²⁵⁹ The primary goal of the police was social control. It was not a police force concerned with regulating ordinary crimes or police

²⁵⁵ Morrell (note 49 above) 14-5.

²⁵⁶ Van Der Spuy (note 60 above) 264.

²⁵⁷ Ibid.

²⁵⁸ Ibid 267.

²⁵⁹ Ibid.

investigative work.²⁶⁰ This resulted in a police force that was ill-equipped to handle tasks that are thought essential to basic police work but well-charged to maintain control through paramilitary measures.²⁶¹

With the rise of the National Party in 1948, the South African Police became the main enforcement arm of the apartheid government, and the 'SAP has been described as the "medium through which apartheid was experienced."' The SAP was notoriously brutal and routinely relied on torture: 'Once in custody, confessions were often obtained through coercion, and torture was not uncommon.'²⁶² These abusive practices delegitimised the police force in the eyes of many black South Africans,²⁶³ and '[b]y the early 1990s, (all) the police in South Africa had acquired a reputation for brutality, corruption and ineptitude.'²⁶⁴ The South African Truth and Reconciliation Commission reported 33 713 instances of gross human rights violations from 1960-1994, and noted 5002 instances of torture (most of which appear to be connected to "non-political" crimes) during this period, attributed largely to the South African Police.²⁶⁵ Many prisoners were detained and incarcerated for political reasons and very little legal process was used to process such prisoners.²⁶⁶ It is suspected that the majority of torture victims were ordinary criminals who were incarcerated or detained by the

²⁶⁰ See generally Brewer (note 26 above).

²⁶¹ Ibid.

²⁶² Whyte (note 52 above) 14.

²⁶³ J Rauch 'Police Reform and South Africa's Transition' in Shaw et al (eds) *Crime and Policing in Transitional Societies* (2008) 119, 123.

²⁶⁴ See Rauch (note 71 above) 119.

²⁶⁵ Independent Complaints Directorate, *Investigating Torture: the New Legislative Framework and Mandate of the Independent Complaints Directorate* (2010) 12.

²⁶⁶ Ibid 9.

police.²⁶⁷ This chapter explores how (and if) this history influences the current police organization and the challenges it faces in policing competently.

Despite this history of violence, the South African Police Service (SAPS) is charged with enforcing the human rights laws that comprise South Africa's modern legal system. Police members must solve crimes with limited resources, creating order in an increasingly disorderly world, while upholding the numerous human rights standards enumerated in the Constitution of 1996. Police have an obligation to protect people's human rights while responding to the people's demands for increased violence in responding to crime. These demands for increased severity and the desire to maintain order affect how police respond to sex workers and the policing task more generally. Their own perceptions about their compensation and social status following apartheid impact how they police sex workers. The policing of sex workers is also influenced by norms relating to gendered policing, including how horizontality implicates police as human rights protectors during domestic disputes and how they must in return respond to incorporate their understandings of human rights to police sex workers. Individual police members are also influenced by the discourse-driven 'policing,' which disciplines sex workers' bodies and dictates the appropriateness of their conduct, going beyond the mandates of the black letter law. In this way police members embody legal norms as well as the discourses that influence both legal and societal norms.

²⁶⁷ Ibid 52.

4.1 'Good Old Apartheid Days'

Given the brutality of apartheid-style policing, before interviewing police members, I expected the officers to distance themselves from apartheid and make proclamations about the value of human rights. I assumed that they would engage in a disingenuous, albeit necessary, performance to validate the legitimacy of police authority²⁶⁸ in South Africa while engaging with a black American woman researcher, but ethnographic fieldwork often defies the expectations of the researcher. Imagine my surprise when several black police officers informed me that they missed how empowered police were during apartheid. This nostalgia towards apartheid was a reflection of their current frustrations regarding contemporary policing. The police seem to believe that the contemporary laws, which focus on a respect of human rights, interfere with their ability to police effectively. By contrast, it was believed that the police power was nearly absolute during apartheid, and everyone was expected to obey the law as enforced by the police.²⁶⁹ I was frequently told that apartheid was a 'good time to be police'. Police members were treated with more respect and provided with fairer compensation and benefits, according to several police members:

²⁶⁸ Here, I am referring to policing in the Weberian sense, in that the police are acting as the state's arm for the exercise of legitimate force. See Max Weber From Max Weber: Essays in Sociology (1946).

²⁶⁹ G Cawthra *Brutal Force: The Apartheid War Machine* Vol 247 (International Defence & Aid Fund for Southern Africa 1986).

DANNY (HILLBROW POLICE MEMBER): Human rights affected policing, I will say um . . . definitely very bad because as the police . . . police hasn't got rights.

INDIA: How has human rights impacted policing?

SIBELA (HILLBROW POLICE MEMBER): Right now, I think it has to be balanced. Right now the police cannot do their work. I think the police are more restricted now. Without taking into account the responsibilities of a policeman. Right now, it seems the system favors the community . . . the perpetrators of crime, then the police. It is hampering their job, without thinking these people will take me to [court]. If we can balance those two, you can do this, you have the right to suppress. Now, that's my opinion. *The criminals are more protected now.* If they can relax some of the laws, there would be less crime. (emphasis added)

Similar sentiments were echoed by several of the police members. These members complained that they were not included in conversations regarding the incorporation of human rights into the policing task and indicated that SAPS was being managed by 'comrades', or African National Congress (ANC) loyalists:

SIBELA (ROSEBANK POLICE MEMBER): I think that before apartheid ended things were better. Now things are getting worse. I got 10 years. I

never got promotion. That's why the morale of the people is always done. I think the system is collapsing. For instance in the *good old days* no one would have to wait one rank more than 10 years to get promoted. In the *good old days*, it was not like this. The management we do not know what they are doing if you are not a trained policeman. The management is flooded by comrades who there on the top. They have never been policemen. The current policemen are . . . the comrades have killed the police. The management is flooded with incompetent people. At the moment because of lack of management and diminished current prospects, the morale is very down. (emphasis added)

Even some community members have suggested that police were more legitimate during apartheid. In a study of apartheid nostalgia in Soweto, one township resident recognized the following:

COMMUNITY MEMBER 1: The police tortured people badly. Boers hated black people. They oppressed them. . . . The apartheid police were bad but there was order and the law was obeyed. The SAP [South African Police] ensured that people were protected.

COMMUNITY MEMBER 2: The police were effective in fighting crime. Our lives were better that time period than now. . . . I miss the apartheid period because we were safe at the time and when you had left

your possessions they would still be there when you came back but today, forget about it.²⁷⁰

These observations, although not necessarily representative of the opinions of all of South Africans, indicate that pockets of society believe that the apartheid police were more legitimate than their contemporary counterparts.²⁷¹ The police were respected, by the public and by the police organization itself. Both young members and older members alike expressed nostalgia for apartheid policing.

Table 2 shows the perceptions of the participants, who are members of the Hillbrow and Rosebank Police Departments, on the improvement of policing since apartheid. As observed, more than half of the participants from Hillbrow ($n = 11$, 57.9 per cent) perceived that policing was much better during apartheid, 2 (10.5 per cent) perceived that the policing is the same as it was during apartheid, and 2 (10.5 per cent) perceived that the policing is much better now than it was during apartheid; 4 (21.1 per cent) failed to provide their perceptions on apartheid policing. From Rosebank, 3 participants (60 per cent) perceived that policing was much better before apartheid, whereas 2 (40 per cent) perceived that policing is much better now than it was during apartheid.

²⁷⁰ G Kynoch 'Personal Security Concerns in South African Townships: Apartheid Nostalgia' (2003) 5 *SA Crime Quarterly* 7, 9.

²⁷¹ A Adepoju 'Continuity and Changing Configurations of Migration to and from the Republic of South Africa' (2003) 41 *Int Migration* 3, 17: 'South Africans lack trust in the police to maintain law and order. Under apartheid, the police protected whites and oppressed blacks. In the current situation, both groups are disappointed; whites no longer feel safe and blacks want proper police service. The police pay is low and corruption is wide-spread.'

Table 2

Perceptions of improvement in policing since apartheid amongst Hillbrow and Rosebank interviewees

Policing improvement since apartheid	Much better then, n (%)	Same, n (%)	Much better now, n (%)	None stated, n (%)	Total, n (%)
Hillbrow	11 (57.9)	2 (10.5)	2 (10.5)	4 (21.1)	19 (100)
Rosebank	3 (60)	0 (0)	2 (40)	0 (0)	5 (100)

This fondness towards apartheid by the predominantly black police officers I interviewed reflects their dilemma as the enforcers of the law in a world that they perceive to be increasingly disorganised and full of terror. Police officers appear to view apartheid with fondness because they believe that the contemporary human rights agenda was an obstacle to effective policing. During apartheid, heavy-handedness was rewarded and often expected. Whereas, human rights requires that even criminals be afforded due process and with protections to their human rights. Several of these police members indicated that they felt that the human rights agenda was thrust upon them and blamed it for their problems:

APRIL: You see the criminal has got the power to kill. The police don't have the power to kill the criminal. When they are arrested, they have killed a person; they have got the right to a lawyer. They have got the right to everything. . . . How does the rights come in to someone who took someone's life? There must be a right there. You know, you have got limitation of using the firearm; we don't use them because every time you use it, they charge you, and therefore it limits us. Every time you are at a crime scene or you are

confronting a suspect, you will think twice when you have to shoot that suspect. You will think, if I can shoot him then I will be arrested.

INDIA: What are some of the challenges that have occurred since the end of apartheid with regard to policing?

APRIL: What I can say is that the law that they are bringing to the police, we don't get consulted, even if we've got unions, it seems the union and the government are doing the same thing together. Excluding us because whatever happens, they just inform us.

Police members indicated that apartheid police members were able to effectuate their task with absolute public compliance. However, apartheid police were under great threat and frequently faced an antagonistic public. This nostalgia was more a commentary on the present challenges in policing than the past reality of what it meant to be a police officer, particularly a black police officer, during apartheid.²⁷² According to these police members, community members are now disrespectful and unwilling to understand the challenges associated with policing. 'They have rights now,' one police member stated while reminiscing about apartheid.

Furthermore, police dissatisfaction regarding salaries, benefits, and opportunities for further education, while policing what they perceive as increasing disorder, is also

²⁷² D James Money from *Nothing 15* (2015) (describing the experiences of middle class individuals, including several police officers, who must go into debt and are generally 'unable to sustain their future dreams with their present income').

relevant in understanding why corruption, brutality, and poor service delivery occur during the policing of sex workers and why these police appeared to genuinely miss apartheid. Police members argued that during apartheid, police members earned living wages and were treated with respect. However, this belief may be based more on a mythology of what it meant to be police during apartheid than on reality.²⁷³ Table 3 presents information on the perceptions of the police members on whether they deserve a higher salary. Almost all of the participants from Hillbrow police station ($n = 18$, 94.7 per cent) and all participants from Rosebank police station ($n = 5$, 100 per cent) perceived that they deserve a higher salary, whereas only one member from Hillbrow police station did not think that a higher salary is deserved.

Table 3

Belief that salaries should be increased amongst Hillbrow and Rosebank interviewees

Do you feel you deserve a higher salary?	Very much, n (%)	Not at all, n (%)	Total, n (%)
Hillbrow	18 (94.7)	1 (5.3)	19 (100)
Rosebank	5 (100)	0 (0)	5 (100)

Police were paid adequately during apartheid and therefore, police members argued, were less likely to be tempted to engage in corrupt practices and exploit sex work clients and sex workers for bribes. However, current police salaries are similar to those of teachers, nurses, and firefighters.²⁷⁴ Police members are clearly within the

²⁷³ Ibid.

²⁷⁴ V Basdeo 'The Curse of Corruption in the South African Police: A Rot from Within' (2010) 23 SA J *Criminal Justice* 385, 394 (finding that salaries for 'police officials in the SAPS is on par, if not higher than teachers, nurses and fire fighters').

ranks of the lower middle class in South Africa. But becoming police during apartheid, especially a black police member, was associated with a middle-class lifestyle that would not otherwise be available to the black officers. Black police members may now see the lifestyles that black businessmen and black doctors enjoy and feel a sense of lack. Police members would discuss their cars and houses with me, complaining how expensive it was to maintain their BMWs. They were in the trap of keeping up with their peers and associated their feelings of lack with the changes of democracy. This fondness towards apartheid necessitates some reflection on the evolution of the South African policing organization in and of itself.

4.2 Reforming the Police Organization

The apartheid police were notorious for their excessive use of force during public demonstrations, and '[T]he brutality and violence with which the SAPS fulfilled its mandate – supplemented by the work of the homelands police forces – was notorious.'²⁷⁵ Women were particularly exposed to gendered violence during apartheid. Domestic violence was viewed as an incident of the private realm and more of a family matter than an issue for the police to address. Women were subjected to specialized forms of gender violence and torture at the hands of the apartheid police. For example,

²⁷⁵ E Whyte 'Aluta Continua: The Struggle Continues in South Africa—against Violent Crime' *Dialogue e-Journal* 14, 14 <<http://www.polsis.uq.edu.au/docs/dialogue7elmariwhyte.pdf>>.

during a public TRC hearing, Zanele Zingxindo testified that she experienced sexual torture during a police interrogation.²⁷⁶

During the political negotiations of the early 1990s, there was a conscious effort to eliminate the police's violent legacy, which was part of the fabric of the SAP.²⁷⁷ There was a new policy mandate to shift the police organization from one rooted in authoritarianism to a democratic police organization that respected human rights. It was a change from absolutist control to service-oriented police delivery. Rauch describes the efforts to reform the police organization following Nelson Mandela's release from prison:

At the time of Nelson Mandela's release from prison in 1990, there were 11 police forces in South Africa, each constituted under its own piece of legislation, and operating within its own jurisdiction. The largest of these was the South African Police (SAP) with approximately 112 000 members, the other 10 were the 'homeland' police forces. Among these, the most significant group was the police agencies of the four 'independent homelands'—Transkei, Bophuthatswana, Venda and Ciskei.²⁷⁸

²⁷⁶ A Kusafuka 'Truth commissions and gender: A South African case study' (2010) 9 *African Journal of Conflict Resolution* 45, 57.

²⁷⁷ M Brogden 'Reforming Police Powers in South Africa' (1994) 17 *Police Studies* 25, 25 (noting that 'recent extraordinary events in South Africa, culminating in the election of President Mandela, have major implications for one of the most notorious police forces of modern times').

²⁷⁸ See J Rauch 'Police Reform and South Africa's Transition' in M Shaw et al (eds) *Crime and Policing in Transitional Societies* (2008) 119.

By 1991, following the release of Nelson Mandela from prison, SAP was amalgamating into one large police force and adopted a new strategic plan. The 1991 SAP Strategic Plan included six main foci:

- depoliticization of the police force
- increased community accountability
- more visible policing
- establishment of improved and effective management practices
- reform of the police training system (including some racial integration)
- restructuring of the police force²⁷⁹

The name of the police force was changed to the South African Police Service (SAPS) to demonstrate that the SAP would now serve the people. Various human rights documents and norms were adopted to transform the police institution into one that would protect and respect human rights. There was great optimism about the changes

²⁷⁹ Ibid 120.

being made to the police organization.²⁸⁰ Minister Mufamadi acknowledged that the police had made great strides in reforming the organization.²⁸¹ As Pigou notes,

With the new political dispensation there has been a clear development of policy towards ensuring that policing in South Africa is conducted in a manner consistent with human rights and democratic values. This process has been multi-faceted in nature and has been underpinned by the adoption of a Bill of Rights, the establishment of a South African Police Service (SAPS) in 1995 and the implementation of a human rights training curriculum in basic police training. A civilian-controlled monitoring and investigative body known as the Independent Complaints Directorate (ICD), tasked with investigating allegations of police abuse, was also established. In addition, and largely in response to ongoing allegations of abuse, the SAPS introduced a 'Prevention of Torture' policy by the SAPS in 1998/99.²⁸²

²⁸⁰ '[T]he first formal positions on policing issues that emerged from its 1992 policy conference, articulated in the ANC policy document *Ready to govern*, gave substantial emphasis to police accountability. Not only did this say that the new police service would be "accountable to society and the community it serves through its democratically elected institutions" but also that policing should be "based on community support and participation" and that policing priorities would be "determined in consultation with the communities they serve."' D Bruce 'Unfinished Business: The Architecture of Police Accountability in South Africa' African Policing Civilian Oversight Forum Policy Paper (November 2011) 1.

²⁸¹ See Rauch (note 278 above) 122: 'In a speech to the top police commissioners in late 1995, Minister Mufamadi acknowledged that, despite the huge pressures they faced, the police leadership had achieved a great deal. Less than two years previously, the police service was regarded as a possible threat to democracy. "Today, the relative credibility and legitimacy enjoyed widely by the police service is one of the more clear indicators of the successful transition to democracy which our country has made."

²⁸² P Pigou 'Monitoring Police Violence and Torture in South Africa' Mexican National Commission for Human Rights International Seminar on the Indicators and Diagnosis on Human Rights: The Case of Torture in Mexico (2002).

The police organization appeared to be evolving (at least on a formal level) into a more diverse organization with leadership reflecting the racial and ethnic background of the population.²⁸³

But this soon changed following the second elections in 1999. During the transitional years, South Africa faced a high crime rate, which was denounced by a media and public that were growing impatient with the police's response to crime.²⁸⁴ The apartheid police force was actually quite small and incompetent at policing ordinary crime, a legacy that continued through the transition.²⁸⁵ The task of expanding the relatively small police force into one that could manage South Africa's high crime rate following democracy proved challenging.²⁸⁶ Moreover, the public demanded the police to be more forceful in managing crime, while the police were simultaneously reforming into an organization that aimed to use less force in the policing task. As policing anthropologist Julia Hornberger has observed:

[A]s the law is shaped by popular desire, influences directed against its formal nature come to inhabit it from within. As South African desires for a forceful state

²⁸³ See Marks (note 35 above) 144.

²⁸⁴ 'The new Minister for Safety and Security, Steve Tshwete, . . . emphasised the crime fighting role of the police, and ha[d] encouraged a more strong-arm approach to criminals, with far less emphasis on the internal problems of police reform. This discourse ha[d] found favour with the South African public, which is increasingly concerned about crime and a police service which felt disempowered by the period of police transformation following the first election.' Rauch (note 301 above) 123.

²⁸⁵ J Brewer *Black and Blue* (1994 Oxford) 335.

²⁸⁶ A Louw 'Surviving the Transition: Trends and Perceptions of Crime in South Africa' (1997) 41 *Social Indicators Research* 137 (describing the increasing crime rate and perceptions around crime from the 1980s through the political transition in South Africa).

materialise in the rise of more forceful policing, this kind of policing disproportionately targets the very people whose insecurity has led them to be invested in much more immediate forms of violence.²⁸⁷

The perception of increased crime encouraged the adoption of practices that deviated from the models centred on human rights policing from the transition era. Consequently, the police organization resorted to the use of torture, corruption, and excessive force in response to these contemporary demands.²⁸⁸ There is a theatre of policing that occurs in the imagination of the public, which plays out in the media, sensationalizing (in)justice. It creates the perception of increasing disorder. Jean and John Comaroff recognised that ‘the specter of illegality [appeared to be] captivating popular imaginations’ shortly after democracy.²⁸⁹ The South African population began demanding that more heavy-handed policing tactics be adopted.²⁹⁰ These demands are

²⁸⁷ J Hornberger ‘From General to Commissioner to General—On the Popular State of Policing in South Africa’ (2013) 38 *Law & Social Inquiry* 598, 600 (citing Bourdieu 1987).

²⁸⁸ The pervasiveness of past police practices illustrates what has been described as the ‘informal organizational police culture’. Hornberger (note 31 above) 264.

²⁸⁹ J Comaroff & J Comaroff ‘Criminal Obsessions, after Foucault: Postcoloniality, Policing, and the Metaphysics of Disorder’ (2004) 30 *Critical Inquiry* 800, 800.

²⁹⁰ See Rauch (note 278 above) 125: ‘Feeling the effects of a devastating post-transition crime wave, the South African public began to demand tougher action against criminals. Recent policy approaches to the problem of crime have largely abandoned any commitment to social crime prevention by the police, attempting to shift this responsibility instead to the “social” cluster of government departments such as housing, health, welfare and education. The government’s two-pronged crime reduction approach now revolves around sustained heavy policing operations (currently known as Operation Crackdown), and ongoing reform of the criminal justice system. The “heavy” policing approach is underpinned by an ongoing process of internal police reform, most notably an emphasis on improved service delivery to the public.’

complicated by the changing power relations that the human rights era has brought as I discuss in the next section.

4.2 Policing Power

As demonstrated in the beginning of the chapter, during my interviews with current police members, officers were frustrated by their compensation. They were also frustrated by the limited ability to advance within the police organization. Although the officers are largely content with being police officers, they felt intense pressure to earn additional income to support their families. This pressure was likely spurred by their perceptions of how they should be living and expectations of a middle class lifestyle.²⁹¹ These police members' frustrations about contemporary policing can be understood through the shifting power relations that have occurred in the democratic era. Foucault argues that 'power must be understood . . . as the multiplicity of force relations immanent in the sphere in which they [police] operate and which constitute their own organization.'²⁹² Assertions of power may resist particular norms or adopt them superficially.²⁹³ Foucault establishes the omnipresence of power, writing that 'power is everywhere; not because it embraces everything, but because it comes from everywhere. . . . Power is not an institution, and not a structure; neither is it a certain

²⁹¹ D James Money from Nothing 15 (2015).

²⁹² Foucault (note 9 above) 92.

²⁹³ Ibid.

strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society.’²⁹⁴

Facially, human rights appear to strip the police of much of their power by placing limitations on police conduct. However, human rights also empower police by rendering them as the enforcers of human rights and, therefore, as guardians of human rights. ‘These shifts have altered the relationship of the police to human rights, especially in the area of the positive duty of the state. They meant, first, that policing had to be transformed through human rights and, second, that policing would now have a central role to play in transforming society.’²⁹⁵ The human rights discourse aims to create a particular social order with preservation and enforcement of certain rights. However, police may adopt the human rights lexicon without fully embracing its norms, creating a ‘front stage’ where human rights norms are performed, and a ‘back stage’ where human rights constraints are ignored.²⁹⁶ ‘[T]he engagement with human rights discourse [therefore] transforms the subjects and their possibilities for a particular kind of meaningful practice at the same time that the subjects reshape the discourse and the field of practice.’²⁹⁷ Human rights therefore become a strategy for police to exercise their power, particularly when embracing human rights terminology while continuing to

²⁹⁴ Ibid 93.

²⁹⁵ J Hornberger ‘Human Rights and Policing: Exigency or Incongruence?’ (2010) 6 *Annual Rev of L and Social Science* 259, 265.

²⁹⁶ Ibid 261.

²⁹⁷ Ibid 270.

engage in conduct that violates human rights norms. The police organisation has retained its power through its 'complex strategical position'²⁹⁸ in society and ability to adopt the prevailing vocabulary of human rights without wholly altering its practices and strategies.

This superficial embrace of human rights does not require that the police actually enforce human rights norms in their entirety. To the contrary, as Monique Marks has recognized, 'police organizational change' is viewed as difficult.²⁹⁹ Thus, the rules may appear to change, but the practical significance of such change is undermined by practices that violate human rights norms. 'Human rights thus can best be described as technologies of the self and knowledge practices about law rather than a legal practice per se.'³⁰⁰ The contemporary police can perform human rights by acknowledging it and adopting its vernacular, but hybridize it by only selectively enforcing it,³⁰¹ ensuring that their power remains constant although it appears to be limited by the adoption of human rights.

²⁹⁸ Foucault (note 9 above) 93.

²⁹⁹ Marks (note 35 above) 869.

³⁰⁰ Hornberger (note 31 above) 268.

³⁰¹ SE Merry, 'Transnational human rights and local activism: Mapping the middle' (2006) 108 *American Anthropologist* 38, 49 (noting 'the paradox of making human rights in the vernacular: To be accepted, they have to be tailored to the local context and resonant with the local cultural framework. However, to be part of the human rights system, they must emphasize individualism, autonomy, choice, bodily integrity, and equality—ideas embedded in the legal documents that constitute human rights law').

This form of human rights policing, which does not fully embrace human rights norms in practice, may be understood through the history of policing in South Africa. Heavy-handedness and violence, though ultimately rejected, were part of the very nature of policing. 'Violence became a currency' through which undesirable conduct was punished.³⁰² Society in general consequently holds its own views about the extent that violence can be used by the police that are undoubtedly connected to conditioning to practices of the past. The bar against which what is normal for policing was measured was fraught with violence.³⁰³ The police are faced with the unique challenge of enforcing and respecting human rights while struggling to reduce excessively high rates of violent crime.³⁰⁴ During the course of my fieldwork, I witnessed how frustrations towards criminals and limited resources manifest in excessive police practices.³⁰⁵

I observed frustrated community members demanding police to respond aggressively to those who had wronged them, and police as they walked the fine line of legal physical force against arrestees. For example, on 14 February 2014, while waiting to join a police patrol at the Hillbrow police station, I idly watched as police members tortured an arrestee by using his handcuffs to cut off his circulation. The arrestee had a

³⁰² See E Whyte 'Aluta Continua: The Struggle Continues in South Africa—against Violent Crime' *Dialogue e-Journal* 14, 19 <<http://www.polsis.uq.edu.au/docs/dialogue7elmariwhyte.pdf>>.

³⁰³ PM Collier 'Policing in South Africa: Replication and Resistance to New Public Management Reforms' (2004) 6 *Public Management Review* 1.

³⁰⁴ Louw (note 308 above).

³⁰⁵ Hornberger argues, 'The phenomenon of increasing state violence is indeed a threat, but it is also a very popular desire—one that serves to legitimize the estrangement of the law from itself and its formal institutional structures. At the same time, though, just because state violence is desired does not mean it is meted out in the desired way.' Hornberger (note 287 above) 616.

thick Nigerian accent and was a physically fit man in his late 20s to early 30s. I watched this adult man squirm on the Hillbrow police station floor, crying for officers to release him. I watched as he cried for his God as his hands slowly changed from a red colour to blue, and then purple. His accusers stood behind on the service counters, apparently pleased by this scene. They spoke to a police member who was taking their complaint in Zulu and English. During the course of providing the details for their complaint, they pointed to the arrestee in disgust and righteous indignation. I watched this scene, pretending to be unaffected, for approximately 20 minutes, at which time the officers dragged the arrestee to a separate area because he was crying too loudly. Several police members walked past the arrestee nonchalantly during this time and behaved as if this were a routine occurrence. Even the best-intentioned human rights documents were unable to fully penetrate the halls of this police station. This act of police violence against the arrestee, as repugnant as it was, was arguably being used to maintain order and instill confidence in complainants who could trust that the police would dole out justice as necessary. In a sense, police were exercising their power to enforce the victims' human rights through this act of violence. Although they rejected human rights in practice in this insistence, they were able to claim that they were enforcing human rights through their act of violence. They were doling out justice on behalf of victims, albeit extrajudicially.

Violence is inherent to the process of governing, and police violence is hardly unusual. As Walter Benjamin has stated, 'law- making is power- making, assumption of

power, and to that extent an immediate manifestation of violence.’³⁰⁶ Police violence is a form of law-preserving violence in its quashing of social disorder. The violence carried forth by members of the police reinforces the law and strengthens the existing regime. Violence is a means for asserting and reaffirming the existing power structures and is not in and of itself a violation of law; it is rather an expression of the law.³⁰⁷ Understood as such, police violence is rational.³⁰⁸ Incidents of police violence after apartheid are not contrary to the democracy order; they seek to strengthen it. Faced with excessive crime and few resources, police often turn to violence to preserve order and law. The law-preserving function of police violence is both a violation of human rights norms and a preserver of human rights as state law. This tension is most explicit when human rights become state law as it has in South Africa.

By their very mandate, police are called upon to maintain law, and the exercise of violence in that task is, by definition, law preserving.³⁰⁹ However, this conceptualization of law preservation is frustrated within a human rights regime. The act of (unjustified) police violence in some ways perverts the law that it seeks to protect. Human rights places limitations on police acts and creates competing law interests that may be at odds—the interest in preserving social order through the law and the interest in

³⁰⁶ N Blomley ‘Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid’ (2003) 91 *Annals of the Association of American Geographers* 121, 124.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

protecting individual rights entitlements.³¹⁰ Police violence becomes both law-preserving and law-perverting under a human rights framework. With this in mind, it is hardly surprising that police would view apartheid with some nostalgia. The explicitly law-sanctioned violence of apartheid empowered police and allowed them to carry out their task with no interference from human rights mandates. Apartheid police violence was solely law-preserving. In a human rights regime, this law-preserving violence becomes complicated by the competing requirement to respect the integrity of the individual. Human rights have in many ways prevented police from effectively policing in this respect.

The issue then becomes whether the imperatives of human rights should trump the police interests of preserving law. Human rights presupposes the existence of rights that are transcendent to the law.³¹¹ While human rights may dictate and create legal standards, their very essence, it is argued by natural law scholars, pre-dates law and is inherent to the human being.³¹² In this regard, human rights cannot be curtailed by the state because the state does not allocate such rights and therefore has no authority over them.³¹³ In a society that accepts this understanding of human rights, certain rights cannot be violated even when done so to carry forth the mandates of the existing law.

³¹⁰ T Evans 'If Democracy, Then Human Rights?' (2001) 22 *Third World Quarterly* 623.

³¹¹ GA Christenson 'Using Human Rights Law to Inform Due Process and Equal Protection Analyses' (1983) 51 *Univ of Cincinnati LR* 3.

³¹² *Ibid.*

³¹³ *Ibid.*

The law is limited by the existence of these rights. Accordingly, police violence becomes a law-breaking exercise that serves to frustrate rights that have their origin outside the 'law'.³¹⁴ This is particularly so within a human rights regime because it violates human rights to life, dignity of person, and integrity of body. In this way, police violence both breaks the law and preserves it. This tension becomes clear when considering the different manners in which sex workers are policed and how rules around public decency influence police's attempts to respect sex workers' human rights. On the one hand, the law indicates that sex work is illegal conduct. Yet, police are required to protect sex workers' human rights. This is further complicated by a police leadership statements that have been interpreted as decriminalising sex work in some police stations as well as competing, and at times contradicting, discourses that shape police officers' understandings around how sex workers should be 'policed' in the broader sense of the word. The police justify their approach by vernacularizing human rights to fit into their context and particular understandings of its mandates, as I discuss in chapters 5-7. I will not turn to what the actual legal mandates encompass.

4.4 Human Rights Legal and Policy Framework

To fully understand the human rights element of policing in South Africa, the international and domestic human rights framework must be examined³¹⁵ The

³¹⁴ Blomley (note 339 above).

³¹⁵ Reflecting on the relevant legal norms provides a metric for assessing 'democratic policing which has largely been described in a three-tiered model that includes "(a) accountability to international standards; (b) accountability to (human rights– based) national, constitutionally based law, either directly through the

Constitution of South Africa is the supreme law of the country and contains several principles intended to restrict the state's ability to infringe upon everyone's rights.³¹⁶ While the Constitution is the supreme law of the land, there is an explicit recognition of the relevance of international law in South Africa. South African courts may turn to the law of other countries, or comparative law, where it might help interpret the provisions of the Bill of Rights in the Constitution.³¹⁷ Consequently, both domestic constitutional and international legal standards determine how state institutions *should* behave in a paradigm that supports human rights.

South Africa has to prevent discrimination on the basis of sex through the Convention to Eliminate the Discrimination of Women ('CEDAW') and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.³¹⁸ CEDAW requires governments to repeal 'all national penal provisions which constitute discrimination against women.' These provisions provide guidance in understanding how the police as an institution should relate to women. The International Convention for the Elimination of Racial Discrimination ('CERD') should also be informative in its guidelines that states '[t]ake effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the

courts or through civilian oversight arrangements and internal disciplinary procedures; and (c) accountability to the public or the community.'" Hornberger (note 31 above) 267.

³¹⁶ 1996 Constitution, Chapter 1 Section 2.

³¹⁷ Ibid Chapter 2 Section 39 (indicating that courts 'must consider international law' and 'may consider foreign law' when interpreting the Bill of Rights).

³¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women (1980) art.2; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art.2, OAU Doc. CAB/LEG/66.6, Sept. 13, 2000.

effect of creating or perpetuating racial discrimination wherever it exists'.³¹⁹ These two conventions read together could be further read as instructing states to especially protect women of colour, who may be exposed to both racial and gender discrimination.

The CERD convention is generally not discussed in the context of discussing sex workers' rights. However, the sex workers in Johannesburg are overwhelming black women, many of whom are migrant women. They are exposed to additional risks particularly because of their intersectional identities and should receive protections that keep this in mind. For example, in Chapter 7, I discuss how the spatial organisation of where sex workers is reflected by material expectations of their beauty, which was tied to perceptions of their ethnic identities. This spatial organisation at times led to further marginalisation for certain sex workers. Furthermore, foreign-born migrant sex workers may be subject to additional vulnerabilities through xenophobic attitudes that further marginalise them. The policing of these women should theoretically ensure that they are free from discrimination and able to enforce their human rights by calling upon the police for assistance. Amnesty International issued an international guidance stating that a human rights approach to sex work required that it be decriminalised.³²⁰ It adopted an intersectional analysis that recognised the unique positionalities of multiple sex workers in calling for sex work decriminalisation.³²¹

³¹⁹ International Convention of the Elimination of Racial Discrimination (1969) art 2(1)(c).

³²⁰ Amnesty International Draft Policy on Sex Work ORG 50/1940/2015 (7 July 2015).

³²¹ Ibid 7 ('Systems of oppression such as gender discrimination, racism, socio-economic inequality and legacies of colonial occupation, deny people power and lead to poverty and deprivation of opportunity.').

In addition to the international conventions, the Constitution of South Africa requires that sex workers not encounter sex or gender discrimination. Section 9 prohibits the discrimination because of 'race, gender, sex, pregnancy, marital status, ethnic or social origin'.³²² The Constitutional Court has expanded the gender component of this provision and noted that '[s]exual violence and the threat of sexual violence goes to the core of women's subordination in society. It is the single greatest threat to the self-determination of women'.³²³ Section 9 consequently pertains to the direct discrimination that women may face because of their sex as well as the non-action by the state when failing to reasonably respond to crimes that have a sexual violence component.³²⁴ Section 9 thus requires police to not only refrain from discriminating against sex workers because of their gender identity and expressions, as well as their race and ethnic origin. It further requires police to act when sex workers may be facing a threat of violence because of gender. This is especially important because sex workers may rely upon police for assistance where they face client violence. Accordingly, police should respect sex workers' human dignity, refrain from arbitrarily detaining sex workers and sex work clients, and protect sex workers against gender discrimination and violence.

Police are also required to protect sex workers' right to dignity. The state's obligation to respect everyone's 'right to dignity' is enshrined in section 10 of the

³²² Ibid Chapter 2 Section 9.

³²³ *Carmichel v Minister of Safety and Security and Another* 2001 (4) SA 938 (CC).

³²⁴ Ibid.

Constitution.³²⁵ This section was intended to ensure that the state does not violate the core of an individual's humanity and that it shows a basic respect for other human beings.³²⁶ In the context of policing sex workers, police are expected to not only embrace this right but also protect sex workers against violations of their right to dignity. The right to dignity is especially significant when considering the policing of sex workers, in that sex workers have long been treated as unreliable and unhygienic as discussed in Chapter 3 and reflected in the various discourses about sex workers. This has contributed to deeply ingrained values that question whether sex workers can be viewed as dignified or otherwise worthy of dignity. The inclusion of this right in the Constitution indicates that all are entitled to dignity, however, there is tension in understanding what it means for police to respect and enforce sex workers' right to dignity, when the police, as individuals, may view sex workers as unhygienic and undignified.

Section 12 of the Constitution requires state institutions to respect individuals' right to freedom and security of person.³²⁷ This right prohibits state actors from

³²⁵ Ibid Chapter 2 Section 10.

³²⁶ A Chaskalson 'Human Dignity as a Constitutional Value' in *The Concept of Human Dignity in Human Rights Discourse* (2002).

³²⁷ 1996 Constitution, Chapter 2 Section 12:

'Freedom and security of the person

12. (1) Everyone has the right to freedom and security of the person, which includes the right—

(a) not to be deprived of freedom arbitrarily or without just cause;

unlawfully detaining individuals or otherwise depriving them of liberty. This section requires police to ensure that sex workers are not ‘deprived of freedom arbitrarily,’ ‘not to be tortured in any way,’ and are ‘free from all forms of violence.’³²⁸ It is particularly relevant in considering how the SAPS have used detention as a form of coercion and as a tool of punishment against sex workers. It explicitly prohibits police from using arrests as a tool for arbitrarily detaining sex workers, and affirmatively requires that they protect their bodily security from torture and violence. It has motivated police to stop the wholesale detention of sex workers in order to respect sex workers’ human rights.³²⁹ Statutory provisions concerning the use of force further limit police. The Criminal Procedure Act of 1977 contains several provisions that dictate how police should effect arrests, treat detainees, and interact with civilians. Section 49 of the Criminal Procedure

(b) not to be detained without trial;

(c) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right—

(a) to make decisions concerning reproduction;

(b) to security in and control over their body; and

(c) not to be subjected to medical or scientific experiments without their informed consent.’

³²⁸ Ibid.

³²⁹ See Chapter 6 below (discussing Rosebank police’s decision to refrain from arresting sex workers to comply with human rights norms).

Act outlines the manner in which police officers may use force to affect an arrest against a person suspected of committing a crime.³³⁰ Police are to use reasonably necessary force, and instances that fall outside of this provision are extra-legal and considered to be police brutality. The Criminal Procedure Act provides that police officers 'may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing'.³³¹ Thus police are limited in how they use force against sex workers as well sex work clients. The South African Police Services Act also regulates police action.³³² It states, 'Where a member who performs an official duty is authorised by law use force, he or she may use only the minimum force which is reasonable in the circumstances.'³³³ Common law principles also limit police conduct. The common law prohibits assault, assault with grievous bodily harm, and rape. Police officers who engage in these activities are acting outside of the scope of their duties and may be prosecuted for engaging in criminal activity.

These legal reforms were intended to radically reform South African institutions through incorporating human rights norms through constitutional norms and statutory restrictions. Many of these reforms were instituted with a specific eye towards the police

³³⁰ 51 of 1977.

³³¹ 51 of 1977 Section 49.

³³² 68 of 1995.

³³³ 68 of 1995 Section 13.

institution, given its history of human rights abuses and apartheid enforcement.³³⁴ SAPS further adopted a human rights training manual ‘to provide information and training on how to police in line with International Human Rights principles and the South African Constitution’.³³⁵ This addition has presumably influenced how police members view their role of policing in a democracy and may explain why several members complained that human rights limited their ability to police effectively. SAPS has a policy against torture that states, ‘No member may torture any person, permit anyone else to do so, or tolerate the torture of another by anyone.’³³⁶ These legal norms were intended to radically reform the police and create an institution with a culture that embraces human rights.

However, legal reforms are often inadequate in changing actual attitudes, culture, and the manner in which policing actually occurs.³³⁷ More importantly, it must be in the interests and capacity of the police to carry forth its tasks while adopting these new norms. Although the police may embrace human rights in form, its practice often is very different. These policies have in many ways changed the human rights discourse

³³⁴ But see Marks (note 33 above) 27 (noting that there have been new reforms to remilitarise the police service, noting that ‘new proposals for “beefing up policing” are not informed by evidence-based research’).

³³⁵ South African Police Service ‘Human Rights and Policing’ <http://www.saps.gov.za/docs_publications/legislation/policies/_policing.htm>.

³³⁶ South African Police Service *Policy on the Prevention of Torture and Treatment of Persons in Custody* (1999).

³³⁷ See CM Fombad ‘The Constitution as a Source of Accountability: The Role of Constitutionalism’ (2010) 2 *Speculum Juris* 41, 44 (‘Today we are haunted by the old demons of authoritarian rule which we had hoped to have exorcised through constitutional reforms and multiparty democracy in the 1990s’).

amongst police and enabled them to adopt a rights-based terminology even in the exercise of rights violations. 'In South Africa, this has taken the form of using human rights as a shield that works by deflecting criticism and hiding behind it a much more violent and *bricolage* kind of practice.'³³⁸ As I detail in Chapters 5 and 7, police frequently adopt human rights terminology to explain their own conduct when it is decidedly outside the parameters of the law. Adopting such language appears to be a mechanism for legitimising their conduct within a human rights regime. Embracing human rights language without fully embracing the underlying principles allows practices that are inconsistent with human rights principles to persist. It creates a fundamental disconnect between what is said and what is done.

4.4 Policing of Sexualised Violence

The policing of sex workers is a particularly gendered form of policing. Following the new political dispensation, there was a move towards increased enforcement of horizontal rights. There was much discussion about the application of horizontality, which can be defined as the application of constitutional rights on private parties.³³⁹ The

³³⁸ Hornberger (note 31 above) 271.

³³⁹ S Woolman & D Davis 'The Last Laugh: Du Plessis v De Klerk, Classical Liberalism, Creole Liberalism and the Application of Fundamental Rights under the Interim and Final Constitutions' (1996) 12 *SAJHR* 361; C Sprigman & M Osbourne 'Du Plessis Is Not Dead: South Africa's 1996 Constitution and the Application of the Bill of Rights to Private Disputes' (1999) 15 *SAJHR* 25; J van der Walt 'Justice Kriegler's Disconcerting Judgment in Du Plessis v De Klerk: Much Ado about Direct Horizontal Application (Read Nothing)' (1996) 4 *TSAR* 732; H Cheadle & D Davis 'The Application of the 1996 Constitution in the Private Sphere' (1997) 13 *SAJHR* 44; J van der Walt 'Horizontal Application of Fundamental Rights and the Threshold of the Law in View of the Carmichele Saga' (2003) 19 *SAJHR* 517; S Woolman 'The Amazing, Vanishing Bill of Rights' (2007) 124 *SALJ* 762. Beyond the law journals, see D Davis *Democracy and Deliberation* (1999) 99; A Cockrell 'Private Law and the Bill of Rights: A Threshold Issue of "Horizontality"' in *Bill of Rights Compendium* (2001) 3A-3.

shift towards horizontal application of constitutional norms provided a passage for police in the regulation of private relationships. Police were increasingly required to protect the people against themselves. The police play an integral role in this form of rights enforcement because they have an affirmative duty to protect the public and a particular duty to protect women from violence. Section 12(c) of the Constitution provides everyone with the right to be free from violence in his or her private and public relationships. This constitutional norm provided the foundation for jurisprudence outlining police's obligations to protect women from private violence as well as the enactment of the Domestic Violence Act (DVA) (1998). This requirement that police enforce rights horizontally should influence how police respond to sex worker complaints concerning client abuse. It creates an affirmative obligation to protect sex workers in such circumstances and is an entry point for mediating what may be thought of as a domestic relationship in a private space.

The DVA came into operation on 15 December 1999.³⁴⁰ The Preamble of the DVA states that 'there is a high incidence of domestic violence within South African society; that victims of domestic violence are amongst the most vulnerable members of society; that domestic violence takes on many forms; that acts of domestic violence may be committed in a wide range of domestic relationships'.³⁴¹ During the transition, there were serious issues concerning officer training on domestic violence law. A Natal survey found that only 60 per cent of station commanders knew about the Prevention of Family

³⁴⁰ Act 116 of 1998.

³⁴¹ *Ibid.*

Violence Act, the predecessor of the DVA.³⁴² A key innovation of the DVA was the conception of police as social workers. The DVA places an obligation on police to inform complainants that the police are there to provide any assistance that may be necessary, including finding a shelter for the complainant and/or other social services.³⁴³ The police must inform the complainant of his or her right to a protection order and then provide a notice to the complainant. The national commissioner of SAPS must submit a report to Parliament detailing complaints concerning police's failure to comply with the mandates of the Act. Police failure to uphold the Act or its regulations must be reported to the ICD, a civilian oversight body. As Govender has observed, 'previously, where women were beaten by their non-marital partners police were hesitant to intrude because of the wall between the public and private spheres.'³⁴⁴ The police were previously viewed as major impediments to the prevention of domestic violence.³⁴⁵ These safeguards were intended to ensure that police would not treat instances of domestic violence as matters to be resolved privately. This approach is relevant because understandings about private and

³⁴² SA Kim 'Betraying Women in the Name of Revolution: Violence against Women as an Obstacle to Democratic Nation-Building in South Africa' (2001) 8 *Cardozo Women's LJ* 1

³⁴³ L Vetten 'Addressing Domestic Violence in South Africa: Reflections on Strategy and Practice' Expert Group Meeting 'Violence against Women: Good Practices in Combating and Eliminating Violence against Women' (2005).

³⁴⁴ M Govender 'Domestic Violence: Is South Africa Meeting Its Obligations in Terms of the Women's Convention? Notes and Comments' (2003) 19 *SAJHR* 63.

³⁴⁵ See Human Rights Watch *Unequal Protection: The State Response to Violent Crime of South African Farms* (August 2001) <<http://www.hrw.org/reports/2001/safrica2/>>. Human Rights Watch observed, 'Women attempting to seek police assistance, however, complained to Human Rights Watch that in these cases too they faced bias and obstruction from officials. In some cases, police dismissed complaints, either refusing to believe the woman's allegations or failing to recognize intra family violence as a crime. Police demonstrated a simplistic and biased understanding of the dynamics of rape, a lack of knowledge and experience as to the range of circumstances in which rapes of women occur, or a lack of sensitivity in dealing with rape victims.'

public shape how the police approach sex work.³⁴⁶ Requiring police intervention in private spaces strengthens their role in mediating the relationship between sex workers and their clients.

In a series of cases, the courts have recognized that the police have an affirmative duty to protect women against violence.³⁴⁷ The case law indicates that police

³⁴⁶ See Chapters 5 and 6 below (discussing how understandings about private and public influence the policing of sex workers).

³⁴⁷ In *S v Baloyi*, the Constitutional Court held that the state has an affirmative obligation to enact legislative measures that will curtail the incidence of domestic violence. 2000 (1) SACR 81 (CC). This case was followed by a series of cases that sought to hold individual state actors accountable for their failure to prevent private acts of violence. Alix Jean Carmichele brought an action against the Minister of Safety and Security and the Minister of Justice. *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC). Carmichele was attacked and seriously injured by Francois Coetzee. *Ibid.* Coetzee was awaiting trial for rape and was released on his own recognizance, although he had a prior conviction for indecent assault. Neither the police nor the prosecutor objected to his release. Coetzee subsequently attacked Carmichele, leaving her with a head injury and a broken arm. Carmichele sought to hold the police and prosecutors responsible for failing to protect the public against Coetzee. The Cape Provincial of the High Court and the Supreme Court of Appeal reviewed the common law obligations, and both held that the state was under no legal obligation to protect Carmichele. The Constitutional Court reversed the lower courts' decisions, holding that the common law must be read in accordance with the principles of the Constitution. *Ibid* paras 18, 19. The Court considered the provisions of the interim Constitution and the Police Act and noted that the police are the primary protectors of the public against acts of violence, especially against women and children. The Court remanded the matter, and the CPD found that there was indeed a basis for the action upon consideration of the constitutional normative framework, and the Supreme Court of Appeal affirmed this holding. *Minister of Safety and Security and Another v Carmichele* (533/02) (2003) ZASCA 117; (2003) 4 All SA 565 (SCA) (14 November 2003). This case emphasizes the role of police as protector in the domestic arena and thereby their role in addressing violence against sex workers. The plaintiff in *Van Eeden v Minister of Safety and Security* was attacked and raped by Andre Gregory Mohammed, a convicted serial rapist who escaped police custody. 2003 (1) SA 389 (SCA). She alleged that the police failed to take necessary steps to protect the public by allowing Mohammed to escape from their custody. Following the Constitutional Court's decision in *Carmichele*, the court found that the police had an affirmative duty to prevent Mohammed's escape. The court considered the police's affirmative obligations to prevent the gender discrimination inherent in violence against women and determined that it was obligated to prevent Mohammed's escape. *K v Minister of Safety and Security* involved the issue of vicarious liability. The plaintiff was raped by three uniformed policemen who had offered her a ride home after she became stranded on the streets in the early hours of the morning. 2005 (9) BCLR 835 (CC). The plaintiff brought a delictual claim against the minister, claiming that the minister was vicariously liable for the police officers that were on duty at the time of the assault. The Court found that the minister could be held vicariously liable because the policemen committed the rape during their official duties and those duties include an obligation to protect the public. These officers violated this constitutional obligation and omitted to protect the plaintiff through their conduct.

are expected to play a more hands-on role in the protection of women's rights in domestic disputes. Accordingly, police are expected to assist sex workers when they have domestic disputes, including disputes that involve clients.³⁴⁸ Police become more involved in the intimate and private sphere bringing their own interpretations about how social relations should occur in this space. As will be illuminated in the upcoming chapters, police members' interpretations about what is appropriate in private spaces contribute to how they treat sex workers.

4.5 Contemporary Policing of Sex Work

The policing of sex workers is a peculiar and particular type of gendered policing that is further influenced by additional norms around gender and sexuality. Following the new political dispensation in 1994, there were significant efforts to decriminalise sex work. The discourse around sex work focused on the question of decriminalisation. Nonetheless, sex work still remains criminalised in South Africa under the 1957 Sexual Offences Act through the 1988 amendment.³⁴⁹ This legislation criminalises the act of both the sex worker and the client³⁵⁰ who employs him or her. However, sex workers are rarely prosecuted under the Sexual Offences Act. This legislation is rather difficult to

³⁴⁸ See Chapter 5 below (discussing Hillbrow police members' involvement in serving as a mediator in disputes between sex workers and their clients).

³⁴⁹ Ibid § 12A(1). 'Any person who, with intent or while he reasonably ought to have foreseen the possibility that any person, who is 18 years or older, may have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward, performs for reward any act which is calculated to enable such other person to communicate with any such person, who is 18 years or older, shall be guilty of an offence.'

³⁵⁰ In Amendment Act 32 of 2007, the Act was amended to more explicitly indicate that it was referring to the activities of the contractor.

enforce and rarely results in prosecution. Rather, sex workers are more frequently prosecuted under various municipal ordinances and legislation, such as loitering and public disturbance regulations. Police use loitering regulations and other highly discretionary public disorder ordinances to detain sex workers. This practice is consistent with how sex work has historically been policed in South Africa—as a public nuisance violation.³⁵¹ The Sexual Offences Act may nonetheless legitimise the regulation of sex workers by providing police officers with a moral bargaining chip for explaining why this population should be subject to special surveillance. In this way, even where legislation is unable to directly achieve its aims by resulting in more of a particular type of prosecution, it is able to do so indirectly by providing moral currency through delegitimising the activities of a particular group.

In Gauteng, the province where Johannesburg is located, there have been many false starts in the movement to decriminalise sex work. In 1997, the Gauteng Province adopted a proposal to decriminalise sex work.³⁵² Provincial Safety and Security Minister Jesse Duarte commissioned the report, which was recommended to the province. Duarte stated, ‘There is considerable consensus among non-governmental organizations in Gauteng that we should begin to talk about decriminalising

³⁵¹ I have spent more than a year conducting ethnographic fieldwork in Johannesburg, exploring the nature of the relationship between police and sex workers in South Africa. Several of the conclusions from this section concerning contemporary police practices are drawn from the ethnographic data gleaned from that research.

³⁵² G Mutume ‘Gauteng Province Decriminalizes Prostitution’ Interpress Service (7 November 1997) <<http://www.ipsnews.net/1997/11/south-africa-gauteng-province-decriminalizes-prostitution/>>.

prostitution.’³⁵³ This proposal was not met without resistance. The House Group, a women’s nongovernmental organization (NGO) based in Hillbrow, vehemently opposed a proposal that would decriminalise sex work, stating, ‘It is our assumption that both “problems” arise from unwillingness to protect the citizens of this country from the depravity of a small number’ relying upon a morality-based discourse to oppose decriminalisation.³⁵⁴ Gauteng government officials hoped that the Gauteng proposal would influence the national government in reforming the Sexual Offences Act. However, sex work remained criminalised on a formal level even after the adoption of this provincial proposal.

The South African Law Reform Commission began examining reforms to the Sexual Offences Act in 1999.³⁵⁵ A 2002 Law Commission Discussion Paper explored the possibilities for reform regarding the treatment of sex work and whether its policing should change. It ultimately called for revisions of the Sexual Offences Act and included the possibility of decriminalisation or legalisation of sex work.³⁵⁶ There have been several efforts to decriminalise sex work in South Africa, yet none has resulted in the repeal of the offending provisions of the Sexual Offences Act.³⁵⁷ Nonetheless, this political climate of openly discussing the possibility of decriminalising sex work has in

³⁵³ Ibid.

³⁵⁴ Letter by Jean du Plessis, Chief Executive Officer of The House, to Mr Sylvester Rakgoadi, NGO Submission regarding Draft Policy Document on Decriminalising Sex Work (28 July 1996).

³⁵⁵ SA Law Commission Discussion Paper 85 *Sexual Offences: The Substantive Law* (October 1999).

³⁵⁶ SA Law Commission Issue Paper 19 *Sexual Offences: Adult Prostitution* (October 2002).

³⁵⁷ See generally Wojcicki (note 16 above) 91.

some manners resulted in de facto decriminalisation. As discussed in chapter 1, the regulation of sex work does not appear to be a police priority. The Office of the State Attorney issued the following statement concerning the criminalisation of sex work in South Africa:

[T]he Department of Justice has presently not announced policy with regard to the decriminalisation of prostitution or sex work. What has become clear, however is a general move towards the decriminalisation of less serious offences. If one looks at the attorneys-general, it is clear that the decriminalisation of acts around sex work has already started.³⁵⁸

During this time period, some courts displayed flexibility in considering how sex work should be policed. In 2002, the Supreme Court of Appeal rejected the government's attempt to prosecute a brothel under the Sexual Offences Act by stating that there was a lack of evidence in *National Director of Public Prosecutions v R O Cook Properties (Pty) Ltd.*³⁵⁹ The alleged brothel owner stated that any acts of indecency that occurred on the property were acts of private indecency, and the court indicated, 'We in contemporary South Africa do not seek windows into other persons' souls,' implicitly recognizing the importance of allowing privacy within the 'private' sphere, even where sex work is involved.³⁶⁰ In *S v Jordan*, the constitutionality of the Sexual Offences Act

³⁵⁸ Ibid 89.

³⁵⁹ *National Director of Public Prosecutions v R O Cook Props. (Pty) Ltd.* 2004 (03) SA 260 (CC) para 39.

³⁶⁰ Ibid.

was challenged.³⁶¹ The Constitutional Court of South Africa rejected the challenge to the legislation, reasoning that the legislature was within its powers in criminalising the act of prostitution because prostitution was associated with social ills, such as violence, child trafficking, and drug abuse.³⁶² An amendment to the legislation was subsequently passed to explicitly criminalise the actions of the sex workers' clients. The Court further questioned whether the sex work was compatible with the right to dignity, providing a moral values judgment on the legitimacy of sex for work. This case illustrates how courts have become the primary arbiters of morality in the constitutional era, taking it upon themselves to assess the social evils of sex work.

Courts have also been critical in ensuring that sex workers' rights are protected despite the illegality of their work. In 2008, the Supreme Court of Appeal confirmed a brothel owner's conviction for the rape of sex workers working under his employ, rejecting the argument that a sex worker's 'willingness to dress in lingerie and take part in training was proof of her consent for him to have sexual intercourse with her'.³⁶³ The court further noted that even though the sex workers 'voluntarily went to the [brothel], this did not mean that this was a license for their dignity and integrity to be violated at

³⁶¹ *S v Jordan* 2002 (6) SA 642 (CC).

³⁶² *Ibid* paras 24–25.

³⁶³ *Egglestone v The State* 2008 ZASCA 77 (A) at para 23.

will by the appellant'.³⁶⁴ This decision illustrates that despite the illegality of sex work, employers must respect sex workers' rights.

In *Kylie v Commission for Conciliation, Mediation, and Arbitration*, the Labour Appeal Court of South Africa held that the Labor Relations Act applies to sex workers.³⁶⁵ The court reasoned:

The fact that prostitution is rendered illegal does not, for the reasons advanced in this judgment, destroy all the constitutional protection which may be enjoyed by someone as appellant, were they not to be a sex worker. . . . By extension from section 23(1), the LRA [Labor Relations Act] ensures that an employer respects these rights within the context of an employment relationship. Expressed differently, public policy based on the foundational values of the Constitution does not deem it necessary that these rights be taken away from appellant for the purposes of the Act to be properly implemented.³⁶⁶

Nonetheless, the contemporary policing of sex workers in South Africa is, in some respects, very individualised and particular, with some police stations forgoing the policing of sex work entirely, while others continue to police it strictly.

³⁶⁴ Ibid para 27.

³⁶⁵ *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* 2010 (4) SA 383 (Labour Appeal Court of South Africa).

³⁶⁶ Ibid paras 54–55.

Some courts have adopted a more conservative analysis when evaluating the enforcement of the Sexual Offences Act. In *National Director of Public Prosecutions v Lorna M. B.*, a Durban court forfeited property that was used as a brothel.³⁶⁷ The prosecution coaxed a sex worker into accepting money from a detective posing as a client and then used the presence of condoms as proof of sex work.³⁶⁸ The court proclaimed, 'I hope that the message will go out to other brothel keepers and also to the respondent, that their conduct would not be tolerated by courts.'³⁶⁹ In 2008, the High Court in Pretoria confirmed the government's request to forfeit property determined to be a brothel, proclaiming its views on brothel keeping and prostitution in *National Director of Public Prosecution v Geysler*.

And there can be little doubt, to my mind, that brothel-keeping would be seen by a majority in society, if not society as a whole, as morally more reprehensible than operating unregistered gaming machines. Brothel-keepers, as mentioned, commit their own offence and aid in the commission of the prostitutes' offence. In doing so, they themselves earn an income from prostitution.³⁷⁰

In these decisions, the judges have acted as the moral arbiters of contemporary times, asserting as 'fact' the morally reprehensible nature of sex work. Even the

³⁶⁷ 2009 (2) SACR 547 (Durban and Coast Local Division).

³⁶⁸ Ibid para 4.

³⁶⁹ Ibid para 43.

³⁷⁰ 2008 ZASCA 15 (CC) at para 25.

Constitutional Court, in its decision in *S v Jordan*, appears to assume that the current dangers in the working conditions for some sex workers is inherent in the nature of sex work itself.³⁷¹ This conflict between the ‘morality’ of sex work (inherent victimization and righteousness of it) and a desire to promote human rights (preventing rights violations and respecting individual agency) appears to be at the heart of current debates on sex work. This tension has resulted in unevenness in the manner in which sex work is policed. Sex work is primarily treated as a public nuisance violation, which has generally always been the case in South Africa.

Recently, there has been a renewed emphasis on the decriminalisation of sex work in South Africa. In May 2013, the Commission on Gender Equality called for the decriminalisation of sex work, stating, ‘We believe it is the only viable approach to promoting and protecting the dignity and rights of sex workers.’³⁷² On 14 November 2014, the Gauteng legislature hosted a Provincial Commercial Sex Workers Dialogue to create a dialogue with sex workers.³⁷³ There have been additional calls from NGOs such as SWEAT and Sonke Gender Justice for decriminalisation, as well as advocacy organisations working on HIV/AIDS.³⁷⁴ Despite this, both the SALRC and the

³⁷¹ *S v Jordan* (note 366 above).

³⁷² ‘Sex Work Should Be Decriminalized’, *iolnews* (16 May 2013) <http://www.iol.co.za/news/crime-courts/sex-work-should-be-decriminalised-1.1516936#.Va_9DBNViko>.

³⁷³ ‘Gauteng Legislature Hosts Provincial Dialogue for Commercial Sex Workers’ (17 November 2014) <<http://www.gov.za/gautenglegislaturehostsprovincialdialogueforcomemrcialsexworkers-17november2014>>.

³⁷⁴ Sonke Gender Justice <<http://www.genderjustice.org.za/policy-development-advocacy/decriminalisation-sex-work/>>; SWEAT <<http://www.sweat.org.za/sexworkiswork/>>.

Government appear to be reluctant to take a decision and move forward. The official law reform process started in the SALRC in the 1990s and has yet to be concluded.

While sex work remains criminal despite these various attempts to decriminalise it, these discourses on its decriminalisation appear to result in de facto decriminalisation in many parts of Johannesburg. This tolerance of sex work shares a continuity with colonial treatment of sex work that tolerated it, so long as there was no public nuisance involved. The police are tasked with implementing legal norms that require that they enter the domestic sphere to ensure that sex workers' human rights are protected. Yet, given the violent past of the police and the explicit nostalgia concerning how this past has emboldened the police, there are contradictions in how human rights is embodied in the policing of sex workers in Johannesburg. In the following ethnographic chapters, I will should how the de facto decriminalisation complicates the relationship between police and sex workers.

Conclusion

In the human rights paradigm, there appears to be a formal recognition that the rights of sex workers should be protected and respected. However, traditional values that view sex workers as unreliable and victims of circumstance are so embedded into the fabric of society that only a few political actors are willing to risk advocating for the complete tolerance of sex work as a matter of moral imperative, reflecting continuities with historical discourses that treated sex workers as inherently unreliable and only tolerable where there is no public nuisance. The Sexual Offences Act may provide

moral authority for viewing sex workers as morally reprehensible in South Africa and is a continuation of legal decisions that have formally recognized sex workers with suspicion. In this way, the conflicting modern discourses around sex work demonstrate the continued conflict between the official policies relating to the policing of sex work and the actual practices on the ground.

Furthermore, discussions of how sex workers' rights should be protected and treated are frustrated by popular desires for fewer human rights and more heavy-handed policing. In a survey surrounding remarks by former police chief Bheki Cele that the police should shoot to kill, the majority of the South African public agreed with his statement.³⁷⁵ While the concern about crime rates in South Africa has prompted cries for additional police force, past expectations regarding police power and violence also colour these cries. As Goldstein has noted, 'architects of change have failed to recognize the power of the police subculture, the effect it has on change, and the need, therefore, to deal with some of the factors that contribute to its strength.'³⁷⁶ The potential limitations of human rights are expressed in Douzinas's question, '[A]re human rights an effective defensive tool against domination and oppression or are they the ideological gloss of an emerging empire?'³⁷⁷ Later, in Chapter 6 I explore how police have superficially adopted human rights principles to reinforce their power.

³⁷⁵ Ibid.

³⁷⁶ See Marks (note 35 above) 869.

³⁷⁷ See C Douzinas *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (2007) 7.

SAPS members are in many ways constituted by the discourses that I mention in Chapter 3 and embody the policing of these discourses in their interactions with sex workers as I describe in the following chapters. Further, police perceptions about the suitability of visible forms of sex work and the challenges of policing on a limited income create a localised form of 'human rights' policing that treats sex work as de facto decriminalised while allowing for corruption and understandings of private and public to influence the policing task. The nostalgia toward apartheid policing, including the beliefs about the lifestyle policing during this era provided, that I describe in the beginning of this chapter influence how the police related with sex workers as I discuss in chapters 5-7.

CHAPTER 5. MAPPING THE POLICING OF SEX

Introduction

Policing has adapted to address contemporary challenges, and these adaptations, particularly in the policing of sex workers, are often outside of the law. They frequently reproduce historical practices in the policing of sex work that sought to preserve patriarchy and demonstrate masculinity over the sex worker's body.³⁷⁸ There were the statements by the State Attorney about the unofficial decriminalisation in Johannesburg, as discussed in the previous chapter, as well as the remarks by Deputy Minister of Police Sotyú about the need for a human rights approach to policing sex workers. These statements have encouraged several police station commanders to adopt a discretionary policy of decriminalising sex work in their areas. The legal vacuum produced by this policy gives space to a whole set of unwritten rules, guidelines, and formal licensing agreements through which sex work continues to be policed albeit in a much more informal way. In these informal spaces, discursive forms of policing sex workers, as described in chapter 3, become significant. As discussed in Chapter 4, there appears to be a *de facto* decriminalisation of sex work in some areas of Johannesburg. Nonetheless, the historical focus on the public nuisance aspects of sex work remains. The policing of this aspect of sex work alters how sex work is treated in different locations and allows for an informality in the relationship between police and

³⁷⁸ See pages 80-81 *supra*, discussing the exercise of bio-power to regulate the sex worker's body and reinforce patriarchy during the Victorian era.

sex workers. This informality in the decriminalisation of sex work gives ample room for policing variations that are specific to different localities. The approach to policing sex work appears to be highly localised and creates a complex sex work geography in Johannesburg involving a host of actors, including SAPS, police officers of the Johannesburg Metropolitan Police Department ('Metro'),³⁷⁹ private security services, female sex workers, transgendered sex workers, non-migrant and migrant workers, and clients running the economic gambit. As Teela Sanders has observed, 'the space in which prostitution is advertised, negotiated and administered is an integral part of why and how prostitution happens in certain streets of cities and towns. [That space] is not a haphazard or neutral locale in the urban landscape.'³⁸⁰ The criminalisation and corresponding policing of criminalised sex work has tremendous impact on the spatial patterns and migration of sex workers.³⁸¹

³⁷⁹ The Johannesburg Metropolitan Police Department was formed in 2001 by the Johannesburg Metropolitan Council to police local crime and engage in visible policing. C Bénéit-Gbaffou 'Unbundled Security Services and Urban Fragmentation in Post-apartheid Johannesburg' (2008) 39 *Geoforum* 1933. The Metro police are focused on policing central Johannesburg. Ibid. 'ONE of the main aims of the service is to restore the public's confidence, and the key to this is visible policing', and this police department is charged with (1) policing road traffic, (2) enforcing municipal bylaws, and (3) enforcing municipal regulations. See <http://www.joburg.org.za/index.php?option=com_content&id=38:metro-police&Itemid=67#ixzz3hDPSnTIL>.

³⁸⁰ T Sanders 'The Risks of Street Prostitution: Punters, Police and Protesters' (2004) 41 *Urban Studies* 1703, 1703 (internal citations omitted).

³⁸¹ As Noah Zatz has argued, 'criminalisation has tended to isolate women from one another (as evidenced by laws making it illegal for a set number of women to live together), encourage dependency on pimps, and cut off mobility between prostitution and other forms of work: "Prostitutes were uprooted from their neighborhoods and had to find lodgings in other areas of the city and in the periphery. . . . Cut off from other sustaining relationships, increasingly they were forced to rely on pimps for emotional security and for protection against legal authorities. Indeed, the wide prevalence of pimps in the early 20th century meant that prostitution had shifted from a female- to a male-dominated trade, and there existed a greater number of third parties with an interest in prolonging women's stay on the streets." The form of prostitution encouraged by this historical process is one in which the subversive potential of

Critical geographer Philip Howell argues that the policing of sex workers often includes deliberate efforts to 'remove women as far as possible from the public streets and to enclose them in specified spaces of sexual exchange. The intention was to domesticate prostitutional activity, to privatize its geography at the same time as it brought it under public regulation.'³⁸² This creates a specific sex work geography, which Howell describes as a 'coherent system of spatial organization'³⁸³ dictated by understandings of public and private. This spatial organization is in part driven by police's expectations of the public and the private and the forms of sexuality that are appropriately expressed in this continuum of spaces.³⁸⁴ In many respects, policing sex work is a fool's errand: despite countless efforts to curtail sex work through the

prostitution is limited even while the supply of prostitutes is maintained.' ND Zatz 'Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution' (1997) *Signs* 277, 301.

³⁸² P Howell 'A Private Contagious Diseases Act: Prostitution and Public Space in Victorian Cambridge' (2000) 26 *J of Historical Geography* 376, 377. See also H Lefebvre *The Production of Space* (1991) ('(social) space is a (social) product . . . the space thus produced also serves as a tool of thought and of action . . . in addition to being a means of production it is also a means of control, and hence of domination, of power.').

³⁸³ *Ibid* 396.

³⁸⁴ J Weintraub 'The Theory and Politics of the Public/Private Distinction' in *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (1997) 1.

centuries, sex work has never been successfully eradicated,³⁸⁵ yet it has consistently remained the object of direct morality-driven policing at most points in history.³⁸⁶

5.1 Mapping Sex Work in Johannesburg

In general, sex work appears to be tolerated in Johannesburg, so long as it occurs on the police's terms. This is not inherently problematic, but it becomes problematic where the police fail to exercise restraint in creating the terms of these implied contracts with sex workers. The very geography of sex work is socially produced and dialogic with understandings of the policing of public and private spaces. As Hubbard recognizes, space 'is constantly produced and remade within complex relations of culture, power and difference'.³⁸⁷ The shift towards increased horizontality and policing of private relationships³⁸⁸ directly places police in the centre of even the most private of relationships. The police have always been involved in the policing of sex work to some extent in South Africa.³⁸⁹ However, the move to further include police

³⁸⁵ J Freeman 'The Feminist Debate over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent' (1989) 5 *Berkeley Women's LJ* 75, 82. For example, in Toronto, Canada, 'in 1988 alone, the city spent \$6.3 million fighting prostitution. Yet, "despite more patrols, dramatically higher conviction rates, and the ongoing massive sweeps (something no other Canadian city had tried before), the police acknowledge that unless there is a raging blizzard the hookers will be out on the street tomorrow."'

³⁸⁶ See Chapter 3 generally for discussion on the regulation of sex work driven by public health, public nuisance, and morality discourses.

³⁸⁷ P Hubbard 'Sex Zones: Intimacy, Citizenship and Public Space' (2001) 4 *Sexualities* 51, 51.

³⁸⁸ See detailed discussion of this aspect in Chapter 4.

³⁸⁹ Van Onselen (note 168 above) 1. See also section 3.3 supra, discussing the collusion of the police and prostitution rings in Gauteng during the Mineral Revolution.

in 'private' spaces through the enactment of the DVA and the horizontal application of constitutional rights provides them with additional legitimacy to police sex workers.

Although Sanchez argues that the 'separation of public and private spheres is largely a product of the liberal imagination and its subordinating practices',³⁹⁰ whether real or imagined, conceptions of the private versus the public dictate how police treat sex workers, sex work, and the bodily capital and hygiene of sex workers. The *Oxford English Dictionary* defines public as 'done, perceived, or existing in open view'.³⁹¹ Private is defined as 'involving only a particular person or group, and often dealing with matters that are not to be disclosed to others'.³⁹² Sex work frustrates this public–private dichotomy in its making the presumably private act of sex into a public transaction. Sex work occurs in spaces that are marked by their private and public tensions. On the one hand, although the sale of sex occurs in private areas, the procurement of strangers for sexual activity is necessarily a somewhat public act. For there to be an efficient market for sex, there must be public or quasi-public spaces where strangers can purchase sex.

This tension can also be understood through secrecy and visibility.³⁹³ The various levels of visibility and secrecy associated with sex work allow for different levels

³⁹⁰ LE Sanchez 'Sex, Law, and the Paradox of Agency and Resistance in the Everyday Practices of Women in the "Evergreen" Sex Trade' in *Constitutive Criminology at Work: Applications to Crime and Justice* (1999) 39.

³⁹¹ *Oxford English Dictionary*.

³⁹² *Ibid.*

³⁹³ A Murphy & SA Venkatesh 'Vice careers: The changing contours of sex work in New York City' (2006) 29 *Qualitative Sociology* 129.

of extraction and protection. The police and hotel-brothel owners become figures of authority in these spaces. The more transparent forms of sex work are subject to higher police scrutiny, while the sex work that is clouded by greater (open) secrecy remains in the domain of hotel-brothel owners. These figures of authority reproduce a patriarchal order in the sex work industry. Although sex workers who operated in hotel-brothels indicated that they were independent contractors, they were still bound by the social expectations of their operating establishments. The patriarchal figures of the police and of hotel-brothel owners and management negotiate informal rules and understandings with the sex workers within their jurisdictional space.

In Johannesburg, sex work is concentrated in several red-light districts throughout the city, each with a very distinct character, depending on the locale. Rosebank and Illovo are located in Johannesburg's northern suburbs, and much of the street-based sex work there is considered to be higher end. Sex work hot spots are on and near Oxford Road, a main thoroughfare in the area. The market for Rosebank/Illovo sex work is street based and concentrated into several areas. The sex workers cater to clients from the surrounding suburbs, including Rosebank, Melrose, and Houghton, which are some of the wealthiest suburbs in Johannesburg. One sex worker, Mary, explained to me that although she lives in Hillbrow, she comes to Rosebank to work because the clients are high income and tend to make frequent visits. Almost all of her clients are married, and they enjoy the discreet convenience of purchasing sex near their homes. Several sex workers repeated similar experiences.



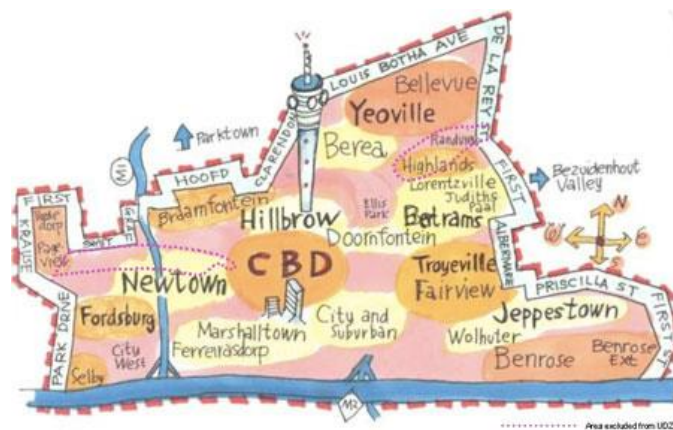
Photo of a street adjacent to one of the hot spot corners for sex work at night

Sex work is marketed in public spaces in Rosebank, but on most evenings the sex workers hide on dark street corners and maintain a certain level of discretion. By contrast, in central Johannesburg, sex work is highly visible and street based. Whereas a busy night in Rosebank involved at least 78 sex workers outside, one particularly busy night in central Johannesburg easily involved more than 300 sex workers lined up on a brightly lit street in various states of undress. This form of sex work occupies a very public space and is highly visible.

In Hillbrow, street-based sex work is not tolerated at all, and sex work takes place in various hotels, clubs, and private residences. This geography of sex work involving a public but discreet form in Rosebank, a highly visible form in central Johannesburg, and a completely indoor form in Hillbrow is socially driven by police practices, client preferences, sex worker preferences, and sex worker bodily capital. As Hubbard argues:

[T]he city is a map of the hierarchy of desire, from the valorised to the stigmatised. It is divided into zones dictated by the way its citizens value or denigrate their needs. Separating the city into areas of specialism makes it possible to meet some needs more efficiently; it is also an attempt to reduce conflict between opposing sets of desires and the roles people adapt to try and fulfil those desires.³⁹⁴

The distinct nature of sex work in the different neighbourhoods allows for a diverse clientele who can easily participate in a market that meets their preferences. It creates a geography of desire that is shaped by preferences informed by ethnicity, wealth, desire, and convenience.



Map of downtown Johannesburg, including Hillbrow and

³⁹⁴ Hubbard (note 387 above) 60.

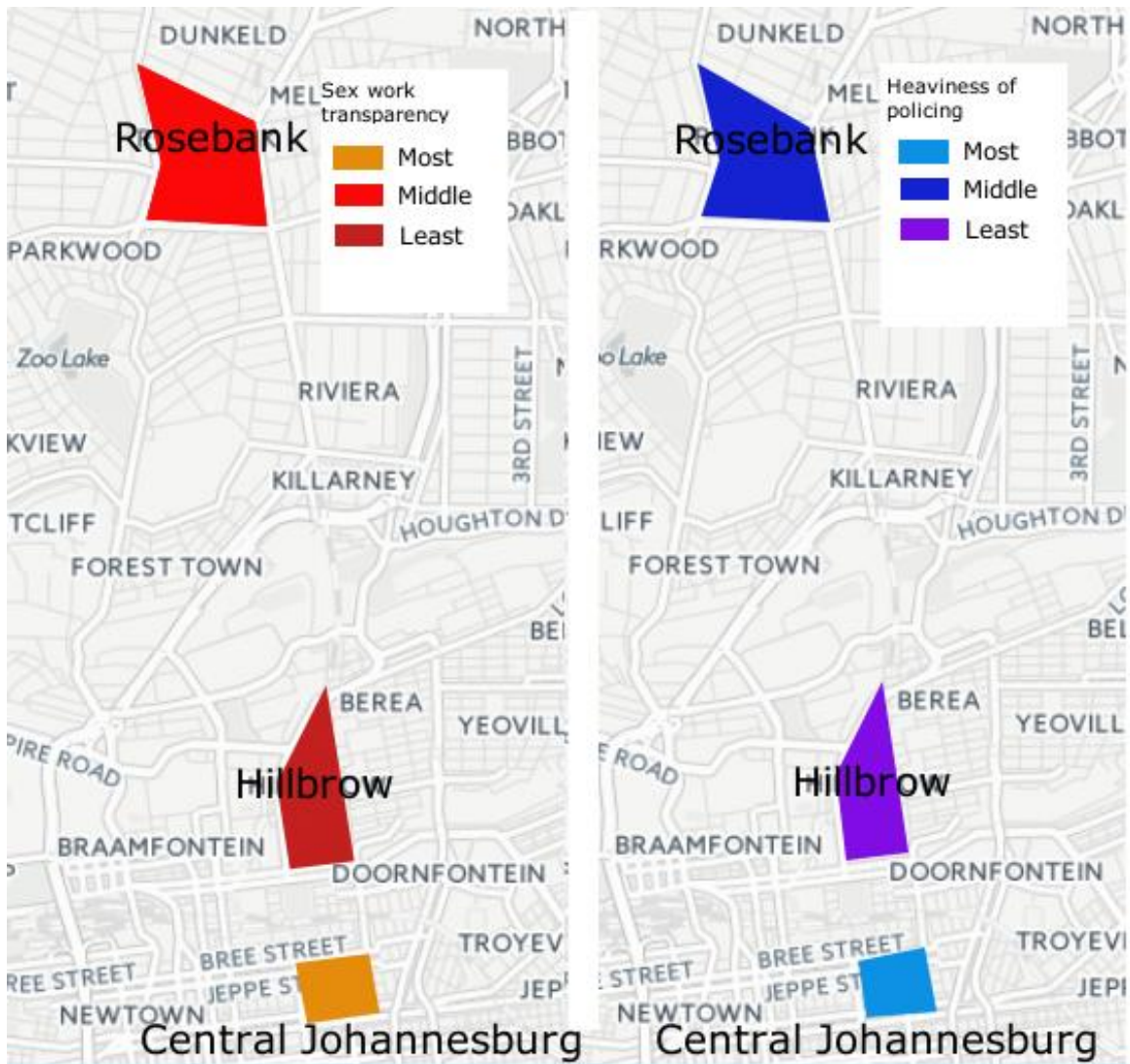
Where sex work occurs on the streets, as in Rosebank or inner-city Johannesburg, its public aspect is more visible.³⁹⁶ This visibility allows for greater direct intervention by the state as the police patrol the streets and the embodiment of the state in that space. Nonetheless, the actual transaction is necessarily private in that it occurs between the client and sex worker and is not readily made for public consumption. The distinction between public and private influences the approaches police adopt in the policing of sex work. Sex work that occurs in public spaces is viewed with great suspicion and generally disdained, although it is frequently tolerated.³⁹⁷ Sex work that is marketed in semi-private spaces, such as brothels, is heavily regulated and subject to a system of legal rules that have evolved from current gaps of the law. The visibility of more 'public' forms of sex work provides the police with direct access to the sex worker. Space in the city takes on new meaning as sex workers problematise notions of private and public policing.³⁹⁸ The problematisation of private and public sexuality ultimately has created a policing sex geography dictated by how the police negotiate between maintaining order in the urban landscape and domesticising expressions of feminine sexuality.

³⁹⁵ Urban Development Zone <http://joburg.org.za/index.php?option=com_content&task=view&id=120&Itemid=58>.

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Hubbard (note 387 above) 58. 'The female prostitute, in particular, represents a paradigmatic figure whose legal and social regulation symbolizes the contradictions inherent in notions of equal citizenship; in many cities prostitutes are forced to work out of sight, off-street in brothels, massage parlours or private flats where their sexuality can be commodified with apparent impunity.'



Side-by-side map of visibility of sex work (left) and heavily policed areas (right) of Hillbrow, Rosebank, and Central Johannesburg

The key players in the sex work research sites included sex workers, sex work clients, hotel–brothel owners, hotel–brothel managers, hotel–brothel security, and police. During the course of the study, there were no direct controllers, or

intermediaries³⁹⁹ or pimps, at the research sites. All the sex workers, including the sex workers who worked from hotel-brothels, indicated that they were independent contractors and retained the entirety of any income earned for services rendered. The market was driven, in part, by client demand. However, sex workers would also dictate the prevalence of supply by favoring warm-weather conditions, missing work on religious holidays, and taking frequent absences as needed.

³⁹⁹ UNAIDS describes controllers as 'power-holding intermediaries between the sex worker and client'. UNAIDS *Guidance Note on HIV and Sex Work* (2009) 3.

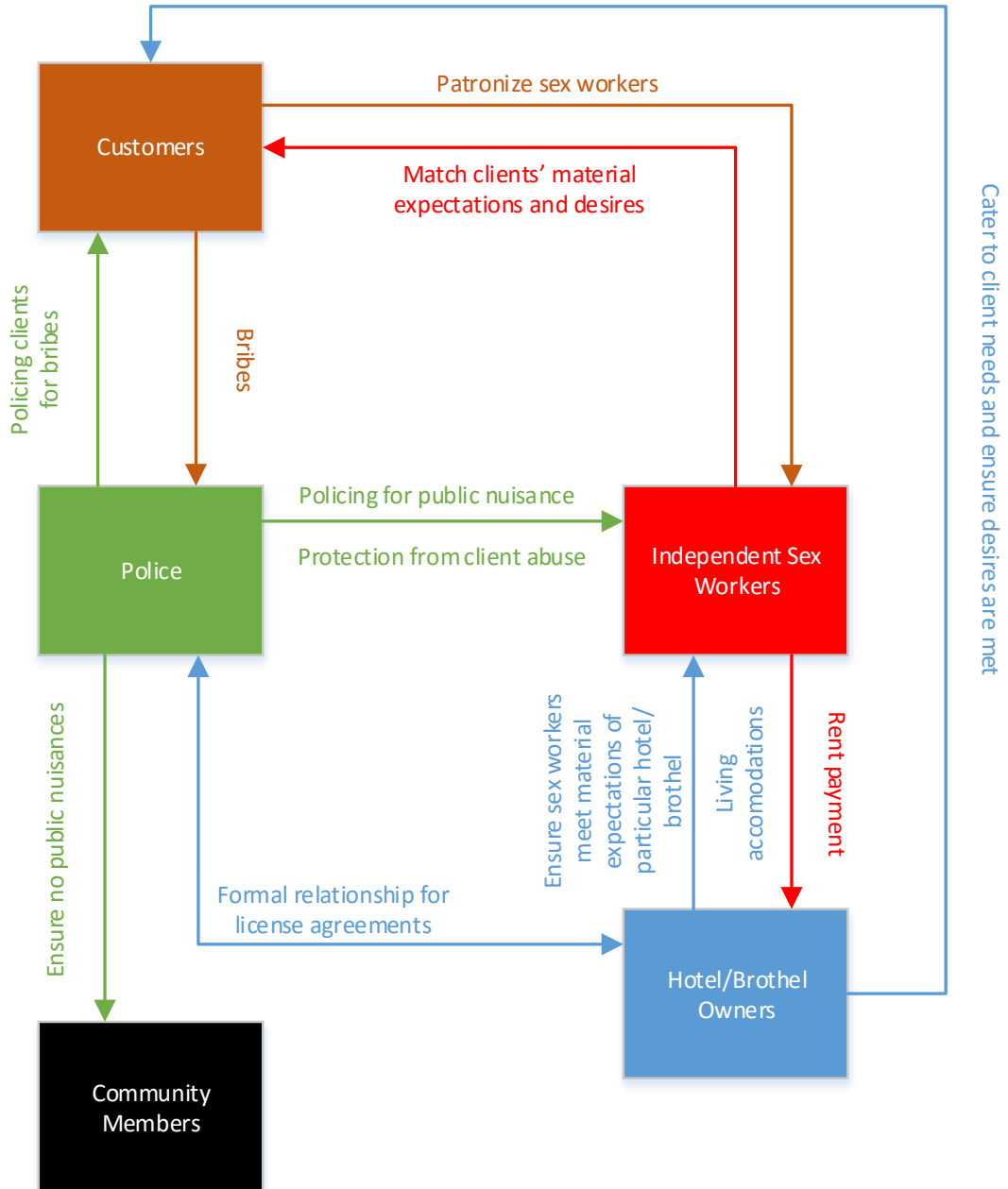


Diagram of relationships between sex work participants

This diagram illustrates the interconnecting relationships between the various players in the Johannesburg sex work arena. Sex workers in Johannesburg are generally independent contractors. Sex workers who operate from hotel-brothels pay rent to the brothel owners and expect space to work and live in return. The hotel owners often have subjective expectations about how the sex workers operating from their brothels should appear and express these expectations to the sex workers, regulating how sex workers organise themselves in the market.

Police are expected to assist sex workers with complaints about client abuse and often interact with sex workers to enforce public nuisance regulations in response to community complaints. Police also regularly act as mediators for sex worker-client disputes about payment. Police interact with sex work clients by soliciting these clients for bribes. The clients have a direct relationship with sex workers as patrons and expect the sex workers to fulfill their material and sexual desires. These clients are at times police members, who may enter a patronage relationship with the sex workers in which the sex workers are available for transactions during the police member's shifts and the police member provides the sex worker with additional police protection for this convenience. These interconnecting relationships create dynamic market conditions, where each of the independent components influence the others. This interconnected relationship is important because it highlights how upsetting one aspect or participant in the relationship may have indirect or direct effects on others.

5.2 Hillbrow

During my patrols with the Hillbrow police, it quickly became apparent that the Hillbrow police adopt a hard-line approach against sex work with a more overtly public nature. Very few sex workers operate outdoors in Hillbrow because there is a policy of ensuring that such sex workers are promptly removed from the streets. The policing of sex work in Hillbrow is primarily conducted through the negotiating of licenses between police and indoor establishments. Street-based sex workers previously operated near Golden Ceresta or Lilly and Johnston Streets before the policy of eliminating street-based sex work was implemented.

Tables 4 presents the demographic characteristics of the participants from Hillbrow police station, presenting the age and tenure at the police department. Participants from Hillbrow police station comprised 14 (73.3 per cent) males and 4 (21.1 per cent) females, whereas 1 participant failed to provide a gender. The age of Hillbrow police station participants ranged from 25 to 53 years, with an average age of 39.79 ($SD = 8.90$) years. The participants worked at the police station for a range of 1 to 36 years, with an average of 18.81 ($SD = 10.89$) years of service. It should be noted that one participant was unable to provide a response regarding his or her number of years at the police department.

Table 4

Age and tenure at police department of Hillbrow interviewees

	N	Minimum	Maximum	Mean	Std. deviation
Age	19.00	25.00	53.00	39.79	8.90
Years at the police department	18.00	1.00	36.00	18.81	10.89

The following entry from my field notes captures the everyday reality of patrolling with the Hillbrow police as they monitored Hillbrow hotel–brothels.

5.2.1 Entry from Field Notes: Hillbrow Patrol

After a couple of attempts at joining the Hillbrow police for patrols, I finally joined an officer patrol on 1 October 2013. I met with Colonel Bongani, and we were discussing my research aims in her office at around 5:30 PM. Colonel Bongani is a black woman in her mid 30s to mid 40s. She is a colonel for the CIC of the Hillbrow police station and is charged with doing community-related police work. She has coordinated the work of other researchers and is quite familiar with the process. Her office is located on the fifth floor of the police station and is an average-sized office with a sterile feeling about it, although there are minor touches of her personal decor in it, including a polyester pillow and photos of her family.

After we discussed my research objectives for a few minutes, she contacted the captain on duty that evening and attempts to arrange a patrol for me to join. Last week, when she attempted to do the same, I was instructed to come back in a few days because there were no patrols for me to join. I was hopeful that I would have a different outcome. After making appropriate arrangements, I go to the ground floor to join officers

who are beginning their patrols. The shifts began at 6:00 PM and end at 6:00 AM. There was always a general hustle and bustle in the Hillbrow police station around this time. There were community members waiting in line to file complaints and get documents certified near the seating area. Behind the desk were approximately six police officers handling various community members at the police station. There were a few offices behind the front desk, where officers sign in and submit relevant paperwork before beginning their shifts in one of these offices.

I waited quietly as Colonel Bongani informed members about my research and appears to be organising my patrol. Colonel Bongani began speaking to several officers in Zulu, and the officers seem a bit reticent about having me accompany them. Because I do not understand the language, I was a bit confused by the interactions. After waiting for around an hour, I finally joined two officers for a patrol. The officers were at first a bit confused by my research but eventually agreed to have me join their patrol after Colonel Bongani had provided a full explanation of my study. I joined the patrol of Officers Sam and Thulo in a four-door police sedan, sitting in the back of the police vehicle. They were both black officers in their 40s, and each has been with the force for approximately 12 years. They interacted with each other in Zulu, but Officer Sam soon began to interact with me in English. He asked me what I would like to do this evening, and I explained that I would just like to see their ordinary patrol. He suggested that we visit a few of brothels, and I agreed to this.

The first brothel we passed was the Maxime, and we did a simple drive-by of this nondescript hotel that blends into Hillbrow. He insisted that there are 'no prostitutes' in

Hillbrow and appeared to have equated street-based sex work with ‘real prostitution,’ highlighting the importance of public versus private displays of sex work and what constitutes a disturbance that requires additional policing. When I asked about street-based sex workers, Officer Sam stated, ‘We don’t have a problem with them [prostitutes]. There are only hotels.’ Indoor forms of sex work are tolerated, and the venues where sex workers operate are treated as mere hotels. He stated that the average price for a service at the Maxime is R150. He quickly changed his vernacular to recognize that this form of sex work does not even warrant the distinction of ‘prostitution’, and he instead refers to these workers as ‘working ladies’, a more respectable term. As we passed the Maxime, I was told that the owner of the Maxime is ‘some Mozambican guy’. He is apparently quite the entrepreneur and owns several such establishments in Hillbrow.

The next stop was Razzmataza. The officers informed me that it is a bar and that working ladies just hang around and solicit clients, but again, ‘it is not a brothel’—or rather, it is not a formal brothel, although there are many prostitutes there. It is ‘just a club’. It is most active on Friday and Saturday nights and is a large venue with a parking lot directly adjacent to it and a graffiti-sprayed green fence.

We patrolled around Hillbrow for some time while the officers spoke to each other in Zulu and interjected with a bit of English every now and then to keep me engaged. They asked me about my family, where I’m from, and how far I am in my studies. I could tell that they are trying to socially place me and to interpret where I fit into their understanding of the world. After some time patrolling, we continued our sex tourism

excursion, landing outside the infamous Summit Club. Officer Sam informed me that the Summit Club is pricier than the other two clubs, and the women are real 'professionals'. The women at Summit have a reputation for being 'beautiful', and 'they know what they are doing'. It is an upscale club with a naked woman in bright lights posted on its exterior. It appears to be a strip club from the exterior, and there is a huge banner advertising the club as one crosses the Nelson Mandela Bridge in Newtown.

After leaving the bright lights of the flashy Summit Club, we headed to the Royal Park Hotel. I was told that the Royal Park is another brothel that is quite pricey. It looks like a mid-range hotel from its exterior, with bright Royal Park Hotel signage in red lights. It is an extremely large venue located in a well-kept building on a city street block corner. Several luxury vehicles are parked outside the hotel. We considered entering the club, but the officers informed me that Royal Park does not allow women to enter. We went to reception and asked to speak to a manager, who arrived a few minutes later. He was a white man in his mid 30s who informed me that Royal Park is merely a hotel and that management cannot control what the men do with the women whom they find while supporting the hotel. I decided to return to the venue on a different day, without the police escort, because the manager was a bit hesitant to speak in front of the police.

Our next patrol stop was the Ambassador Hotel. We quickly passed it, and it appears to be similar to the Maxime because it is also a nondescript building that blends into the general inner-city landscape. The average price for intercourse at this hotel is R150. After patrolling the Ambassador, we passed by Safari, where sex workers also

charge R150 for intercourse. Finally, we passed by the Hillbrow Inn, which again also charges R150 for intercourse and was described as being in the same class of service as the Maxime and the Ambassador. After passing these clubs, we continued with the patrol for the evening.

5.2.2 *Patrolling Hillbrow*

These types of sex work patrols quickly became typical of my night-time visits with Hillbrow police officers, which began to morph into tours, during which the officers would serve as my dutiful guides, providing me with all their insights about the various brothels, sex workers, and the industry in general. The very nature of sex work is hidden and marginal, yet the police officers were all very well-versed on how to identify these margins. Initially, I assumed that their knowledge of the Hillbrow sex industry was a natural consequence of police work. However, it quite quickly became clear to me that many of these officers were quite intimately aware of the brothels. In fact, it was clear that a good number of them frequented the brothels as customers. Brothel managers and hotel-brothel sex workers who confirmed that plain clothes police officers frequented these establishments, verified my suspicions. Although I grew close with several of the police officers, I never felt comfortable directly asking them whether they were brothel customers in my semi-structured interviews with them. However, they did indirectly confirm that they frequented the hotels by recounting good times that they had at the establishments or their perceptions of them.

Officer Sam once informed me that sex work was not a priority for the police. The Hillbrow police were no longer concerned with the sex work and left the clubs to their own devices. This policy changed about two years before I entered the field, around 2011. The officers indicated that the police only raid brothels that do not have ‘licenses’. I was frequently told, ‘If a brothel has a license, it is operating fine.’ During a focus group discussion, several commanding officers confirmed that the brothels are only policed to ensure compliance with liquor licenses. Compliance happens routinely and is led by the liquor chief at the Hillbrow police station. During these enforcement raids, police verify that the clubs are operating according to the terms of their liquor licenses. These theatrical raids are attempts to produce social order and legitimatise the conduct of police through enforcement of licensing agreements that protect brothels. As Malcolm Young notes, ‘policing everywhere relies on “well-directed social productions” to maintain the mythic divide between good and evil.’⁴⁰⁰ They raid were productions to reify police legitimacy and enforce hotel-brothel licensing schemes. I questioned police members about the nature of liquor licenses during a focus group discussion:

INDIA: What sort of licenses do these brothels have?

SEVERAL: There is a liquor license and hotel license.

INDIA: How do you get a license?

SIPHO: The licenses are through the liquor board.

INDIA: Do you have to make sure that clubs are in compliance with their licenses?

⁴⁰⁰ Comaroff & Comaroff (note 311 above) 824.

SAM: We enforce the law and must apply in terms of the Liquor Act. If the license says that they must close at a certain time, we must check that they are complying with the requirements of the license. They must display the license outside in the front of the club and be clear. The police are ensuring that they don't sell alcohol at certain times and that they are meeting the requirements of the license.

Compared to street-based sex work, one sex worker claimed that there was virtually no police presence in the high-end Hillbrow clubs:

MARIA: There is no real police presence at Summit Club. It is a registered place and brothels have licenses. Brothels pay license fees.

These liquor licenses, however, did not make the sale of sex legal. In truth, the establishments were allowed to sell liquor and had specified closing times pursuant to the licenses. However, curiously, several officers interpreted the procurement of these licenses as legal entitlement to operate a hotel-brothel. Some officers were insistent in informing me that certain clubs were completely legal. There are two possible explanations for this. Firstly, these officers were conflating the establishments' legal right to sell alcohol with a legal right to sell sex. Alternatively, these officers were alluding to additional 'license' agreements that certain brothels entered into with upper-level members of the police force that allowed these brothels to operate. I believe that the latter may very well be the case. Although I was unable to obtain direct confirmation of my suspicions, several brothel owners did speak of an arrangement, or an

'understanding,' they had with the police. In a country where routine traffic stops frequently include bribes that serve as informal 'understandings' with the police, this interpretation is not far-fetched.

One club manager informed me that the police and club owners routinely meet during community forum meetings. This practice began around 2011 and radically changed how the clubs were policed. The relationship became more cooperative, with club owners able to communicate regularly with the police. Another brothel manager by the name of 'Steve' explained that the brothel owners had routine meetings with police and had been establishing a positive relationship with police. The police were less inclined to penalise compliant brothels and even frequented the establishments as customers. These licensing agreements appeared to promote a positive relationship between police and brothels and seemed mutually beneficial.

Although many officers mentioned licenses and stated that certain brothels were 'legal' because they had the proper licensure, no informant provided specific details about these licensing agreements. It became apparent that these arrangements, if they in fact involved more than the customary liquor licenses, were negotiated fairly far up the police's organizational food chain and involved high-ranking officials who had created certain terms that likely included paying licensing fees to obtain cooperation with the police. These licensing agreements allow the Hillbrow police to treat the brothels as semi-legal entities operating within their jurisdiction. Police routinely patrol Hillbrow brothels at closing to ensure that liquor is not sold after a certain time and to ensure compliance with the terms of the licensing agreement. Captain Mugabi initially

indicated that there was no real police presence at Summit Club, that it was a 'registered place' and that brothels have 'licenses'. There appears to be a blurring between the various licenses. There is a blurring between the liquor license and an actual license to operate brothels. This is reflective of the policing of sex work in general in the constant blurring of lines between the legal and illegal and the mutability of legalities.

The licensing scheme also appeared to encourage indoor-based sex workers to request police assistance without fear of marginalisation. The sex workers I encountered in Hillbrow ranged in age from 21 to 45 years, and sex workers routinely called the police for assistance. Several police officers recounted their experiences with sex workers at the police station, and some indicated that such scenarios occur several times a week. The biggest complaints sex workers reported regarded domestic violence and street robbery. Sex workers frequently came to the police regarding disputes arising from clients' failure to compensate the sex workers for services rendered. At times, the sex workers claimed that the clients had raped them. The police indicated that they follow up with rape allegations; however, after facilitating negotiations between the sex worker and client, the police often learned that there was actually a transactional dispute and instruct the client to compensate the sex worker for services rendered:

INDIA: How do police and prostitutes interact with each other?

APRIL: Not much, just when they need help they come to the police.

INDIA: When do they ask police for help?

APRIL: When they are in trouble.

INDIA: What type of trouble do they get into?

APRIL: When one of the clients does not want to pay. One of the clients abused or raped them, that type of situation.

INDIA: And how do you resolve the situation where the client doesn't want to pay?

APRIL: Most of the time when the client, when [the prostitute brings the client to] the police, the clients make payment because they don't want to be arrested because they know that their wives are going to find out.

This again illustrates the blending between the formal and the informal. Officer Sipho, one of the police officers I interviewed, verified that the police do not make a concerted effort to arrest sex workers; rather, police arrest sex workers for malicious damage of property or theft, after there has been an argument with a client, or if the sex workers are operating from the streets. This function of police as mediator in private relationship is consistent with the role provided to police through the DVA. The police officer charged with processing domestic violence complaints at Hillbrow informed me that she frequently resolved monetary disputes between sex workers and clients through her office. Her general approach was to serve as a mediator, and she usually instructed the client to pay the sex worker for any services rendered. However, one police officer indicated that, at times, rape charges were used to force a client to pay for services after a payment dispute:

THEMBA: Sometimes they come and lie, and sometimes we open cases we will, like this one, this one is lying but we know that. When he comes for rape we cannot turn away, anyone away. When someone says, 'I've been raped,' because with them most of the time they only come and say, 'This person was not, was supposed to pay me this amount,' they come and say, 'Here, I've got the condom with me, this person raped me,' and then we open a case of rape and then that is how we help them.

INDIA: OK.

THEMBA: You get what I'm saying?

INDIA: Yeah. Do they only come if there's, for rape, do they ever come if someone took their money or anything like that?

THEMBA: No.

INDIA: OK.

THEMBA: It's rape, that one is rape.

INDIA: Have you ever responded to prostitutes who have come in regarding rape?

THEMBA: Yes, many.

INDIA: OK.

THEMBA: Many a times. In fact here in Hillbrow many rape incidents, I'm not saying all of them, many of them, when you interview a person you can see that this rape is not really a rape, but you cannot turn this person away . . . it goes to court and it's proven in court that

this was not rape. You hear what I'm saying? So my duty as a police officer is just to do my part and open the gates . . .

INDIA: Why do you think they come in and ask, and say that they've been raped?

THEMBA: I think it's because the person who promised to pay them, for example that amount of money is not given, the money, because there are cases like that.

This exchange was problematic in that it revealed that officers do in fact view sex workers' claims of rape with a bit of suspicion. This is consistent with earlier court judgments that viewed sex workers as unreliable, such the court decision in *R v Sibande* where the court stated, '[p]rostitutes are not respected members of the community and, generally speaking, one does not expect them to be truthful.'⁴⁰¹ However, the officers acknowledged their obligation to treat each claim fairly despite any personal perceptions about a claim's veracity, reflecting the influences of a human rights perspective and a type of vernacularization of human rights.⁴⁰² In the opaque and 'legal' spaces where sex work is regulated, there is actually space for the police to protect sex workers, supporting calls for decriminalisation that argue that it would allow sex workers to seek police protection. In Hillbrow, where sex work is taken away from the public eye and does not disrupt the public moral order, police allow themselves to consider their role of protector as under the DVA.

5.2.3 Hillbrow Licensing Scheme

The licensing scheme in Hillbrow provides an alternative legal scheme for regulating sex work that operates on the fringes of the law by adopting legal terminology to create a de facto sex work legalization. In Hillbrow, although street-based sex work is strictly prohibited and sex workers operating from the streets are promptly arrested, sex work in the various hotel–brothels operates pursuant to liquor licensing agreements with

⁴⁰¹ 1958 (3) SA 1 (A) at B (emphasis added). See also section 3.4.2 (discussing the discourses describing sex workers as unreliable).

⁴⁰² SE Merry, 'Transnational human rights and local activism: Mapping the middle' (2006) 108 *American Anthropologist* 38, 49.

the Hillbrow police. These licenses are clearly operating in the fringes of the formal law in that brothels are expressly illegal. The licenses create a quasi-legal regime for resolving the operation of sex work in Hillbrow. The establishment of a licensing scheme for conduct that is explicitly illegal is an exercise of power, in that it result from the police's 'complex strategical situation in a particular society'.⁴⁰³ The police are adopting a language that provides them with legitimacy in the Weberian sense, in that it attempts to demonstrate their actual legitimacy as given to them by the people.⁴⁰⁴ However, it is actually an exercise of policing in the Foucauldian sense in that it is a power that is not necessarily derived from a contract with the populace but rather an exercise of a discursive technology to give the appearance of legitimacy.⁴⁰⁵ The licensing scheme highlights the manners in which the formal legal regime is being marginalised. Hillbrow police have adopted these rules that respect 'private' space in response to an approach that calls for unofficial decriminalisation. As Table 5 shows, most police officers that interviewed from Hillbrow favor sex work decriminalisation. Their primary concern is understanding how they should approach its policing, and whether additional measures (or fewer measures) are required to do the task justice.

⁴⁰³ Foucault (note 3 above) 92.

⁴⁰⁴ See note 2 above (discussing the application of a Weberian conception of legitimacy in relation to policing).

⁴⁰⁵ Ibid. See also Hornberger (note 287 above).

Table 5

Hillbrow police interviewees opinion on decriminalisation of sex work

Should prostitution be decriminalised?	
Yes	15
No	4

During a focus group with Hillbrow police members, the police informed me that part of the rationale for allowing brothels while forbidding street-based sex work is the quasi-private nature of brothel-based sex work, which occurs in private establishments that entertain the public. They explained that the hotel-brothels are private in the sense that their activities are not readily apparent to passersby on the streets. This theme of privacy was constant during my participant observation. Hillbrow hotel-brothels are less visible and therefore do not require the type of direct state intervention that street-based forms of sex work require. However, several of the Hillbrow hotel-brothels feature signage that prominently features scantily clad women, and several of them have strip shows that occur in the public areas of their buildings. Thus, they are open secrets. These establishments have more private areas where business transactions occur. In this sense, the actual act of sex work only occurs in a very private space within the quasi-private building, which is also semi-public.

Licensing and registration appears to immunise the related brothels from intense policing, and the police frequently describe these venues as 'legal', although sex work is clearly criminalised within the Sexual Offences Act. As Kotiswaran has similarly observed in Sonagachi, a red-light district in Kolkata, India, 'multiple illegalities do or do not incite into action, the lived coexistence of legality and illegality, the negotiations of

private disputes in the shadow of illegality, the state's role in fostering illegal markets and its toleration of certain forms of illegality more than others.'⁴⁰⁶ The illegality of certain brothel activities peacefully co-exists with the legality of the brothels' registration and licensing as enforced by the Hillbrow police. This legalisation of sex work in Hillbrow brothels harkens to the cooperation between Johannesburg police and sex work syndicates during the mining boom.⁴⁰⁷ As discussed in Chapter 3, Van Onselen describes the close cooperation between Johannesburg area police and syndicates that operated sex work industry during the early 1900s.⁴⁰⁸ Again, police are working informally to create a sex work paradigm that is mutually beneficial for police and sex work operators in Gauteng, suggesting that contemporary expressions of policing reflect some continuity from past practices. There is also continuity in how public nuisance is strictly policed, and sex workers are completely barred from public spaces. The sex workers continue to be viewed as threats to hygiene that must be restricted to these secret spaces. Sex work is permissible in these spaces because the spaces allow for convenient satisfaction of male desire without the public expressions of female sexuality. The Hillbrow police members have demonstrated a form of black urban South African male masculinity⁴⁰⁹ that allows for expressions of female sexuality at the convenience of the male sexual appetite but completely bars it where it fails to

⁴⁰⁶ P Kotiswaran 'Born unto Brothels—Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area' (2008) 33 *Law & Social Inquiry* 579, 616 (internal citations omitted).

⁴⁰⁷ See section 3.3 *supra* generally for further discussion.

⁴⁰⁸ Van Onselen (note 168 above) 1.

⁴⁰⁹ See Morrell et al (note 49 above) 14 (discussing the expressions of various forms of South African masculinities, including a black, urban form).

acknowledge social mores about what is suitable in public spaces. Thus, street-based sex work is completely barred, whereas regulated sex work in hotel–brothels is permitted.

5.3 Sex Work in Central Johannesburg

This type of policing of sex work is not consistent throughout Johannesburg; in fact, how sex work is policed is highly context-specific. My patrols with Hillbrow police revealed that the policing of sex work in central Johannesburg is radically different from that in Hillbrow, where sex work is highly organised and restricted to private spaces. On 17 January 2014, I met Captain Mugabi⁴¹⁰ at the Hillbrow police station for our nightly patrol. During the previous patrol, we had agreed to go out to central Johannesburg, where I could interview some of the street-based sex workers there. After I waited for about 20 minutes on the ground floor of the police station, where patrons were waiting to lodge complaints, Captain Mugabi joined me near the main entrance. Captain Mugabi is Bapedi and originally from Limpopo.

As we drove to central Johannesburg, he informed me that the most dangerous area of Johannesburg is Jeppe, explaining that there are many robberies and hijackings in the area. He suggested that this may be a result of the Zulu influence in the area. He indicated that Zulus are very aggressive and combative, resulting in a higher crime rate, highlighting the ways that perceptions of ethnicity and race infuse policing. Captain

⁴¹⁰ All names have been anonymised.

Mugabi and I chatted a bit, and he confirmed my findings that there are no street-based sex workers in Hillbrow. He explained that the police immediately arrest street-based sex workers. The only sex workers in Hillbrow work in the brothels and strip clubs. Lisa Sanchez has discussed the displacement of street-based sex workers:

The law displaces these [street-based] women spatially. This displacement occurs not just through the criminalisation of specific acts of prostitution, but through laws that criminalise conduct prior to any actual sexual interactions (e.g., solicitation, procurement, and loitering). In essence, these laws are like status offences, making it illegal to be identified as a 'prostitute' and to occupy certain public spaces.⁴¹¹

Here, informal law-making processes and policies have displaced the Hillbrow street-based sex workers who are unable to create viable incomes in the hotel-brothels to central Johannesburg streets. These street-based sex workers have consequently been displaced to central Johannesburg because their identity as sex workers has made their presence on the streets criminal in Hillbrow.

Sex work in Hillbrow must remain an open secret. The hotel-brothels are not hidden, but they also cannot spill out into the streets. Street-based sex work is viewed as per se illegal, and sex workers engaged in this version of sex work are instantly criminalised. Sex work is treated as a phenomenon that should be relegated to private

⁴¹¹ LE Sanchez 'Boundaries of Legitimacy: Sex, Violence, Citizenship, and Community in a Local Sexual Economy' (1997) *Law & Social Inquiry* 543.

areas. This approach to policing sex work is consistent with historical approaches, as developed in the previous section. The Hillbrow police appear only to be concerned with sex work to the extent that it is visible and thus a nuisance to the public. Sex work is pushed to semi-private spaces where there is a market for the sex work services. The very act of sex work itself, however, is not viewed as especially problematic. This relegation of sex work to private areas may also reflect a desire to domesticise female sexuality and marginalise it to spaces that make it seemingly invisible, while readily available for male consumption.

During my patrol with Captain Mugabi, we continued on our trip to central Johannesburg, which is approximately 7–10 minutes from Hillbrow. During the course of our patrol, I intended to interview several sex workers about their interactions with police. We devised a scheme to promote safety while ensuring that the police vehicle was not obvious to allow the sex workers to speak freely with me without fear of police presence: I would hop out of the patrol *bakkie* while Captain Mugabi followed several metres behind me or circled the block with his lights off. He suggested this approach because the sex workers will be reluctant to speak to me if I approach them in a police vehicle. This would also allow him to continue patrolling the area.

In contrast to the sex work that, in Hillbrow, is relegated to quasi-private spaces within brothels and hotels, sex work in central Johannesburg is highly visible and public in its operation. I was initially startled during my first visit to the area by just how public the sex work there was. It was a hot summer night in 2013, and I visited some streets known to be frequented by sex workers near the Fashion District in Johannesburg.

During the daytime, these streets are filled with the informal traders and taxis typical of the general hustle and bustle of Johannesburg. In the evenings, however, the streets morph into an area for overt sex trade bustling with a few hundred partially dressed women. A row of no fewer than 80 scantily clad women lined one small city street block on this particularly busy Friday evening. The streets were so packed that there was virtually no room on the street for additional women to stand and advertise their services. I squirmed past the streets and tried to find a place where I could blend in without interfering with the workers' transactions. Clients were in their vehicles and would drive by and pick up women who suited or fulfilled their desires.

Captain Mugabi suggests that whereas the police officers in Hillbrow have been instructed to arrest sex workers who operate from the streets, the police in central Johannesburg likely have an 'understanding' or 'arrangement' with the sex workers in central Johannesburg. He stated that these arrangements are characterised by mutually beneficial financial understandings in which the police tolerate sex work under certain circumstances. The creation of arrangements for legalising the illegal is an expression of diffuse power that aims to create order and give the appearance of legitimacy.⁴¹² On the one hand, this arrangement may be viewed as overt police corruption, which necessarily obstructs the rights of sex workers. On the other hand, it may be viewed as a form of efficient corruption that creates rules that are otherwise outside the parameters of the law but nonetheless effective at regulating legal relationships.⁴¹³ After

⁴¹² See Hornberger (note 287 above).

⁴¹³ TS Aidt 'Economic Analysis of Corruption: A Survey' (2003) 113 *Economic J* F632.

all, the alternative may be merely to arrest all sex workers given the illegality of their work.

The policing of sex workers in central Johannesburg is very much the prerogative of the Metro police⁴¹⁴ rather than of SAPS. The Metro police are the municipal police service charged with enforcing municipal bylaws governing such as things as traffic violations and loitering. The Metro police are lower on the hierarchy of policing organisations but above all the private security forces. As I was visiting central Johannesburg on several occasions, sex worker after sex worker complained about the unprompted and consistent abuse they faced at the hands of Metro police officers.⁴¹⁵ Most of the sex workers indicated that SAPS officers were quite accommodating and allowed them to engage in their trade:

JESSICA: The police [SAPS] are good.

However, a sex worker in her late 20s who goes by Lydia indicated that the Metro police have been a problem for the sex workers there. She stated that the Metro police beat her and that if she is with a client, they take money from the client. In general, the police, Metro and SAPS, generally try to take around R10 from clients:

LYDIA: They take money from the client.

⁴¹⁴ J Rauch & M Shaw *Municipal Policing in South Africa: Development and Challenges* No 67 (Institute for Security Studies 2001).

⁴¹⁵ See note 377 above for full descriptions of the The Metro police's powers.

The Metro police also seem to exhibit an unexplained cruelty towards sex workers. Three days prior to my initial visit, Metro police physically beat and abused the sex workers, although the sex workers had not encountered similar violence from SAPS officers:

ANNIE: Metro police find us in the streets, [and] they are beating us. There is no reason provided for the abuse. They don't want to see us in the streets. . . . Police are not giving us any problems. . . . Every day there is a problem with the Metro police.

JESSICA: Metro come and harass us. . . . They want to beat us with a *sjambok*⁴¹⁶ and pepper spray us and say we must go.

SARAH: Metro like to chase us around. If you are in a miniskirt, they bother you. They say we make the street dirty.⁴¹⁷ They say that your mates are married. How can you do this type of work.

I was told repeatedly, 'The real problem is with the Metros. The Metro police came and beat us with a *sjombok*!' This is a striking contrast from Hillbrow, where the SAPS are the primary police enforcers of sex work regulations and where physical violence is not the primary characteristic of policing. This open hostility towards sex workers reproduces social norms that view sex workers as unhygienic threats to public

⁴¹⁶ A *sjambok* is a leather whip that was used by the apartheid police force for riot control. It is similar to the police baton used by police officers in several countries.

⁴¹⁷ This remark reflects a gendered notion of hygiene consistent with the discourses around sex worker hygiene in the Victorian Era as fully discussed in Chapter 3.

health and safety.⁴¹⁸ While the officers are not armed with a Contagious Diseases Act to carry forth their hostile policing, they do carry weighted perspectives of sex workers that cover them with a cloud of suspicion and lack of hygiene. This regulation of the sex workers' bodies is an exercise of bio-power that is driven by the public discourses about hygiene and public health.⁴¹⁹ The officers openly tell the sex workers that they are dirty and that they spread disease.⁴²⁰ A Hillbrow police officer echoed the sentiment that sex workers should be driven off the streets, revealing a bias against street-based sex workers:

ZOLO: On the streets it should be out because especially for Johannesburg Central there are gross ladies sitting there or it must be on the central venue, central area then the people know that it's this area. . . . They are so pathetic. Not professional. Those ones, no. You know you just see yourself as a female or not a female. You don't know if this person is having a pain or not. No, you don't want to go there. If you are travelling that side, you don't want to check or you just know what time. No. Have you seen them?

⁴¹⁸ See sections 3.2 supra, discussing the regulation of sex workers' through the Contragious Diseases Act driven by discourses focused on hygiene and public health.

⁴¹⁹ V Munro 'Legal Feminism and Foucault—A Critique of the Expulsion of Law' (2001) 28 *J Law & Society* 546, 550.

⁴²⁰ Ibid.

The Metro police officers in central Johannesburg are acting as the arbiters of moral society and use violence to beat these sex workers into submissive roles. This open aggression is consistent with a black African male masculinity that views black women as property and gives men license to publicly discipline dirty women.⁴²¹ These police members viewed the sex workers as undignified and were completely unconcerned with the rights that such women might have. The sex work frequently stated that the Metro police officers would accuse them of spreading disease. The police adopted the public health discourse to explain their policing of sex workers in the city. Metro were concerned with the sex workers as carriers of contagion, a discourse with a long history in South Africa.

The Metro police officers' approach reflects popular narratives that emphasise the sex worker as victim and site of contagion, particularly in the public health context. The commentary of many scholars is that sex workers require protection; this is the stance from sex work advocates and sex work opponents alike, particularly in the South African context, where scholars are concerned with protecting sex workers' health but at times fail to fully contextualize sex workers beyond their public health profiles and victim status.⁴²² Much of the advocacy for decriminalisation focuses on protecting the sex

⁴²¹ Morrell (note 49 above) 12.

⁴²² See e.g. R Jewkes et al 'Transactional Relationships and Sex with a Woman in Prostitution: Prevalence and Patterns in a Representative Sample of South African Men' (2012) 12 *BMC Public Health* 325, 325 ('Sex motivated by economic exchange is associated with public health problems, and presents many conceptual challenges for researchers. Women and men in prostitution are vulnerable to HIV and other sexually transmitted infections, as well as acts of violence from clients, pimps, police and other parties.');

J Stadler & S Delany 'The "Healthy Brothel": The Context of Clinical Services for Sex Workers in Hillbrow, South Africa' (2006) 8 *Cult Health Sexual* 451 (noting that sex workers are extremely vulnerable to HIV infection' and focusing on the provision of clinical services to sex workers outside of traditional clinical settings relating to the spread of HIV); K Dunkle et al 'Risk Factors for HIV Infection

workers from the evils of the police and the client⁴²³ whereas sex work opponents essentially argue that we must protect the sex worker from herself.⁴²⁴ Under this line of reasoning, the sex worker is always subjecting herself to an act of violence and thus must be protected from her poor choices.

among Sex Workers in Johannesburg, South Africa' (2005) 16 *Int J STD AIDS* 256 (primarily focusing on the biomedical profile of sex workers as high risk for HIV infection); K Peltzer et al 'Characteristics of Female Sex Workers and Their Attitudes in Semi-urban Areas in South Africa' (2004) 27 *Curationis* 4 (focusing on sex workers' knowledge of HIV); H Rees et al 'Commercial Sex Workers in Johannesburg: Risk Behaviour and HIV Status' (2000) 96 *SA J of Science* 283 (examining HIV status of sex workers in Hillbrow); F Scorgie et al 'Socio-demographic characteristics and behavioral risk factors of female sex workers in sub-saharan Africa: a systematic review' (2012) 16 *AIDS & Behavior* 920, 920 (studying the behavioural and social factors in the spread of HIV amongst sex workers and claiming 'sex work remains an important contributor to HIV transmission within early, advanced and regressing epidemics in sub-Saharan Africa'); T Leggett 'Drugs, Sex Work, and HIV in Three South African Cities' (2001) 32 *Society in Transition* 101 (studying the connection between drug use and the spread of HIV through sex workers). But see J Gardener 'Criminalising the Act of Sex: Attitudes to Adult Commercial Sex Work in South Africa' in ME Steyn & M van Zyl (eds) *The Prize and the Price: Shaping Sexualities in South Africa* (2009) 328 ('Rather than talk of high-risk and low-risk groups, we should be talking about high- and lower-risk sexual acts. The exchange of sex for money does not spread HIV; unprotected sex with an infected person is what leads to infection. Many of the women who sell sex also have personal partners, and time and time again research has shown that while sex workers may use condoms with the clients, this is not the case with their personal partners, who generally refuse to use condoms. Why then is it often assumed that hiv-positive sex workers got infected in the course of their work?').

⁴²³ See Marlise L. Richter et al 'Sex work and the 2010 FIFA World Cup: time for public health imperatives to prevail' (2010) 6 *Globalization and Health* 1 (arguing that sex workers currently cannot report instances of abuse to the police and are harassed by the police, and that decriminalisation will allow sex workers to report instances of abuse to police because their conduct would be legal). The literature often adopts the narrative of the sex worker as the victim to in turn justify decriminalisation by reasoning that we must 1) protect the sex worker from the dangers of sex work, and/or 2) such protection protects the public health by reducing the spread of HIV and opening access. See *ibid* ('Decriminalising sex work is at odds with the sensibilities of many political and religious leaders and often raises their indignation and ire. Yet watching a population being decimated by HIV should evoke similar responses and elicit strong action based on evidence.'). However, one must be careful when making these argument. This approach adopts a framework that deems the sex worker worthy of attention to the extent that we can protect her from her work, and protect society from her contagion. It is well-intentioned research, but it nonetheless reifies past discourses that have been obsessed with the public health profile of the sex worker. See Chapter 3 of this thesis for additional discussion about the public health discourses that have historically policed sex workers.

⁴²⁴ Embrace Dignity <<http://embracedignity.org.za>>; New Life Centre 4 Girls <<http://www.newlifecentre4girls.org/index.php>>.

The various perspectives on (de)criminalisation at times rely upon metanarratives of the singular 'sex worker victim' whose experience can be universalised. Such arguments fail to appreciate the full complexity of the reality of many sex workers. As Kapur discusses, the reliance on the victim subject, especially in the developing world context, has been the fulcrum of much of the radical feminist debate:

The articulation of the victim subject is based on gender essentialism; that is, overgeneralized claims about women. . . . [E]ssentialism assumes that 'women have a coherent group identity within different cultures . . . prior to their entry into social relations'. Such generalizations are hegemonic in that they represent the problems of privileged women, who are often (though not exclusively) white, Western, middleclass, heterosexual women. These generalizations efface the problems, perspectives, and political concerns of women marginalised because of their class, race, religion, ethnicity, and/or sexual orientation. The victim subject ultimately relies on a universal subject: a subject that resembles the uncomplicated subject of liberal discourse. It is a subject that cannot accommodate a multi-layered experience.⁴²⁵

Such constructions have led to the creation of a monolithic 'sex worker' who fails to appreciate the plurality of sex worker experiences within the same city, let alone

⁴²⁵ R Kapur 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-colonial Feminist Legal Politics' (2002) 15 *Harvard Human Rights J* 1, 6.

globally.⁴²⁶ It also fails to engage in the more complicated analysis of appreciating the intersectionality of the discrimination of many sex workers and blissfully looks to the criminal law as a saviour, whereas many sex workers are already subject to intense surveillance and generally mistrust interactions with the carceral⁴²⁷ system.

The victim narrative is reflected in contemporary public health discourses that are concerned with the sex worker body as a site of contagion. The public health narrative continues discourse that places the state's gaze upon the sex worker as a site of contagion. There is no question that sex workers should have access to health and healthcare.⁴²⁸ However, it is crucial that the discourse around providing rights to sex worker does not inadvertently pathologise sex workers and treat them as carriers for contagion. The 2016 South African National HIV Plan for Sex Workers will expand healthcare access to many of South Africa's sex workers. However, it simultaneously adopts a narrative framework that relies continues the perception that sex workers require public attention to the extent that it is in the interest of the public health, similar

⁴²⁶ Ibid.

⁴²⁷ For a discussion of the weaknesses of so-called carceral feminism or penal feminism, see E Bernstein 'Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns' (2014) 36 *Signs* 45 (discussing the militarization of human rights in sex trafficking campaigns); JA Chuang 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-trafficking Law and Policy' (2010) 158 *Univ. of Pennsylvania LR* 1655.

⁴²⁸ 1996 Constitution, Chapter 2 Section 27 provides:

Everyone has the right of access to – a) Health care services, including reproductive health care, b) Sufficient food and water, and c) Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

to the approach adopted during the passage of the Contagious Diseases Act in the Cape Colony.⁴²⁹ The foreword for the report discussing the plan begins:

Sex workers have not received the same attention as the general population in our country response to HIV, tuberculosis (TB) and Sexually Transmitted Infections (STIs). A number of recent studies have shown that the sex worker community is at a substantially elevated risk of HIV and that prevalence rates in this community are among the highest in the world.⁴³⁰

⁴²⁹ See Chapter 3 for discussion on the Contagious Diseases Act.

⁴³⁰ South African National Sex Worker HIV Plan 2016-2019 (March 2016).

The report has spawned articles with titles such as '*72% OF SEX WORKERS IN JHB ARE HIV POSITIVE*'⁴³¹ and has continued the discourses around sex workers' health that are largely exercises of bio-power. It is important that well-intentioned public health advocates ensure that they do not reinforce discourses that portray sex workers as unclean and unhygienic. This focus on the sex workers' public health profile, which has in turn resulted in popular news articles about sex workers and disease promotes the discourse of sex workers as unclean and dirty. The Metro police officers would expressly state that they thought sex workers were dirty while harassing them and were not policing them according to their understandings of whether sex work is legal. They were policing them because they believed that they spread disease and were nuisances to the public. Public health discussants must be deliberate in how they *talk about* sex workers without further pathologising them. It is also important to include sex workers' clients as mutual participants, who also require public health services and education, in the conversation to ensure that sex workers are not being treated as singular carriers of contagion inflicting

⁴³¹ Masa Kekana '72% of Sex Workers in JHB are HIV Positive' Eye Witness News (11 Mar 2016), <<http://ewn.co.za/2016/03/11/72-percent-of-sex-workers-in-JHB-are-HIV-positive>>.

disease upon society *vis-a-vis* the client. Rather, the clients are equally involved and should be included in protecting the public health.

Finally, there is also a third 'police' presence in central Johannesburg with the active engagement of private security forces. After spending several weeks on the streets, I learned that security guards from ABSA Bank routinely harass sex workers. The security guards ask sex workers for monetary bribes on a regular basis. If a sex worker is unable to provide money, security guards demand free sex. The sex workers generally just give the security guards money in the face of these requests. When sex workers are reluctant, the security guards jail them in cells within ABSA. One sex worker, named Jessica, indicated, 'Every day, there is a problem with the security guards. If you have no money, they want sex from you.' These private security forces are at the bottom of the police hierarchy and appear to be adopting public nuisance discourse for their individual benefit.

Contrary to the sex workers in Hillbrow, sex workers in central Johannesburg rarely go to the police for assistance. One sex worker explained, 'Clients are beating us sometimes, taking our money [and we can't go to the police because they are] going to say [I'm] selling my body. . . . [I would] feel embarrassed.' The women in central Johannesburg appear to be in the most desperate of situations and face the continuous gaze of the corrupt Metro police. One sex worker stated, 'I come every day for money. I have children. The hotels are full [so I'm] working in the street.'

On a separate occasion, Captain Mugabi explains that SAPS generally do not interact with the street-based sex workers in central Johannesburg. Because the Metro police focus on the municipal bylaws, which include zoning and public nuisance regulations, they are more intense in their approach to sex workers.⁴³² This might explain why the Metros are so highly involved in the everyday policing of the street-based sex workers in central Johannesburg. The highly brutal and persistent nature of the policing of sex workers in central Johannesburg by Metro police appears to have no rational basis outside of the desire to clean the streets. In this manner, the policing is consistent with the history of treating sex work as a public nuisance that should primarily be regulated where it affects the public order in some manner. In central Johannesburg, the sex workers appear less empowered and subject to random police brutality and corruption. The relationship between the Metro police and sex workers is not cooperative, and Metro appears only to barely tolerate sex workers there. The Metro police inform the sex workers that they need to leave the street, that they are dirty, whereas the ABSA police coerce sex from them.

⁴³² Metro police cite several bylaws when approaching sex workers. These bylaws relate to loitering and public decency. The City of Johannesburg Metropolitan Municipality Public Road and Miscellaneous By-Laws provide the following in Sections 13 and 14:

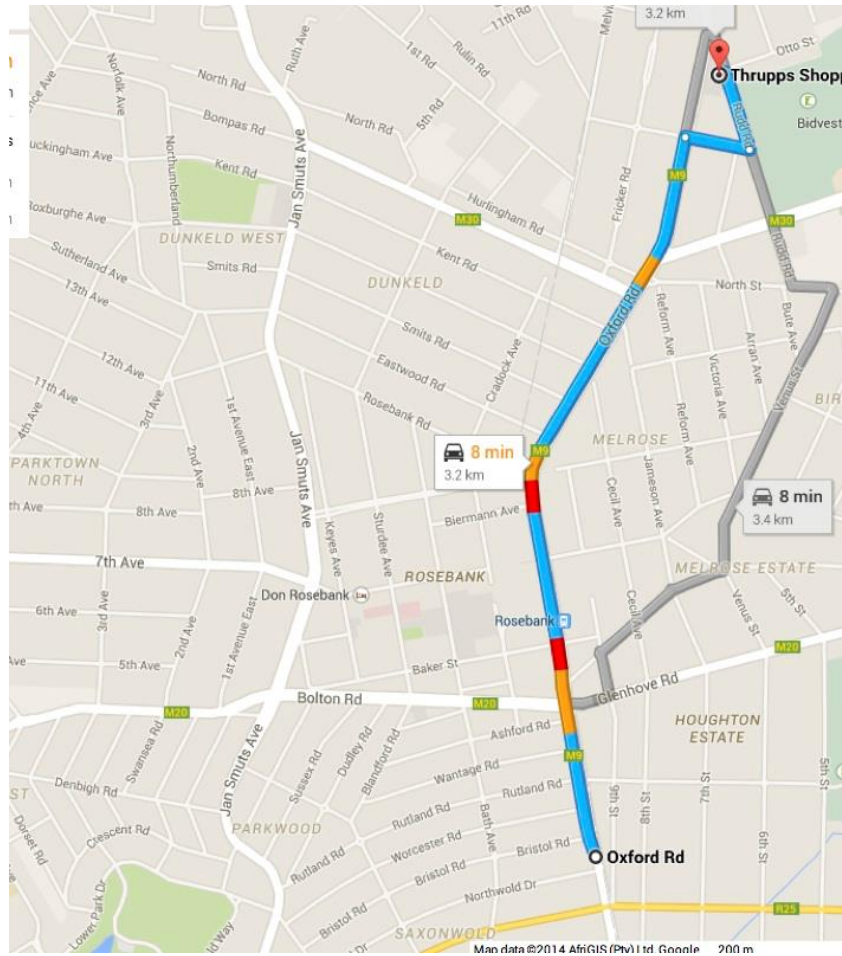
13. (1) No person may loiter or, except when forming part of a queue, congregate on any public road within twenty (20) metres of the entrance to any place of public entertainment so as to obstruct traffic or persons proceeding to, attending at, or departing from such place of entertainment.
- (2) No person may, without the prior written permission of the Council tout or solicit a driver of any motor vehicle who parks a motor vehicle at a place of entertainment for the purpose of or under pretext of looking after or watching over the motorvehicle . . .
14. (2) No person may on or in view of any public road urinate, excrete, behave in any indecent manner by exposing his or her person or otherwise, make use of any indecent gesture, or commit, solicit or provoke any person to commit any riotous, orderly or indecent act.

This focus on municipal public order regulation is quite consistent with the approach that South African police have always adopted towards sex work. Public nuisance violations would still be relevant even if sex work were to be fully decriminalised. If there are significant regulations resolving public order disturbances, even where sex work is decriminalised, those ordinances would nonetheless apply and sex workers would be uniquely positioned for regulation under them. Although not directly in line with the colonial policing of sex work that focused on the public disorder of it, there appears to be some connection with this form of policing that is concerned with the 'public' and borne of discourses regulating how sexuality should be represented. These discourses influence how sex workers are policed in that Metro police claim that sex workers will corrupt vulnerable children and families by exposing themselves on the streets. The women are viewed with suspicion because patriarchy demands that women's sexuality be primarily expressed in private spaces and domesticised. In central Johannesburg, where the sex work is very public and visible, the police are especially brutal and communicate a general disdain for the activities of the sex workers. Sex workers who operate from this environment tend to do so out of desperation and their inability to break into other markets for sex work. The presence of the private security establishes differentiated policing, where the presence of the enforcement of horizontal rights is noticeably absent.

CHAPTER 6. INFORMALITY IN POLICING IN ROSEBANK

6.1 Sex Work on Oxford Road

Sex work in the Rosebank area lies somewhere between the extremes of sex work practice in Hillbrow and central Johannesburg. Sex workers in Rosebank and Illovo primarily operate from the streets and are independent operators. Despite their outdoor location, they maintain a certain level of secrecy that is lacking in central Johannesburg by remaining in dark corners spread over several distinct streets over the course of several kilometres from Norwood, Rosebank, Illovo, and Bramley. One could very easily drive down Oxford Road oblivious to the more than 20 sex workers who might be operating on a slow night.



Map of Oxford Road strip

This relative invisibility encourages an informal system of rules, similar to those in Hillbrow, negotiated between the individual sex workers, police, and clients. The informality, however, allows for instability and during the course of my fieldwork the rules were ever-changing. Public discourses about sex worker hygiene and public nuisance all contributed to the nature of these informal rules, similar to those rules described in chapter 5 in Hillbrow and central Johannesburg and those discourses throughout the history of South Africa as described in chapter 3. While sex workers

were able to exercise some power in their negotiations with the police about the nature of sex work in Rosebank, the system was quite instable, preventing lasting security.

I adopted a narrative methodology in this chapter to use storytelling to illustrate how the changes that I observed over time evolved and to demonstrate the variations of police-sex worker relationships in the same locale.⁴³³ Using narrative as method allows me to fully employ the three dimensions of narrative which include ‘the personal and social (interaction) along one dimension; past, present and future (continuity) along a second dimension; place (situation) along a third dimension.’⁴³⁴ This method highlights the benefits of ethnography by highlighting how the depth of time allows the researcher to observe multiple iterations of the same research object and subjects. It provides a dichotomy for understanding how place and time impact how sex work is policed. Adopting a narrative approach ‘highlights the relational dimension of narrative inquiry. Narrative inquirers cannot bracket themselves out of the inquiry but rather need to find ways to inquire into participants’ experiences, their own experiences as well as the co-constructed experiences developed through the relational inquiry process.’⁴³⁵

⁴³³ J Clandinin *Narrative Inquiry: A Methodology for Studying Lived Experience* 27 (2006) *Research Studies in Music Education* 44, 46-7. Narrative inquiry has been defined as:

[A] collaboration between researcher and participants, over time, in a place or series of places, and in social interaction with milieus. An inquirer enters this matrix in the midst and progresses in the same spirit, concluding the inquiry still in the midst of living and telling, reliving and retelling, the stories of the experiences that made up people’s lives, both individual and social.

Ibid 46.

⁴³⁴ Ibid 47.

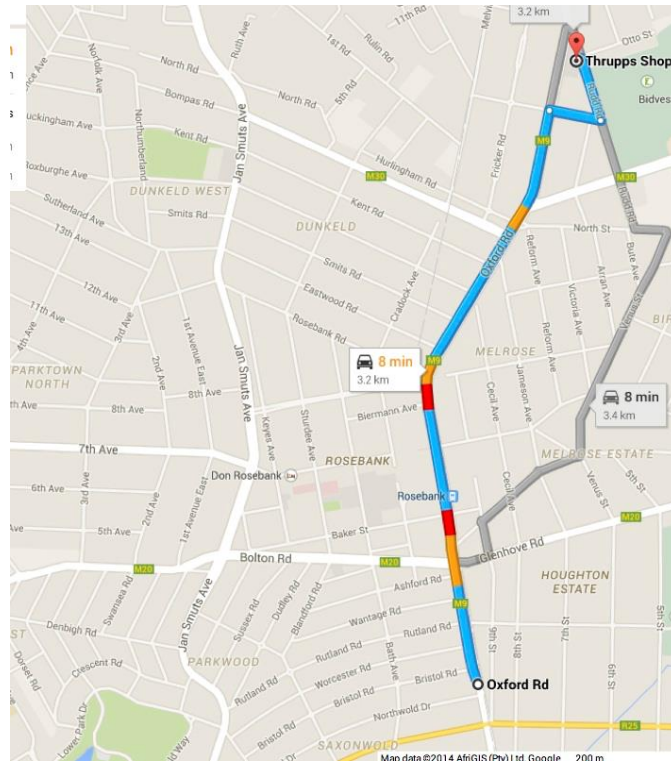
⁴³⁵ Ibid 47.

6.2 Patrolling in Rosebank

Oxford Road is a site of visible street-based sex work and provides access to a large number of sex workers. The sex workers in Rosebank cater to a high-end clientele from Johannesburg's northern suburbs. The site allows for prompt and discreet transactions for individuals looking to purchase sex while their families wait for them at home. Rosebank sex workers are well aware of this and charge a premium for their services:

MELISSA (ROSEBANK SEX WORKER): The streets are good for a quick one and they go back home because they are married.

Oxford Road includes parts of Norwood, Rosebank, and Illovo. However, the majority of sex work on Oxford Road occurs in Rosebank, and thus I patrolled with Rosebank police officers.



Map of Oxford Road⁴³⁶ starting from Houghton, going through Rosebank, and ending in Illovo

Oxford Road is a leafy thoroughfare in suburban Johannesburg. Viewed from Houghton, the street appears to stretch endlessly into the distance. The street is adorned with many trees, and the area is primarily residential. Although Rosebank Mall is located towards the center of the portion of the road where sex work occurs, the street is primarily residential on either side of the mall. This section of Johannesburg's northern suburbs is home to many of the city's liberal elite, who are attracted by the road's tall trees and picturesque Johannesburg surroundings. The book *Kaffir Boy* describes Rosebank as 'one of Johannesburg's posh whites-only suburbs,' which

⁴³⁶ Extracted from Google Maps and reproduction is consistent with policy of Google and fair use for academic purposes.

reflects an apartheid-era description of the area.⁴³⁷ Now, Rosebank retains much of its historical 'poshness' but is also considerably trendy and home to several media houses, and welcoming of Johannesburg's young, black elite.⁴³⁸ Nelson Mandela's estate is within five minutes of Oxford Road in Houghton Estate. Oxford Road feels and looks like a 'homey' and idealistic environment in which to raise children. A preschool stands near one of its main corners, and a bakery is located on another corner. During the daytime, it looks like a typical street in the northern suburbs, with its steady stream of traffic, endless view of trees, and big houses that are only partially visible behind tall walls and gates, which are commonly used in many of Johannesburg's suburbs to create barriers against unwanted intruders. At night, it retains much of this charm but is instead populated with sex workers who operate from a few distinct corners, hidden under the leaves of the road's tall trees. As Oxford Road approaches Illovo, a nearby suburb of Rosebank, there are fewer trees and younger residents. Illovo is home to several older apartment blocks that house a young professional class in Johannesburg, still considered part of Johannesburg's elite. Many of the residents are childless, although a fair number of young families reside in Illovo. Illovo is livelier than Rosebank and Houghton and is home to several restaurants and after-work bars. There are nightlife options, including several nightclubs and bars, in both Rosebank and Illovo. Both Rosebank and Illovo are surrounded by suburbs that are family oriented, upper middle

⁴³⁷ M Mathabane *Kaffir Boy: The True Story of a Black Youth's Coming of Age in Apartheid South Africa* (1986.)

⁴³⁸ S Nuttall 'Stylizing the self: The Y generation in Rosebank, Johannesburg' 16 *Public culture* (2004) 430, 45 ('Rosebank is a suburb cum business district where sectors like information technology, retail, fashion, cinema, restaurants, and travel and tourism have been attracting a trendy and youthful workforce since the late 1980s.')

class, and home to Johannesburg's well-to-do. Oxford Road is surrounded by Hyde Park, Athol, and Houghton Estate, which are amongst the richest areas in the country with the highest concentration of multimillionaires.⁴³⁹

The Rosebank Police Station is one level and is housed in two small connecting buildings that are around the same size of a family home in the area. It is generally pretty quiet inside the building with only a few patrons requesting documents certification on any given day. When you enter the building there is a reception desk where the police members on duty assist community members. The police station is generally most active when officer change twelve-hour shifts at 6 in the evening and 6 in the morning.

⁴³⁹ J Muller 'Financial Main SA's Most Expensive Streets' (31 October 2013) ('Millionaires row in Johannesburg includes Culross Road and Eccleston Crescent in Bryanston, 4th Road in Hyde Park, Coronation Road in Sandhurst and Deodar Road in Atholl'); 'Study Reveals SA's Wealthiest Areas' *iolnews* (29 August 2012) ('Joburg areas dominate the list of wealthiest suburbs with the other top spots going to Bryanston with 31 multi-millionaires, otherwise known as "ultra high net worth individuals" or UHNWI, Hyde Park (26 UNHWIs), and Westcliff (20 UNHWIs)').



Picture of prototypically leafy corner on Oxford Road in Rosebank, adjacent to a preschool

Beginning in July 2012, I joined Rosebank officers for routine patrols during which we would drive around Rosebank in police vehicles, respond to resident complaints, and engage in visible policing.



Exterior of Rosebank Police Station

During the early stages of my research, on 5 July 2012, I went to the Rosebank station around 6:00 PM, the time when the officers change shifts. There was a bit of

activity at the police station, with a couple community members filling out accident reports and insurance papers. I patiently stood in the line, waiting for my turn, at which point I explained that I was conducting research that evening and would be joining the officers on their patrols. I met a charming young officer by the name of JR, who informed me that he had been ‘a cop’ for three years. ‘It’s not easy,’ he told me. ‘It’s not for the faint of heart’—the job has many dangers. JR was holding a large semi-automatic gun as he nonchalantly spoke with me. He was incredibly handsome, with smooth mahogany skin, and tall in stature. He appeared to be a bit on the younger side, somewhere around 24–27 years. He was very poised and confident in his demeanor. He seemed charmed by me and eager to exploit the opportunity to speak with a researcher about the dangers of police work. He warned me that I would encounter unexpected scenarios and might very well be frightened by the true nature of policing. His bravado added to his charm, but later I would learn things about J.R. that would chip away at this first impression.

After waiting a few minutes at the front of the customer service line, I spoke to the station commander for the evening. I informed him that I would be joining the officers on their patrol that evening, pursuant to an arrangement with Lt. Colonel Greggs, the regular station commander, and Captain van der Westhuizen, the head of visible policing. He asked, ‘Will you be with them for the whole night?’ to which I responded yes. He then asks, ‘How?’ and I responded, ‘With coffee.’ He chuckled and stated that he would need to contact Captain van der Westhuizen to confirm my patrol.

After a few minutes, he contacted Captain van der Westhuizen and appeared to plead with the captain about limited space and other concerns that should bar me from joining the officers. Finally, the officer informed me that the captain stated I could join the officers on one of their trips to the '*prrossies*'⁴⁴⁰ to go down Oxford Road. I asked whether I could join one of the *bakkies* already on patrol but was told that special officers were being called in for me. Fortunately for me, the special officers did not show up, and I was instead assigned to one of the *bakkies* on patrol. They were to pick me up when they planned to meet with the sex workers, which will be some time after 7:00 PM.

One of the station commanders inquired about my family and my home country. He asked whether my family is based in South Africa and appeared to be trying to place me. I informed him that I was from New York, and I just happen to really like South Africa. The officers had what seems to be an intense conversation in Zulu⁴⁴¹ about my joining the patrol. One of them seemed nervous, while the other said that there was no problem with the arrangement. They were arguing with each other, and I heard Captain van der Westhuizen's name mentioned several times over the course of their conversation.

These same officers, who were in their mid to late 30s, eventually allowed me to join them on their patrol. We entered a sedan vehicle for the patrol. I explained my research study to them as we drove and provided additional details in the hopes of

⁴⁴⁰ The police members frequently rolled the 'r' of the word *prossies*, a shortened version of the word prostitutes.

⁴⁴¹ The researcher has a very basic understanding of spoken Zulu.

assuaging their concerns. There was a deadening silence in the car following my attempt to make the officers more comfortable.

We drove down Oxford Road and slowly patrolled the streets. The exercise seemed a bit artificial to me, but I realised that there is some insight to gain even from this rudimentary exercise. Through regular patrols like this one, I personally witnessed the fatigue, exhaustion, and ordinary challenges of engaging in police patrol work. After loosening up a bit, a couple of hours into our patrol, the officers informed me that the police no longer police sex workers. They claimed that there was a national directive prohibiting the arrest of sex workers, that sex workers are no longer a police priority, and they insisted that I would not see much during my fieldwork. When I asked them what they think about sex workers, one officer paused and chuckled for a moment. He stated that sex workers are generally women who really need the money and are out on the streets because of necessity. He stated that he knows several of the sex workers from Rosebank and that the police members are quite familiar with him. We continued patrolling, and the officers stopped near a few ladies, who seem intimidated by the police vehicle. After driving from Illovo to Norwood a few times, patrolling and watching the sex workers, we headed back to the Rosebank police station and called it a night.

In between the officers' sly grins and chuckles, I could read between the lines after several months of patrolling. The officers would usually deny frequenting sex workers, as most of them were married, but every now and then, they would slip in a detail about a previous encounter they had with a sex worker to indirectly inform me that intimate encounters did occur. Although sex worker advocates might naturally be

concerned by these encounters, these sexual encounters seemed to foster positive interactions between police and sex workers. However, the connections were contingent upon the understanding that the police officer was to pay the same rate as any other client. Several sex workers informed me that if they encountered any type of trouble, they could just call their police officer clients for assistance, demonstrating a form of patronage that highlights the fringes benefits that go beyond money in police-sex worker transactions.

6.2.1 *The Informal Rules of Rosebank*

In Rosebank, there is a relatively small community of sex workers and police who work around the Oxford Road area. Police were very acquainted with the sex work hot spots and would take me on patrols in these areas. The sex workers know the names of the police officers, and police officers are familiar with the various sex workers. The relationship between sex workers and police proved to be quite dynamic and cyclical during the course of my fieldwork in Rosebank. As the months went by, I learned that police officers would negotiate informal rules with the individual sex work contractors. Sex workers were, as a general policy in the area, not arrested. The general policy of the Rosebank, Bramley, and Norwood police was to ignore sex workers. Some officers have solicited 'permits' from individual sex workers new to the business or have demanded free services from new sex workers, but despite this, the policy has generally been one of tolerance and acceptance of sex work. Such aberrational instances of police misconduct were not in line with the informal policy of ignoring sex workers.

Nonetheless, both police and sex workers reported that police routinely arrested sex workers in 2012 and 2011, before I began my fieldwork. Previously, police would request identification from sex workers and initiate deportation proceedings against sex workers who were unable to furnish identification. I was told that Rosebank police officers were charged with corruption and police brutality in connection with the policing of sex workers. This lawsuit had a chilling effect on the arrest of sex workers, and a formal policy prohibiting the arrest of sex workers was adopted. During semi-structured interviews, police officers acknowledged that measures were required to protect the human rights of sex workers and prevent their arrest. Adopting this human rights language, they claimed to have tolerated sex workers rather than arresting them or otherwise preventing them from working.

After I had been in the field for several months, between August and November 2013, sex workers confirmed the police officers' accounts and repeatedly confirmed that the police were no longer policing them. Several sex workers indicated that during the prior year, the police would arrest them and harass them on a routine basis. The police were highly problematic but have since reformed. Some of the sex workers were emboldened by this change and had become openly defiant. One evening, several sex workers cursed the police vehicle as we drove past; in general, sex workers boldly ignored the police vehicle, whereas in years past, they would have run from it. During this time period, the relationship between police and sex workers was quite individualistic; it really depended on the sex worker and the particular officer. As one sex worker informed me, police were 'like anyone else. You like some and you hate others.' Another sex worker stated, 'The police are like anyone else. Some are nice,

some aren't.' Sex workers informed me that they felt comfortable going to the police for assistance and would often call upon certain officers, who were usually regular clients. Several sex workers informed me that the Bramley police were particularly helpful, followed by the Rosebank police. One sex worker reported that police members actually went to the sex workers while they were working outside and directed them to go to the police station if they experienced any police harassment or abuse.

Police members, including the head of visible policing, acknowledged the illegality of the sex workers' acts but informed me that sex work simply was 'not a police priority'; rather, robberies and other serious crimes in Rosebank demanded their attention. The police could no longer devote resources to the issue of sex workers, and so the 'ladies of the night'⁴⁴² were left alone. I also heard stories from several officers about officers who used to extort money from sex work clients for bribes before the change in policy was effectuated. This practice was from the 'old days' and was no longer prevalent in Rosebank.

6.2.2 Shifting Modes of Policing: Upsetting the Sex Work Market

Up until November 2013, I had been consistently told that sex workers were no longer being harassed or arrested by the police. Nonetheless, during one of my night-time patrols, I observed an interaction between one of my regular patrol partners, Sipho, and a sex worker that demonstrated how easily police and sex workers could end up in

⁴⁴² The police members at the Rosebank Police Station frequently referred to sex workers as 'ladies of the night' or 'working girls'.

altercations. The corner near Illovo Engen generally has a large population of transgender sex workers. As we drove past this corner one evening, Siphon was particularly annoyed by the sex workers and states that they tend to be a bit disrespectful. One of the sex workers shouted profanities at Siphon, and he became visibly angry. Despite this near-confrontation, I spent my first five months in Rosebank being told that 'the situation is fine', and with the exception of a few outliers, the relationship was cooperative and sex workers were comfortable going to police for assistance.

However, following the December holiday period in 2013, the relationship between police and sex workers around Rosebank rapidly deteriorated. Sex workers informed me that the police had shifted their energies towards their clients. The police had begun to extort the clients who they found soliciting sex workers. This endeavor became so lucrative that patrolling officers would spend time at known sex work hot spots, waiting for clients to finish with sex work transactions so that they could engage in their scheme. I observed police from central Johannesburg patrolling in Rosebank and heard reports of police from Pretoria travelling to Rosebank in hopes of reaping huge returns from the large bribes that were being extracted from Rosebank clients. One police member recounted the practicalities of obtaining a client bribe:

INDIA: What is the situation in terms of dealing with the clients of the prostitutes?

KARABO: They must also arrest them because they are loitering in prostitution so they are accomplices.

INDIA: The police, you see a man who is about to pick up a prostitute, what do you do then? . . .

KARABO: Yes he gets arrested.

INDIA: And then he gets detained in the police station?

KARABO: Yes.

INDIA: How often do you have to make those arrests?

KARABO: Almost every day.

INDIA: How do the clients react?

KARABO: They try to bribe the police because they don't want their family to find out. At the end of the day we end up taking the bribe.

The policing of sex work became entirely motivated by financial rewards, and the possibility of supplementing income, which most police officers view as wholly inadequate for supporting a family, became too much to resist. This was a radical shift from the previous strategy of ignoring sex work to focus on more serious crimes. Police attempted to partner with sex workers to extort their clients, but most sex workers refused such arrangements, as it would compromise their very livelihood and thus not worth the associated risks. As the diagram on page 35 shows, there are interconnecting relationships in a sex work transaction. By affecting one component of the interaction, police were also affecting sex workers. Although the police did not return to arresting sex workers during this period of intense client scrutiny, their demands on the sex worker clientele began to severely upset the delicate market that existed in Rosebank. The male clients who purchased sex from Rosebank were ordinarily married, white, and middle to upper middle class. They frequented Rosebank because the sex workers who

operated there were reputed to be 'professional' and 'beautiful' and because the location was conducive to relative invisibility. Oxford Road is near several of Johannesburg's wealthy northern suburbs and allows clients to be stealthy in their purchase of sex because of the location's proximity to their homes. The sex workers in Rosebank were also less visible than those operating from central Johannesburg. They were generally careful to be discreet, to remain hidden under shadows and in dark corners, and repeatedly bragged amongst themselves that they were 'true professionals'. Accordingly, Rosebank attracts a wealthy clientele, and the Rosebank police are highly sensitive to this fact. As a perverse manner of getting around human rights directives prohibiting the arrest of sex workers, police began targeting sex work clients, creating some devastating consequences.

As this corruption intensified, police began demanding up to R7000 from clients, threatening that they would report them to their wives. The illegality of sex work had very little impact on the conversation; it was a negotiation whose currency was morality, driven by the clients' fear of exposure to their wives and families. Several sex workers complained about the incessant police corruption:

GRACIOUS: Right now they took R1000 from a client. When they [police] get money, they don't share. The client can come back and the client can be dangerous.

MELISSA: I had a client with a gun and he was extorted by the police. We went to do business and the police were waiting outside. They ask for bribes and say that you must pay to stand on this corner. You

must pay, pay, pay. . . . If it's a white guy, they take so they don't want their wife to be told. If they [police] get 1000, they will give you 20. There were three Chinese guys who paid 1000 each [to the police]. They were driving a nice car. The police gave her 40 bucks. Luckily we did business, 200 each. It was a quick fuck, those guys cum fast.

CHRISTINA: The clients are scared of police and will pay 1000 in bribes. I feel like I'm working for the police. The police have stopped arresting the sex workers and have been engaging these extortion schemes instead. They are targeting the clients.

The police were mostly complying with their newly adopted 'human rights approach' to policing sex work, which prohibited the arrest of sex workers. But they were subverting the law for their individual benefit; they were abusing their authority by making unlawful demands on both clients and sex workers.

Several of the sex workers informed me that the police had been seeking 'freebies' and resorting to dropping them several kilometres from their work sites if they refused to provide them with free sex. 'Some of the police just want to pay 50 and some nothing. If you are caught with a client, they will say that you are sleeping in the cells.' The sex workers also began to recount instances of police abuse of power after several months of informing me that the police were 'OK':

MELISSA: The Rosebank police ask for sex and if you don't agree they drop you off somewhere far from Rosebank as punishment. It is difficult because you have to take a taxi and sometimes you haven't even made taxi money yet. They drop you near Zoo Lake if you refuse. When they get money from clients, they don't share it. . . . They want us to work for them but we don't want to work for them. The clients are scared. They are always patrolling us.

HAU: They asked for sex from me just the other day. They really go after the new ladies. They ask for business while in uniform for less than the normal prices. The police used to arrest too. They no longer arrest so they instead go for the money. They threaten to arrest us but we don't care. However, it is a problem for girls not from here. They do target the girls who are not from here.

This shift towards extorting clients was the police's way of complying with policies to respect sex workers' human rights by eliminating the practice of frequently arresting them while continuing to police aspects of sex work. Rosebank police members indicated that they did not police sex workers. However, this rationale is similar to the Swedish approach in its focus on client criminalisation and sex worker 'protection'. The police did continue to harass sex workers, however, they frequently stated that their policy was to no longer focus on sex workers and stated that this policy was an effort to respect their human rights. Sex workers did not feel that their rights were being protected:

ALANNA: The police follow the clients. The clients are scared to approach and are sometimes just watching. They take the clients and take money from them. The police are busy taking money from clients. They say we want the number for your wife. We will call her if you don't give us money.

Many of the clients were confused by the police's new approach to policing sex work. On 30 January 2014, I went on an evening patrol around Rosebank by myself.⁴⁴³ As I was driving around Oxford Road in Rosebank, I noticed a police officer pull over a BMW that appeared to be cruising for sex workers. I decided to follow the police and see where the trail would take me. I followed the police from a few metres behind. The police took a roundabout way to get to the Rosebank police station, using primarily back routes. When I arrived at the police station, one of the officers asked whether he saw me on Oxford Road, and I confirmed that I did first see them on Oxford. I told him that I was doing research with the police and had been coming to the police station for a few months now. The police took the arrestee to the back to have a chat with him. They spoke to him in the back while I waited in the front.

From the front desk towards the right of the police station, I could hear the conversations that were taking place in the back room. I decided to sit in this corner to hear the conversation between the police and the arrestee. During this conversation,

⁴⁴³ After approximately three months of joining police members on their scheduled patrols, I began patrolling the streets of Rosebank alone to get a sense of the police presence from the outside. I also used this time to quietly observe officers' interactions with sex workers and their clients and to familiarise myself with the sex workers and various hot spots.

one of the officers approached me and seemed flustered and confused. He seemed a bit shocked to see me there at that moment. It became clear to me that I had caught them in the middle of some sort of inappropriate act. The arrestee had a Nigerian accent, and fortunately this meant that the conversation was in English and not in a language native to South Africa that I would have been unable to understand. The arrestee pleaded, 'In 2012, they abuse us. I was driving and there was a lady there. You stop because I was talking to a prostitute. We were stationary. Whatever we were doing were between us. So, it's not a crime, *this is still the system.*' The police officers responded, 'Back in your country . . . [you might talk like this but] you are going to get into trouble for nothing.' The arrestee initially appeared surprised that the police had arrested him and had assumed that it was related to the 2012 incidents of xenophobic attacks towards foreigners, which were at times directed at the behest of the police. His understanding was that sex work transactions were private in nature and thus noncriminal. This was the 'the system' that had been place over the past several months.

After hearing this conversation, I was able to confirm that the arrest in process did in fact involve alleged solicitation and that officers were reaching an 'understanding' and making 'arrangements' to resolve the matter. Soon after, I saw the arrestee place some money into one of the officer's hands. As the police and arrestee were exiting the station, the officer was less firm with the arrestee and feigned concern, stating that it was not 2012 anymore. The client appeared so relieved to learn that this shakedown was connected to his involvement in a sex work transaction rather than a xenophobic attack that he seemed nearly elated to pay the bribe. The police officer used a

patronising tone to instruct the arrestee to be careful, as if the arrest were for the arrestee's own educational benefit. As he was about to enter his BMW, I had an informal interview with the arrestee. He confirmed that he had been arrested in connection with sex work but denied giving a bribe for his release.

This focus on clients had devastating effects for sex workers in the Oxford Road area. Clients were directing their anger at the sex workers and had even shot rubber bullets at sex workers standing outside. The clients were hesitant to work with sex workers and suspected that they were in cahoots with the police. The police had begun demanding larger bribes, and by mid-February, the consequences of their intense client policing caught me in a web of corruption and near-arrest. It was not long before the trickle effects of the intense police scrutiny fell down to me.

I received a phone call on 16 February 2014 alerting me to go to number 25 in Illovo. I headed to this parking bay and notice that there were sex workers and a parked Metro police vehicle. The private security officer and Metro police allowed me to enter the parking bay after I explained that I was a researcher and that I had been working primarily with SAPS. It was quite strange to see Metro police in Rosebank, because the Rosebank SAPS usually policed the sex workers in the area, whereas the Metro police were ordinarily based in central Johannesburg in the evenings. This was not an area that Metro should be policing. The Metro police officer informed me that he was concerned because he saw people he did not know in the parking bay. I asked him whether they were arrested, and he said no. I then asked him why they were being detained because I learned that they had been detained for three hours. One sex

worker, Lucy, stated, 'I came and the Metro entered in here. They asked what are you doing here.' Officer Langa informed me, 'We still do not know what is going on here. We are still finding out what happened. We are still wanting to know what's happening. We are working to see what happened, maybe they have a bad reason to be here.' Everyone was gathered in the parking lot, where sex work transactions often took place because the security officers had a special arrangement with the sex workers there. The Metro police were aware of this and decided to wait there to find clients whom they could extort.

The Metro police officer is named Officer Lerato. After another hour of detention, one sex worker complained to me that she has a child and that 'the baby does not even have milk. How will she eat? Last night I was dropped off by a client and the police asked for 500 rands. Today police asked for 500 for each of the sex workers present.' The sex workers were concerned that these clients would not come back after the negative experience. One sex worker detailed the severity of the situation in Rosebank: 'One of us is in hospital because of a client. You call the police and they don't help. They are committing a crime because of the money. After they collect their bribes they don't care about it hurts us.' This sex worker was recounting an insistence where a sex worker had called the police for assistance because her client was being abusive to her. The police come to the scene but instead of assisting with protection, they extorted a bribe from the client, and that client in turn became more physically violent with her and sent her to the hospital.

Backup Metro police arrive after another hour, and an Indian officer by the name of Officer Vidz came out of his vehicle wearing a bulletproof vest. He was in his mid 30s to mid 40s, and he quickly began to interrogate me. I complied with his questioning and provided him with my contact information. After speaking with him, I was ready to leave the site because the situation was getting tense and I was concerned that the police officers would become violent. As I pulled up to the gate to leave, Officer Lerato indicated that I could not leave. He appeared to be posturing, and despite my pleas to be released, I was stuck. In fact, the officers instructed a female officer to handcuff me, but I walked away from the exit and stated that I would not leave of my own accord. I walked down an alley, and the female officer followed me and stated she would use force on me if I did not come closer to the group.



Picture of area near site of arrest; X marks the actual office park

I complied. The officers had now been talking for some time with the large group. The sex workers continued complaining about the lost income. I remained behind in a dark alley and slowly crept behind the building. When it seemed clear that no one was following me, I jumped over the fence, cutting my hands and ripping my pants. I then jumped over a second fence as sex workers watch from the outside and pleaded for me to be careful. Both of my hands were bleeding by this time. I ran into the Thrupps Shopping Centre and gestured for the sex workers to keep quiet. I quickly ran through the shopping centre, dropped my bike helmet and jacket on the ground in the back of the parking lot, waved at the security guards, and made my way upstairs, skipping through the parking lot. I threw off my black jacket and was now donning a bright blue sweatshirt as I casually walked from Thrupps to my house so as to avoid looking suspicious. I arrived home, asked my husband for some assistance in retrieving my abandoned scooter, and waited for the Metro to leave number 25 before speaking to the Securitas security staff about retrieving my bike.

I narrowly escaped getting seriously hurt, but this experience forced me to seriously rethink my research methodology. Despite all the dangers of night-time patrols with sex workers, my biggest danger had become the police, the ones sworn to serve and protect us. Rosebank and Illovo sex workers called me endlessly the following day, each with different reports about Metro and SAPS officers asking clients for large bribes and clients in turn inflicting violence upon the sex workers. Many women vowed not to return to Rosebank, and for several weeks following this evening, the streets of Rosebank were nearly empty, with very few sex workers operating on a given evening. In early February 2014, I counted more than 100 sex workers outside one evening; in

the evening of the day following my near-arrest, I could only find 2 sex workers on the streets, both of whom appeared to be new to Rosebank.

Visual timeline of sex work policing in Rosebank

Date	Event
July 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Sex workers are recovering from prior arrests • Sex workers are recovering from prior news coverage by journalists
August 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Tension is low
September 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Police and sex workers are in agreement • No tension
October 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Police and sex workers are in agreement • No tension • Individualised nature of relationship is recognized
November 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Isolated incidents of police abuse, but generally informed by sex workers that police have a policy of no arrests
December 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Increasing incidents of police targeting sex workers' customers
Late December 2013	<ul style="list-style-type: none"> • Informal decriminalisation is in effect • Reduced number of sex workers due to holidays and travel
January 2014	<ul style="list-style-type: none"> • Partial decriminalisation is in effect • Heightened police surveillance of sex workers' customers • Extraordinary bribes
February 2014	<ul style="list-style-type: none"> • Partial decriminalisation is in effect

- Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - I was arrested
- March 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Drastic decrease of sex workers due to sex workers moving to other locations
- April 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Drastic decrease of sex workers due to sex workers moving to other locations
- May 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Drastic decrease of sex workers due to sex workers moving to other locations
- June 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Occasional number of sex workers
- July 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Occasional number of sex workers
- August 2014
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Occasional number of sex workers
- February 2015
- Partial decriminalisation is in effect
 - Heightened police surveillance of sex workers' customers
 - Extraordinary bribes
 - Occasional number of sex workers
-

If nothing else, this experience indicates that upsetting the market for sex work can reap devastating consequences. The quasi-private nature of sex work encourages informal rules to be adopted that shape how police deal with sex workers. These rules adopt legal language in its use of license and threats of possible arrest, yet they are a perversion of the law. The rules are often motivated by greed, as their informal manner allows officers to share in the profits to be gained from sex work. There is an explicit focus on police officers' monetary gain, which encourages the policing of the private lives of sex workers and their clients and of the semi-private spaces that sex workers and their clients negotiate. Police officers appear cognizant of the legal mandates and have adapted means of bending them. As discussed in Chapter 4, many police members feel that they are owed additional income and believe that they were better compensated during apartheid. This belief appears to have fueled the individualistic greed of some officers.

In the Rosebank case study, the police corruption was excessive and deviated from the expectations of 'efficient' amounts of corruption. The formal law worked in its encouraging police officers to 'respect' sex workers. However, the police found a fail-safe to get around these legal requirements by focusing on the clients and exploiting the

conditions of sex work. Jean and John Comaroff describe lawfare: ‘the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure . . . is equally marked in postcolonies. As a species of political displacement, it becomes most visible when those who “serve” the state conjure with legalities to act against its citizens.’⁴⁴⁴ The focus on client activities is a form of lawfare, an attempt to comply with human rights standards that have led police to remove their attention from the sex workers. The police members informed me that they did not police sex workers anymore because sex workers also have human rights. They were purposely adopting a policy that did not involve the frequent arrest and direct harassment of sex workers. They did not even cite the law when harassing clients. It was about morality and extorting the client’s desires to remain invisible in the sex work transactions. In many respects, this looks like the Swedish model of policing sex work that focuses on clients, but this model fails here. This model looks inadequate in its focus on client criminalisation because clients can always turn their gaze onto sex workers.⁴⁴⁵ Moreover, sex workers need clients to work. If one-half of the transaction is criminal, the sex workers cannot freely work. Sex workers were most concerned about

⁴⁴⁴ J Comaroff & J Comaroff ‘Law and Disorder in the Postcolony’ (2007) 15 *Social Anthropology* 133, 145 (internal citations omitted).

⁴⁴⁵ P Hubbard, R Matthews & J Scoular ‘Regulating Sex Work in the EU: Prostitute Women and the New Spaces of Exclusion’ (2008) 15 *Gender, Place & Culture* 137, 137 (‘the state and law may intervene in sex work markets with the intention of tackling gendered injustice, but are perpetuating geographies of exception and abandonment’); A Gould ‘The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden’ (2001) 30 *J of Social Policy* 437 (acknowledging that Sweden’s approach to sex work was driven by fear of foreign prostitutes and the weak liberal tradition in Sweden); S Dodillet & P Östergren ‘The Swedish Sex Purchase Act: Claimed Success and Documented Effects’ International Workshop on Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges (2011) (‘serious adverse effects of the Sex Purchase Act—especially concerning the health and well-being of sex workers—in spite of the fact that the lawmakers stressed that the ban was not to have a detrimental effect on people in prostitution’).

their inability to work. Several of them indicated that they were the breadwinner for the family and needed sex work to provide for themselves and their children:

PRUDENCE: I wouldn't be standing here if there was another job. I am the breadwinner for my family. I have kids.

The Rosebank officers' conduct was an abuse of the law in its manipulation of legal standards to encourage individual monetary benefit for the officers involved. Here, the police manipulated dominant mores around sexuality and marriage to entice clients to pay bribes. Police were acting as moral arbiters while personally benefiting from their lawfare against clients. The police perceived their conduct as consistent with human rights because they were no longer systematically harassing and abusing sex workers. However, their targeting of clients was indirectly compromising the rights of sex workers and gave the guise of legal compliance when, in fact, their acts were law breaking. Abolishing sex work would not have benefited the women in Rosebank. They needed work, now. What would be the immediate work substitute if sex work were eliminated by focusing on the clients? Would these women be able to provide for their extended families as they had with sex work?

Conclusion

In this chapter, I focused on Rosebank, which occupies a middle ground rooted in cooperative informality. During the course of my fieldwork, I observed a changing mode of policing in which the police began to focus on client enforcement for monetary gain. I also discussed different legalities and how the police developed informal rules for policing sex workers, creating a system that created a de facto decriminalisation of sex work. These informal rules were guided by understandings of the private and public in relation to street as a contradictory space and were reflective of popular discourses relating to sex workers around public nuisance, public health, and domesticity. The greed and social pressure to maintain the ideals of middle class lifestyle through the client extortion reflect the discontent about police in contemporary times that I discussed in Chapter 4. As I details in the diagram on page 35, there are interconnected relationships in sex work transactions. Upsetting one component of the relationship may have devastating effects on other actors.

CHAPTER 7. POLICING BEAUTY

During my patrols with Hillbrow police station members, officers often spoke about sex workers as being either 'professional' or 'unprofessional', attributing assorted values to the sex workers depending upon their perceived professionalism. Police officers frequently tied such so-called professionalism to the perceived beauty of the sex worker. The more beautiful sex workers were deemed to be more professional. They were more 'about their business' and knew their jobs well. They were also more desirable. In the officers' words, they 'really know' their work. This theme of beauty and professionalism constantly recurred, especially as police officers began to feel more comfortable having casual conversations with me. The perceived beauty of sex workers seemed to deeply influence police perceptions of them and the required approaches towards policing them. Beauty was a form of bodily capital that was reflected in the geography of the various red-light districts and their corresponding policing. These subject views of beauty reproduces a spatialisation of the intersectionality in sex work. In other words, a sex worker's particular identity as being perceived of a particular class of sex worker (for example, 'beautiful' South African, female, thin sex worker) was spatially reproduced in the very geography of the various brothels. This spatialisation is itself a reproduction of a patriarchal hegemony that provides the standards for female beauty. At the same time, it is not expressed in the negative language of immorality, but in the positive, subjective language of appreciation of beauty.

The subjective experience of desire reflects gendered norms that speak to a particular social order. Women who were perceived as appearing South African or whiter, with leaner bodies, lighter skin, and straighter hair, were universally lauded. Women who looked foreign catered to a different demographic. These perceptions reflected larger social forces that included positionality within a country that struggles with race and xenophobia.⁴⁴⁶ This subjectivity was reflected in the policing task. The sex workers' 'beauty' appeared to be a separate element influencing how they were policed. It created a type of subjectivity in the policing of sex workers that was inconsistent and subject to the tastes of the individual police officers. Policing became guided by the desires of the officers rather than by the objective of reducing crime, echoing the public hygiene discourses around sex workers that are part of the legacy of how sex workers have been policed in South Africa.⁴⁴⁷ In this way, the pernicious male gaze not only defined the hierarchal status of the sex worker body but also determined the level of police scrutiny and interaction it must withstand. In general, brothel-based sex workers

⁴⁴⁶ B Harris 'Xenophobia: A New Pathology for a New South Africa' in *Psychopathology and Social Prejudice* (2002) 169. Harris discusses how xenophobia is a reflection of the 'culture of violence' pervasive in South Africa: 'Xenophobia is a form of violence and violence is the norm in South Africa. Violence is an integral part of the social fabric, even although the "New South African" discourse belies this. Indeed by belying and excluding xenophobia, the "New South Africa" discourse is able to define itself as peaceful and tolerant. It is similarly able to coexist with the "African Renaissance" discourse and to perpetuate ideals of harmony and diversity. But in order to do this, it is necessary that xenophobia is created and represented as a pathology. Consequently, xenophobia as a pathology is central to national discourse. It must be recognized as part of the new nation, and is not separate from the "New South Africa", even although it is pathologised within and by the discourse.' See also J Crush et al *The Perfect Storm: The Realities of Xenophobia in Contemporary South Africa* (2008).

⁴⁴⁷ See Chapter 3 generally for use of public hygiene discourses to regulate the sex worker's body. While there might be some crime-fighting element in any type of policing, the fact that the police exercised their discretion to police locations with more desirable sex workers reflects that their crime-fighting tasks were not solely, or even primarily, driven by reducing crime. While I relied upon police officers' reflections about the frequency of raids of different brothels, I also reviewed the liquor chief's schedule to confirm that the 'raids' occurred as frequently as the police officers indicated. These logs confirmed the officers' reflections, as did the data I collected from sex workers from the different brothels who recounted the various raids during the course of the research project.

were perceived as more hygienic and professional than street-based sex workers. Both police members and sex workers acknowledged this distinction:

MICHAEL (HILLBROW OFFICER): In the clubs they are professional because I think they are going to go to the hotel and they are using condoms so they are taking life professionally. By taking care of your life, that is professional. They are clean. Yes, I think that that is more professional.

Sex workers confirmed that police members were frequent patrons at the high-end establishments:

JANELLE: At Summit, there are a lot of police as clients and they are not in uniform, even white guys come to drink.

In those brothels where the sex workers were denounced as less attractive, the police appeared less enthusiastic in their policing. These brothels were presumed to be bastions of violence and crime. Ironically, the fear of violence in these clubs kept some officers from entering them. This is precisely what happened during one of my nighttime patrols in Hillbrow on 10 January 2014. I went to the police station to join one of the routine patrols to which I had become accustomed. I regularly accompanied Hillbrow police officers during their night-time patrols, during which time we would respond to complaints, patrol clubs, and engage in routine police tasks. The night-time shifts always began at 6:00 PM, but allowing for time for the police officers to check in for their

shifts, complete the necessary paperwork, and ensure that there was a vehicle large enough to accommodate everyone joining the patrol, we would usually leave around 7:00 or 8:00. I had already joined the officers on several patrols of Hillbrow brothels and was familiar with several of them.

On this particular evening, I asked whether we could visit Maxime brothel, as I had only driven past this hotel in the past during the police patrols and was interested in exploring it with the police. I had visited the club on my own during one of its live sex shows several weeks prior to this patrol and was curious to see how the club was policed. Officers John and Jimmy, who were my patrol partners for the evening, quickly protested this suggestion. They informed me that ‘those ladies’ were not professionals and that we could be in imminent danger if we were to enter the club. I was surprised to hear this because the club did not appear particularly dangerous when I visited it for the sex show. Certainly it was not an ordinary bar, but it was no dodgier than any of the other clubs in Hillbrow. The officers insisted that we should not go to this club and made offhand comments suggesting that the physical appearance of these sex workers left much to be desired. They mentioned the lack of cleanliness of the venue and suggest that the sex workers who worked there were a bit ‘rough around the edges’. They further claimed that two police officers had been shot outside the brothel two weeks prior and that it would too dangerous to enter.⁴⁴⁸ The mention of the shooting was enough to deter my persistence. The officers were allegedly patrolling outside the club

⁴⁴⁸ B Ndaba & R Serumula ‘Hired Cop Killers Jailed for Life’ (29 May 2015) <<http://www.iol.co.za/news/crime-courts/hired-cop-killers-jailed-for-life-1.1864863#.VabANJNViko>>.

and were purposely struck by two shots from inside the venue. Officers Jimmy and John claimed that the building is incredibly dangerous and that the very sight of a police vehicle would be enough for some residents to shoot.

This cautionary tale served as my introduction to the officers' tendency to link sex worker 'beauty' to brothel danger and professionalism. I was fascinated by the connection between the perceived beauty of its sex workers and the professionalism and perceived danger in entering a particular club. I saw first-hand the fear these officers had at the proposition of entering the hotel. Interestingly, police officers never had an issue taking me to the clubs where they proclaimed that the sex workers were professional and beautiful.

That same evening, I entered Summit Club with Officers Jimmy and John without any hesitation on their part. Officer Jimmy appeared to be good friends with the brothel management. The Summit Club manager is a burly Afrikaans man who is sweating excessively. There is a slickness about his demeanor, and he appears incredibly comfortable with the police officers. I sense that Officer Jimmy has made many visits to Summit Club and is intimately familiar with the staff and the club's layout. The club manager and Jimmy greet each other by name, and the manager offers us a warm welcome and a drink upon our entering.



Flyer and advertisement for the Summit Club

The manager gave me a very superficial tour of the bottom levels of the club where strip shows and teases took place. I peeped into the bar as the officers continued chatting with the management. As we watched the semi-clothed workers walk past us, the officers reiterated that these ladies are professionals and reminded me that they 'know what they are doing'. I nodded in agreement and decided to browse the lower levels of the club. This was how a typical night of patrolling these clubs went. I would always look curiously at the upper levels of the brothels, to which, of course, I never received a managerial escort. The women at Summit Club were generally relatively thin in stature, and several wore long weaves with Brazilian hair. Both sex workers and clients have informed me that the sex workers in Summit are mostly black South African women and that they cater to men who have a particular desire for upscale sex workers that fit into popular subjective norms of beauty, which included women with long hair, thin bodies, and flashy outfits. This desire was not, however, restricted to particular ethnic groups; in fact, the clientele was quite diverse, depending on the time of day.

During the daytime, old white men salivated at the gyrating bodies on the dance floors. I would visit Summit around noon on Saturdays and would frequently find older

white men viewing strip teases on the lower levels. The men appeared to be as old as their mid 80s and seemed to be more infatuated by the attention that they received from the workers than by the promise of a sexual escapade. These men left large tips and were surrounded by young women who ordinarily would not give them the time of day. Summit Club provides a total experience. It is very clean and about as well decorated as a gauche Las Vegas casino can aspire to be. Of course, it serves drinks and meals, but it also has a swimming pool, a full gym, and private rooms on the top levels. The parking lot for Summit, filled with Mercedes Benzes and BMWs, is a testament to the caliber of men the club attracts. It is obviously designed to cater to well-to-do businessmen venturing to the notorious Hillbrow enclave to engage in sinful behaviour. This club is in many respects the epitome of the Hillbrow brothel. It represents what many of the other clubs aspire towards. It is the gold standard.

After exploring several other Hillbrow clubs, I noted that they each had a distinct reputation with the police, and I began to explore how such perceptions influenced how these sex workers were policed. One hypothesis is that the more professional the sex worker, the less likely she is to be policed. This did not pan out in my findings, however. The police were more likely to police those sex workers they perceived to be professional and beautiful. Beauty in some way appeared to result in higher scrutiny for the sex worker. This may be because the police preferred frequenting establishments where they would find women they believed were attractive.

However, focusing on perceptions of beauty is inherently problematic. Beauty is ordinarily viewed as a constraint to womankind. It is a construction created by men that

necessarily oppresses women.⁴⁴⁹ Feminists are generally suspicious of it, and the notion of spending any serious time evaluating it in academic work seems suspect.⁴⁵⁰ Yet I could not turn away from this topic because it is in many ways an inherent means of evaluating sex workers in particular. After all, their clients evaluate sex workers according to the women's perceived beauty. Sex workers compete fiercely for clients, and some women are accused of engaging in *muti*, or African magic, by fellow sex workers who do not understand their strong client demand. Sex workers themselves organise themselves based on their perceptions of their own beauty and their ability to compete with sex workers from a particular locale. My key informant, Emile, informed me that she left Summit Club for greener pastures in Hillbrow Inn because she is heavier set and was unable to find work at Summit, where the women are much thinner. Mary, who was already relatively thin, recounted a story where the Summit Club manager admonished her weight and instructed her to spend more time in the enclosed gym. The physical standards of the respective establishments were enforced by the hotel-brothel owners and management.

Beauty is highly subjective and may be difficult to study. However, exploring how perceptions of beauty influence approaches to policing sex workers provides an interesting arena for exploring the intersection of gender, sexuality, and policing. In

⁴⁴⁹ AJ Cahill 'Feminist Pleasure and Feminine Beautification' (2003) 18 *Hypatia* 42 ('That beauty is a problem for feminist theory is clear. Feminists ranging from Mary Wollstonecraft to Susan Bordo have analyzed the phenomenon of feminine beautification as a crucial and oppressive moment in an overall patriarchal structure') (internal citations removed); K Davis 'Remaking the She-Devil: A Critical Look at Feminist Approaches to Beauty' (1991) 6 *Hypatia* 21.

⁴⁵⁰ See note 423.

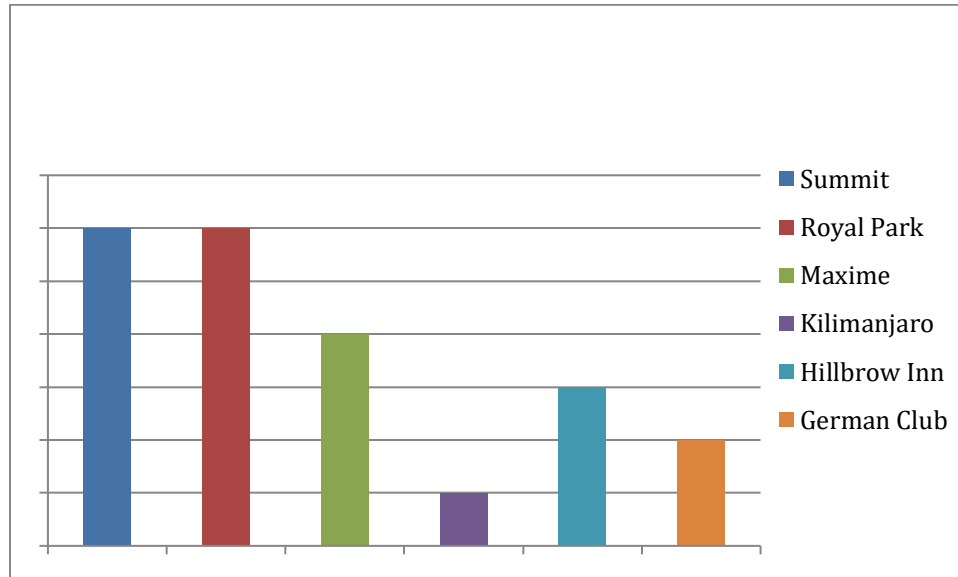
some ways, women who were 'higher' on the beauty hierarchy had more control over their patrons and where they could work. They also tended to be higher earners. However, they were subject to greater surveillance and regulation by male police officers.

I focused on six clubs that fell across the spectrum of clubs in Hillbrow. I visited each of these clubs on 5–15 separate occasions and spent several hours in each as a patron to get a sense of their clientele, reputation, and energy. I selected the Royal Park Hotel, a high-end hotel with flashing lights and a significant international sex worker population that includes Thai and Russian sex workers; Summit Club, a high-end club that specializes in 'beautiful thin South Africa women with Brazilian weaves';⁴⁵¹ Maxime Club, a mid-range club with a notorious weekly sex show; Hillbrow Inn, a lower-mid-range club with a significant portion of clients from Zimbabwe that specializes in 'thick women'; German Club, a lower-mid-range club that is reputed to have thinner and younger sex workers, which is patronised by older white men; and Kilimanjaro, a low-end, casual establishment that serves food and is reputed for its affordability.

Hillbrow police member interviewees were asked to rate the beauty of sex workers in the different clubs on a scale from 1 (most beautiful) to 6 (least beautiful). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more beauty. The following graph shows the rankings of clubs in terms of beauty of their sex workers. Amongst the six

⁴⁵¹ Statement made by Janelle, a sex worker at Summit.

clubs, Summit and Royal Club tied for the highest ranking of beauty of sex workers, which were then, in descending rank, followed by Maxime, Hillbrow Inn, German Club, and Kilimanjaro.

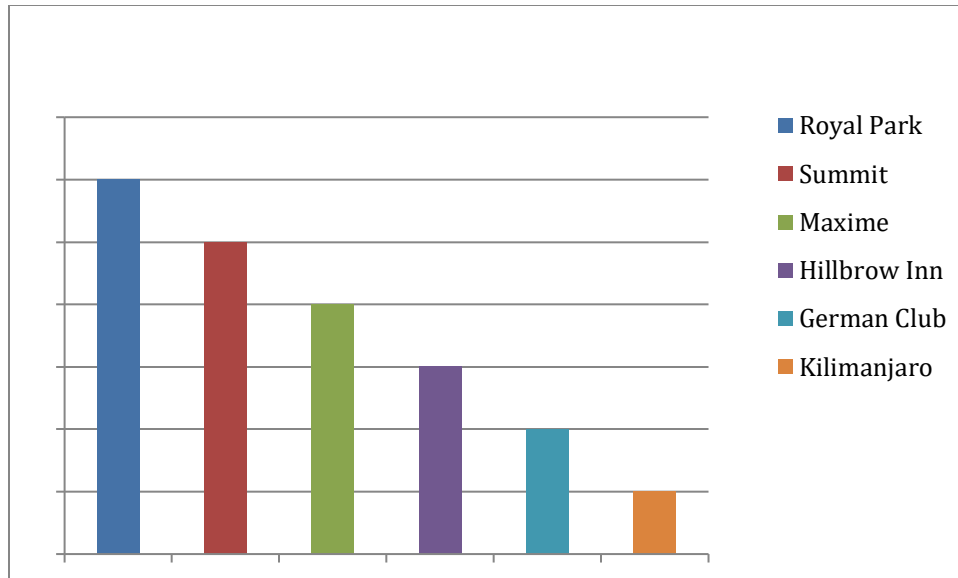


Ranking of clubs by beauty of sex workers as evaluated by Hillbrow police interviewees (higher indicates better rank)



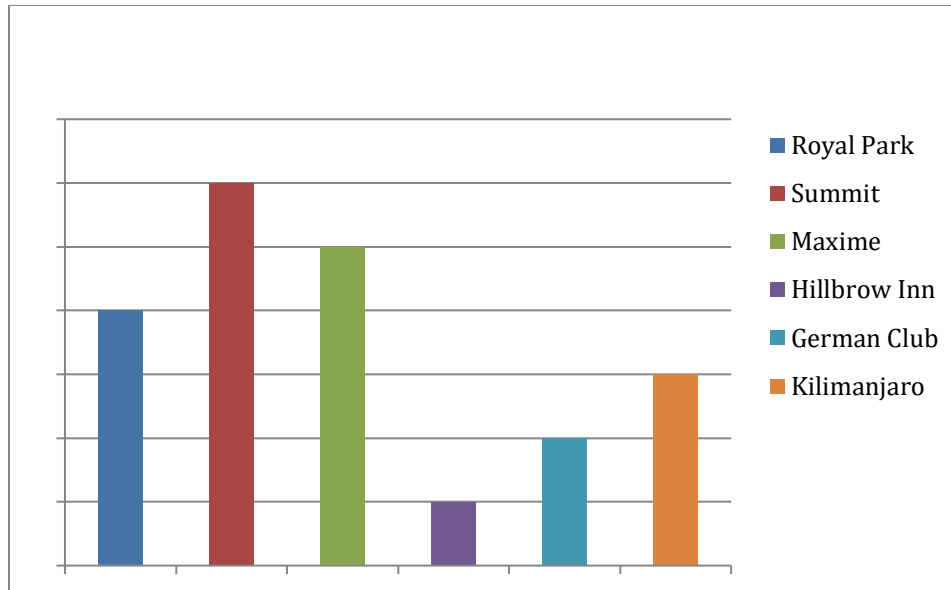
Map of brothels and their beauty rankings (higher is better)

Hillbrow police member interviewees were asked to rate the professionalism of sex workers in the different clubs on a scale of 1 (most professional) to 6 (least professional). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more professionalism. The following graph shows the rankings of clubs in terms of professionalism of their sex workers. Amongst the six clubs, Royal Park was found to have the highest ranking in professionalism of sex workers, followed then, in descending order, by Summit, Maxime, Hillbrow Inn, German Club, and Kilimanjaro.



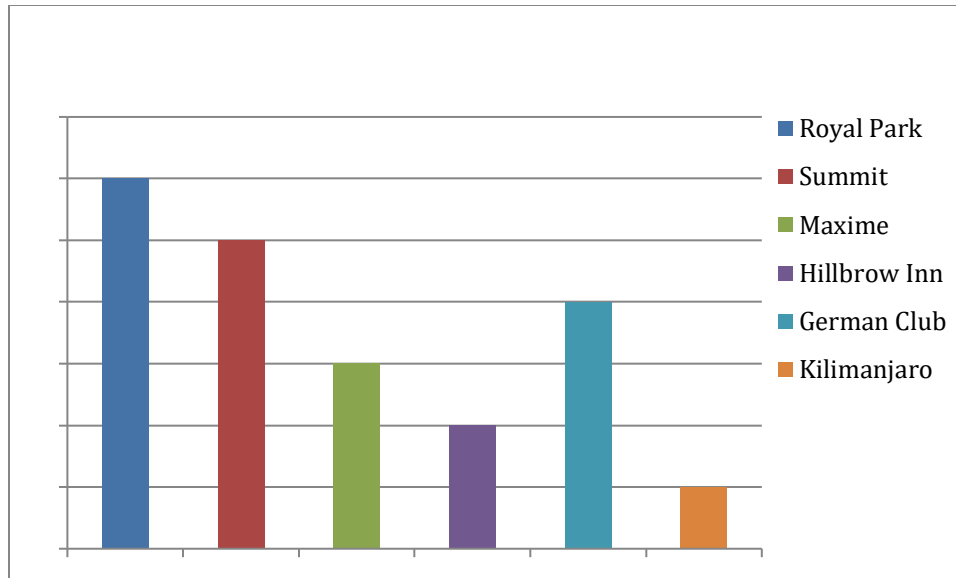
Ranking of professionalism of clubs as perceived by Hillbrow police interviewees (higher indicates better rank)

Hillbrow police member interviewees were asked to rate the number of foreign sex workers in the different clubs on a scale of 1 (highest number of foreigners) to 6 (least number of foreigners). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more foreign sex workers. The following graph shows the rankings of clubs in terms of higher number of foreigners. Amongst the six clubs, Summit was found to have the highest ranking for number of foreigners, followed then, in descending order, by Maxime, Royal Park, Kilimanjaro, German Club, and Hillbrow Inn.



Ranking of number of foreigners in clubs as perceived by Hillbrow police interviewees (higher indicates better rank)

Hillbrow police member interviewees were asked to rate the different clubs by frequency of raids on a scale of 1 (most raids) to 6 (least raids). The means of these responses were obtained and ranked. The ranks were then inversed such that a higher rank would represent more raids. The following graph shows the rankings of clubs in terms of frequency of raids. Amongst the six clubs, Royal Park was found to have the highest ranking, followed then, in descending order, by Summit, German Club, Maxime, Hillbrow Inn, and Kilimanjaro.



Ranking of frequency of raids in clubs as perceived by Hillbrow police interviewees (higher indicates better rank)

To determine the relationships between the variables of beauty, professionalism, foreigners, and raids, I conducted pairwise correlation tests. Prior to conducting the tests of correlation, I inversed the values of the responses so that a higher response represented a better rank. I then subjected the data to tests for normality, of which the results showed non-normality of data ($p < .05$). As such, non-parametric tests of correlation, Spearman's tests of correlation, were performed.

Results of the correlation tests are presented in Table 6. All four variables were statistically significantly correlated ($p < .05$). Beauty of sex workers was positively correlated with professionalism of sex workers ($p < .001$), which indicates that in brothels where police perceived sex workers to be more beautiful, the perception of the professionalism of sex workers was higher as well. Beauty of sex workers was negatively correlated with foreign sex workers ($p = .026$), which indicates that in brothels where police perceived sex workers to be more beautiful, the brothels were perceived to

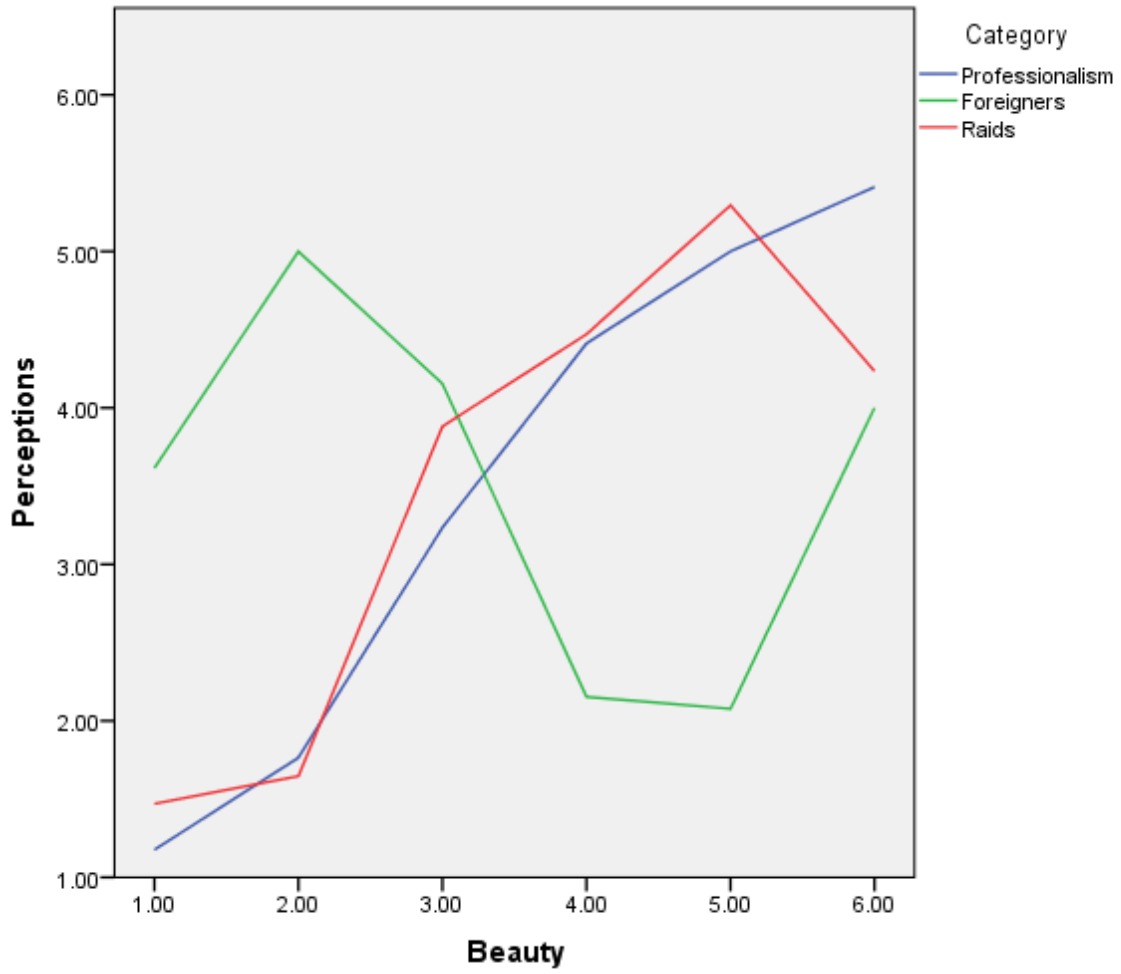
have lower numbers of foreign sex workers. Beauty of sex workers was positively correlated with the frequency of raids ($p < .001$), which indicates that brothels where police perceived sex workers to be more beautiful experience a higher frequency of raids. Professionalism was negatively correlated with foreigners ($p = .014$), which indicates that brothels with higher perceived professionalism of sex workers were also perceived to have lower numbers of foreign sex workers. Professionalism was positively correlated with raids ($p < .001$), which indicates that brothels with higher police perceptions of the professionalism of sex workers had higher frequencies of raids. Foreigners was negatively correlated with raids ($p = .006$), which indicates that the frequency of raids in brothels with higher numbers of foreigners is lower. The relationships from the results of the correlation tests are illustrated in the graphs that follow.

Table 6

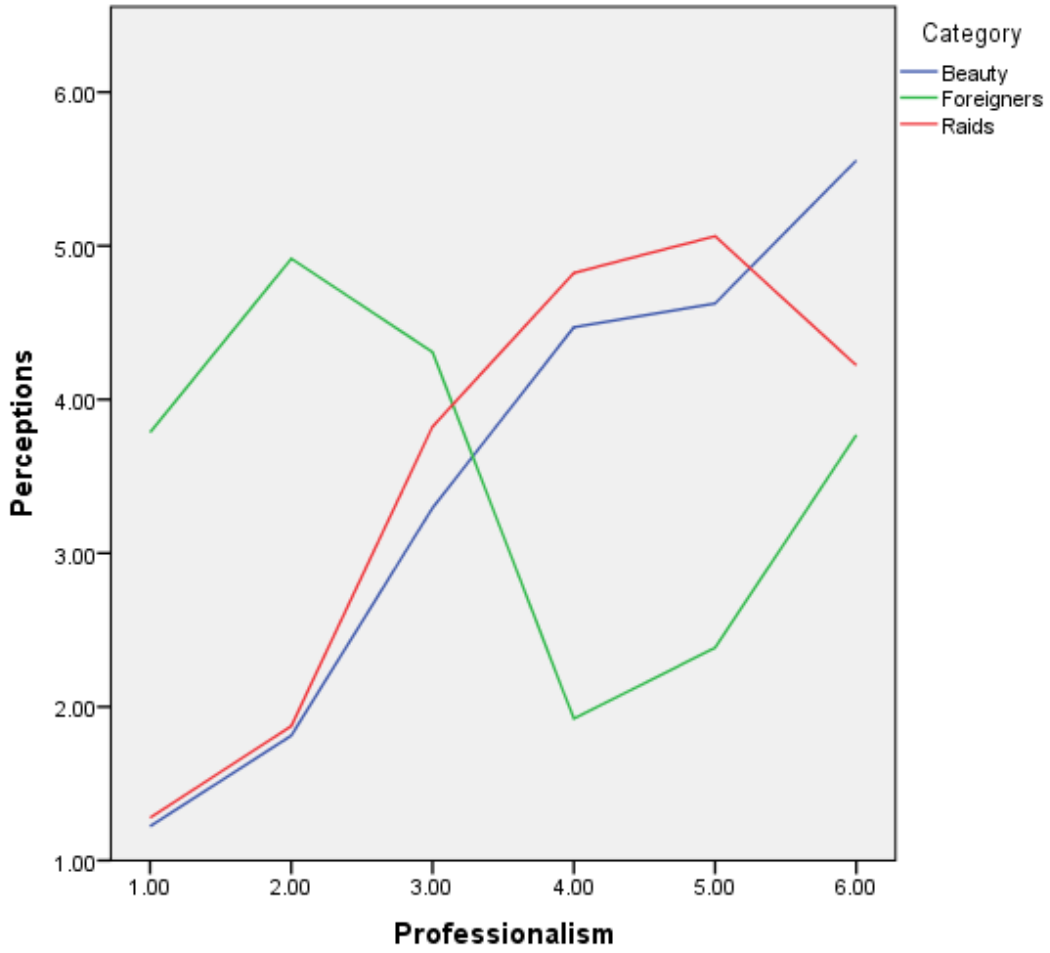
Spearman's correlation coefficients between beauty, professionalism, foreigners, and raids

	Beauty	Professionalism	Foreigners	Raids
Beauty	1	.904**	-.253*	.724**
Professionalism		1	-.278*	.721**
Foreigners			1	-.310**
Raids				1

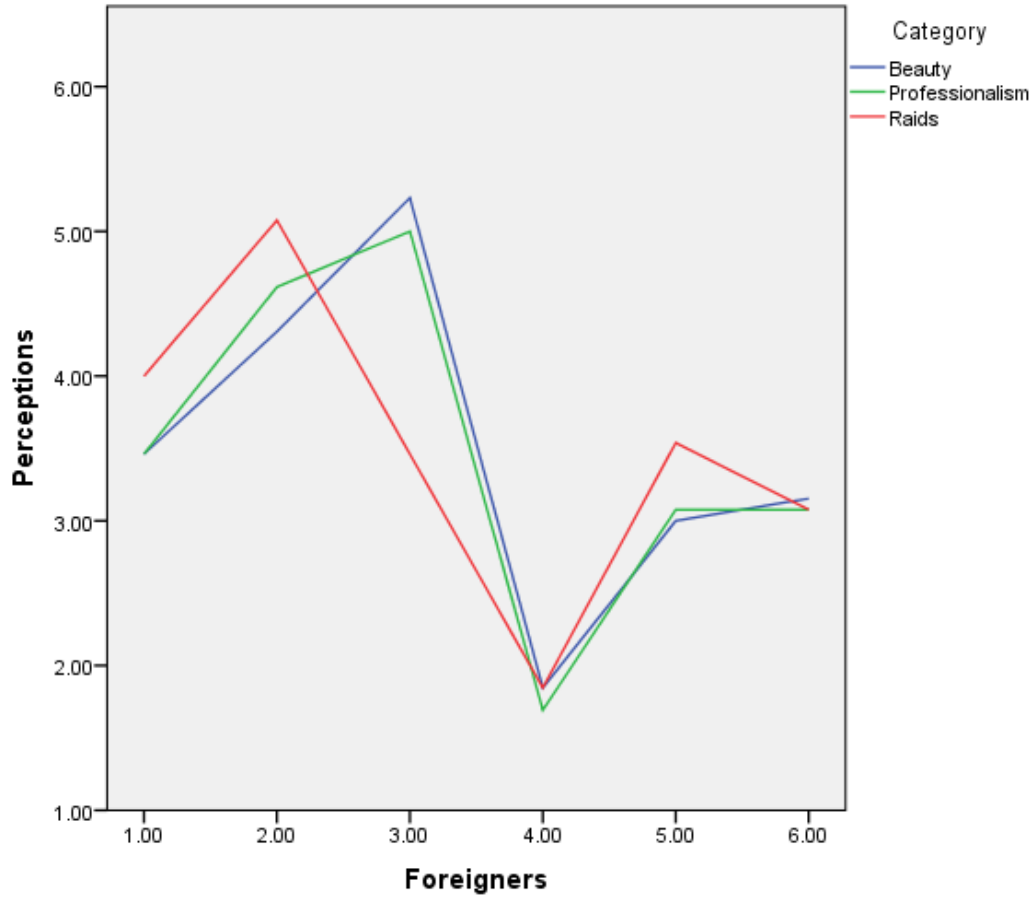
** $p < .01$. * $p < .05$.



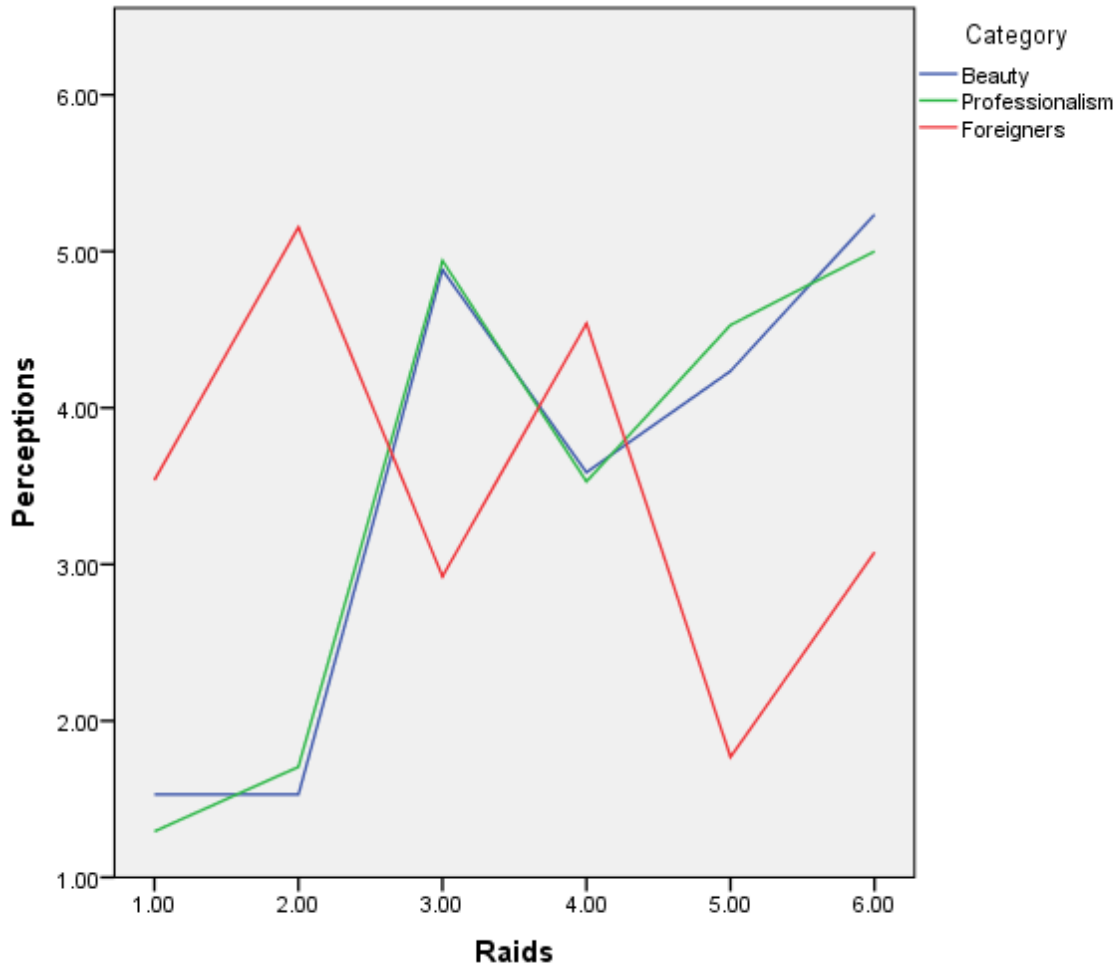
Relationship between perceptions of beauty (x-axis) and professionalism, foreigners, and raids (y-axis)



Relationship between perceptions of professionalism (x-axis) and beauty, foreigners, and raids (y-axis)



Relationship between perceptions of foreigners (x-axis) and beauty, professionalism, and raids (y-axis)



Relationship between perceptions of foreigners (x-axis) and beauty, professionalism, and raids (y-axis)

In those brothels where sex workers were perceived to be beautiful, the police were more likely to believe that the sex workers should be regarded as professionals. In those brothels where the sex workers were perceived to be less beautiful, the sex workers were more likely to be assumed as foreign. Police were more likely to raid brothels that housed sex workers believed to be beautiful and professional. This finding is surprising if you assume that police engage in police raids to curtail activities that occur in less organised environments that are not highly professional. The women in the professional environments reported that they felt safe and comfortable in their working

conditions because they had the protection of these highly organised brothels. My visits to the various brothels confirmed that those brothels that were deemed to be more 'professional' were highly organised and adopted a tourism approach to the trade, which was very customer service driven. As such, one would expect police to investigate the less professional brothels if they were primarily interested in investigating crime.

One explanation for the inverse relationship between professionalism of the brothel and likelihood of police raids is that police are not motivated by a desire to curtail crime. Rather, brothels that are highly organised and professional are more likely to be raided because police are motivated by other incentives. Police appear to be patrons at the more upscale establishments and tend to return to familiar territory. The policing of these locations is quasi-policing and quasi-socialising. Sex workers did confirm that they had police officer clients during the raids, and some indicated that there were certain police officers who expected to receive discounted services during these encounters although most paid full price for their services. The police visit these brothels late in the evenings and often partake in beverages. There may also be a greater opportunity to extract bribes at highly organised establishments precisely because of their high profits, high-profile clientele, and willingness to cooperate with the police.

These policing practices further reflect that sex worker choices concerning an appropriate venue for work are far from accidental. These spaces are socially produced by a sex worker's understandings of her bodily capital, competition, potential clients, and general comfort in various social situations. The perception of the sex worker's body then becomes a mode for reproducing misogyny and exercising power over

female sexuality. It becomes an excuse for heightened surveillance and exercise of authority over the sex workers' expression of sexuality. Sex workers from Hillbrow Inn and German Club were described as 'foreign' and marginalised. Sex workers from Summit Club and Royal Park were valorised but simultaneously subject to exploitation at the hands of the police. In this way, assertions about the sex workers' beauty alienate certain sex workers and valorise others, who are frequently described as domestic to South Africa.

Stating hotel–brothel preferences also was a method for police members to brag amongst each other and demonstrate their superlative desires and tastes. During the focus group discussion with Hillbrow police members, members were proud of their preferred hotel–brothels and appeared to judge police members who had more alternative desires. It was a way for officers to brag in the locker room and discuss their 'conquests', so to speak. The expression of their subjective desires was a mode for the expression of masculinities that hierarchialise female sexualities, reflecting a geography of sexual desire in the urban space.

Moreover, beauty is also a way of thinking about hygiene. The sex worker body has consistently been policed in hygienic terms and subject to regulations based on concerns around hygiene. Here, beauty is treated as synonymous with proper hygiene. Sex workers in indoor locations have generally been considered more professional and, correspondingly, more hygienic; sex workers in the streets were often perceived as 'dirty' or less hygienic. In this way, the varied policing due to subjective understandings of beauty highlights the continuity with past practices of policing that focused on the

hygiene of various sex workers. The logic of the hygiene discourse is that the sex workers who are considered the most 'dirty' would receive the most policing. Instead, this ethnography suggests that being more hygienic at times subjects sex workers to more policing, which is counterintuitive. The more hygienic, or beautiful, sex workers in both Hillbrow and Rosebank were more heavily policed. However, the type of policing that the more hygienic sex workers experience is not the crude policing focused on merely driving them out and making them invisible, as occurred in central Johannesburg. Instead, it is a more benevolent form of policing that is a more direct expression of biopower in its gaze on these sex workers' bodies. It is more intense gaze, but also more reverent. There is a level of respect associated with it that is not present in the form of policing that relies on brute force and violence to enforce the law.

This extension of biopower to more beautiful sex workers illustrates how desire and biopower can take form in unexpected ways. Patriarchy and hegemony do not reproduce themselves in simple ways. One patriarchal form is not necessarily going to be replaced by another that it is its equal. Rather, it may be transformed into different and unexpected forms, and even within these forms, women can express power and resistance.

CHAPTER 8. SEX WORK, FEMINISM AND POLICY

Introduction

I started my research ambivalent about the policy and legal choices around (de)criminalisation of sex work. However, as the research took place at a time in which the legal framework for sex work in South Africa was under review and many advocacy organisations were calling for decriminalisation, the theme of criminalisation kept emerging, and everyone with whom I spoke seemed to have an opinion on it. I was insistent that determining the appropriate legal or policy choice around criminalisation was not the primary subject of my research and that I was interested in the nature of the policing of sex work in a very general sense. The legality of the act was only relevant to the extent that it influenced how the sex workers were policed and perhaps to understanding how they should negotiate their relationships with police officers. I could appreciate arguments made by advocates from various sides of the argument. Although I anticipated that I might lean towards the so-called ‘pro-sex’ stance,⁴⁵² I was not completely sold on any particular approach. My research would be from a neutral position that did not necessarily advocate for any particular advocacy agenda.

⁴⁵² Claire Snyder *What Is Third-Wave Feminism? A New Directions Essay* 34 (2008) *Signs* 175, 188:

[P]ro-sex feminism usually refers to a segment of the women's movement that defends pornography, sex work, sadomasochism, and butch/femme roles, but it also recuperates heterosexuality, intercourse, marriage, and sex toys from separatist feminist dismissals . . . [and] is heavily influenced by marginalized or nonnormative sexualities—including gay and lesbian, transgender, butch, and sex worker activists—and is devoted to reducing the stigma surrounding sexual pleasure in feminism

However, as I became immersed in my research, spending nights on the streets of inner-city Johannesburg speaking to sex workers, becoming a friend to the many sex workers who operated from the streets of Rosebank, my orientation on the subject rapidly shifted. I spent hours patrolling with, interviewing, and spending time with police officers and heard their views on sex work criminalisation. It was impossible for me to be so closely immersed in the reality of sex work, literally floating between the perspective of the police and the sex worker, constantly shifting my frame of reference, without developing an opinion on criminalisation myself. I occupied a space of liminality that is common for the ethnographer but even stranger in my situation, as I floated between spaces occupied by presumed rivals. And yet, these rivals appeared more in sync than an outsider might presume.

My perspective on the policing of sex work was constantly evolving and subject to the variables of passing time, seasonal and political changes, geography, and the observation of religious holidays. There was no singular 'policing of sex workers'. The policing of sex workers largely occupies a space on the margins of law, sometimes within the law and sometimes outside of it. This is a space where rules are constantly re-negotiated to satisfy the needs of the political moment. Much of the feminist debate around sex work has focused on the sex worker and issues of consent, coercion, subordination, freedom, and sexual autonomy. Some of these debates proceed as if sex work were static. There often is a blanket recommendation for decriminalisation or partial criminalisation without much discussion about how these legal approaches would actually look on the ground. Much of the debate tends to be circular because it often avoids the most direct question: how do we, as feminists, want to think about sex?

Radical feminists have argued that sex should never be a tool to address economic struggles. Scott Anderson notes, 'Prohibition [of sex work] not only denies individuals the choice to sell sex for money, it also signals that no one should be expected to make choices about sex just to escape economic hardship.'⁴⁵³ Arguments regarding subordination and coercion can easily be transplanted to marriage, yet no contemporary feminist movement has as its aim to outlaw the institution of marriage. Something about commercialised sex makes it especially troubling for feminists to grapple with.⁴⁵⁴ Although patriarchy exists as a structural force that women experience in South African society, how it is expressed, how it is experienced, and the how it influences women's lives is not uniform, let alone static throughout time. In fact, women have power and agency, and can exert resistance to defy societal standards and norms. This power to resist lies even amongst women who are often to be deemed 'vulnerable,' including sex workers.

8.1 The Role of Law in Interpreting Sex Work in South Africa

Because South Africa has been undergoing a lengthy and much delayed law reform process within the South African Law Reform Commission, as discussed in greater detail in section 4.5, much of the work around sex work is focused on

⁴⁵³ SA Anderson 'Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution' (2002) 112 *Ethics* 748, 777.

⁴⁵⁴ '[The] normalization of prostitution and the reduction of sexual autonomy are linked in the way Anderson describes only if prostitution alienates sexual rights rather than preserves them.' HR Liberto 'Normalizing Prostitution versus Normalizing the Alienability of Sexual Rights: A Response to Scott A. Anderson' (2009) 120 *Ethics* 138.

influencing policy and advancing a particular legal outcome. In the international arena, several feminist approaches to sex work generally be conceptualised as a form of governance feminism, which has been defined as ‘the incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power’.⁴⁵⁵ Although they adopt different rationales and proposals for sex work, these approaches are aimed at incorporating feminist legal thought into the legal hierarchy. Governance feminism emphasizes law-making to set the feminist agenda;⁴⁵⁶ it turns to legal enforcement of feminist ideals, which may include criminal law. A way feminism seeks to create a middle ground for the competing approaches to sex work is in the way that it ‘appreciates the individual as agentic and self-determining in the face of limitations, instead of ascribing a narrow status of victim or agent’, aiming to provide a more nuanced understanding of sex work.⁴⁵⁷

There are generally four approaches to the regulation of sex work, including: (1) criminalisation, (2) partial criminalisation with the goal of eventual elimination of sex

⁴⁵⁵ J Halley et al ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism’ (2006) 29 *Harvard JL & Gender* 335, 340: ‘Global governance describes contemporary lawmaking as the product of deep and sustained interaction between states, international organizations, and non-governmental associations. Lawmaking in this mode is characterized by substantial communication in “networked” form across national borders: networks among governmental sub-units, and networks among NGOs. Global governance is also characterized by ongoing communication between “official” actors (states and international organizations) and NGOs, in which the latter act as sources of information, guides for “agenda-setting”, and levers of political pressure.’

⁴⁵⁶ *Ibid* 341.

⁴⁵⁷ S Cavalieri ‘Between Victim and Agent: A Third-Way Feminist Account of Trafficking for Sex Work’ (2011) 86 *Indiana LJ* 1409.

work, (3) regulation, and (4) decriminalisation.⁴⁵⁸ Sex work is currently regulated pursuant to approach (1) and, since 2007, has been explicitly criminal for both the sex worker and sex work client in South Africa.⁴⁵⁹ Partial criminalisation relates to the so-called Swedish model, which prohibits the conduct of the sex work client but does not criminalise the conduct of the sex worker. Radical feminists generally support this approach because it theoretically protects the sex worker, who is a victim of her⁴⁶⁰ occupation, while criminalising the client in the hopes of eliminating future demand for sex work. Legalisation, or regulation, pertains to the decriminalisation of sex work for both the client and sex worker although it allows for additional laws and/or ordinances aimed at regulating aspects of the sex work trade, e.g. zoning ordinances for specific to brothels.⁴⁶¹ Finally, decriminalisation is the total elimination of all criminal sanctions relating to sex work.⁴⁶² Under decriminalisation, sex work would be treated like any other occupation, and would be subject to the general laws.

SWEAT and Sisonke are leading sex work activist organisations in South Africa that have all called for the decriminalisation of sex work, arguing that sex workers have

⁴⁵⁸ J Halley et al 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard JL & Gender* 335, 338-9.

⁴⁵⁹ Sexual Offences Act of 1957, Act 23 of 1957.

⁴⁶⁰ I deliberately use the feminine word her because advocates of this approach are primarily concerned with the violence of patriarchy in sex work and its ability to strip women of meaningful choices.

⁴⁶¹ See J Halley et al 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harvard JL & Gender* 335, 338-9.

⁴⁶² *Ibid.*

agency and choice⁴⁶³ and should be allowed to choose their occupation.⁴⁶⁴ Much of the debate has been driven by these two groups, resulting in a distinctly governance-based approach to the sex work question that is concerned with policy and legal reform, specifically focused on advocating for decriminalisation and is focused on law-making as agenda-setting.⁴⁶⁵ Advocates have favored decriminalisation as a form of harm reduction for sex workers, while also highlighting the individual autonomy⁴⁶⁶ of the sex worker. This approach has garnered widespread support across the women's sector. For example, in 2013 the Commission on Gender Equality released a report calling for decriminalisation, outlining the various ways that criminalisation violated the human rights of sex workers.⁴⁶⁷ This report adopts a liberal rights-based framework in discussing the violations the sex workers' individual rights caused by a criminalized environment and highlights sex workers rights to choose their own form of work and

⁴⁶³ N Fick & Sex Workers Education & Advocacy Taskforce *Coping with Stigma, Discrimination and Violence: Sex Workers Talk About Their Experiences* (2005).

⁴⁶⁴ Manoek Women's Legal Centre, SWEAT & Sisonke 'Stop Harassing Us! Tackle Real Crime!: A Report on Human Rights Violations by Police against Sex Workers in South Africa' (2012).

⁴⁶⁵ See Marlise L. Richter et al 'Sex work and the 2010 FIFA World Cup: time for public health imperatives to prevail' (2010) 6 *Globalization and Health* 1 (arguing for decriminalisation); N Fick & Sex Workers Education & Advocacy Taskforce *Coping with Stigma, Discrimination and Violence: Sex Workers Talk About Their Experiences* (2005) (advocating for decriminalisation).

⁴⁶⁶ See e.g. C Boudin & M Richter 'Adult, Consensual Sex Work in South Africa—The Cautionary Message of Criminal Law and Sexual Morality' (2009) 25 *SAJHR* 179 (discussing the practical realities of sex worker and the need for sex worker autonomy in choosing to engage in body work).

⁴⁶⁷ See Commission for Gender Equality 'Decriminalising Sex Work in South Africa' Official Position of the Commission for Gender Equality (2013) ('The current legal regime harms the interests of sex workers by denying them their human and constitutional rights to protection as well as preventing access to legal assistance and enjoyment of their labour rights. However the current legal context has led to harassment and abuse of sex workers at the hands of the police.').

occupation.⁴⁶⁸ In the policy context of South Africa, in relation to sex work, the emphasis on criminalisation is less about using criminal law to protect sex workers and more about freeing sex workers from the mandates of criminal law through decriminalisation.

The ANC Women's League, the women's wing of the African National Congress, has also adopted a rights-based approach in discussing sex work. In 2012, the Women's League adopted a stance in support of decriminalisation of sex work, stating:

Whatever the ideal approach would be going forward, it is imperative and critical that it embraces the dignity of women, increases job opportunities and decent work for all women; and affords sex workers their human rights, human dignity and access to health care and social justice.⁴⁶⁹

The treasurer for the organization, Hlengiwe Mkhize, confirmed that this statement was a show of support for decriminalisation. However, the emphasis on the 'dignity' of sex workers often can be conceptualised as reinforcing views of sex workers as undignified, promoting their continued marginalisation.⁴⁷⁰

⁴⁶⁸ Ibid. The CGE position brief further explains the rationale for its advocacy for sex work decriminalisation and like other sources in part relies upon the narrative that sex work will protect the sex worker against police harassment. See Commission for Gender Equality 'Position Paper on Sex Work' (16 January 2013) ('The criminalization of sex work harms sex workers and denies them access to the rights contained in our constitution. Sex workers are subjected to numerous human rights violations, predominately harassment and abuse at the hands of police officers, and are not able to access and exercise legal or labour rights, or social protections.').

⁴⁶⁹ ANC Discussion Paper on Gender Based Violence (2012) 14.

⁴⁷⁰ S Cunningham 'Reinforcing or Challenging Stigma? The Risks and Benefits of "Dignity Talk" in Sex Work Discourse' (2015) *Int J for the Semiotics of Law* 1.

8.2 The Essentialisation of Sex Workers in Radical Feminist Theory

The theoretical underpinnings for the various legal outcomes generally rely upon principles advanced in a continuum from radical feminism to liberal theory. Western-based radical feminism is often in conversation with liberal feminism and its ideas of individual choice and sex work as work. Jody Freeman provides an honest account of the radical feminist position:

Conceiving of sexuality in market terms dehumanizes how we think and act about something extremely important to our conception of self. It would reduce sexuality to just another fungible good because commodification leads to ‘the domino effect’—the tendency in our society to completely commodify in all respects and for all purposes⁴⁷¹

She boldly claims that ‘we need to reclaim values that affirm and enhance, not demean human beings. Feminism that is unwilling or unable to choose amongst an assortment of behaviours may be tolerant, but to me it is apathetic and apolitical.’⁴⁷² But the declaration begets the question, whose values matter?

⁴⁷¹ Freeman (note 385 above) 102.

⁴⁷² Ibid 105.

The sex work victimization paradox is present with the emergence of radical feminism in the 1980s. However, victims are not empowered.⁴⁷³ They require help and by definition are subject to the authority of those who deem them helpless. Although scholars who engage in sex-worker-as-victim debates presumably aim to help or save the sex worker victim, they are simultaneously depriving sex workers of aspects of their self-determination, while ignoring their voices in the debates about what is best for them. 'Most simply, sex workers' own understandings of their lives, and the ways of living embedded in those forms of understanding, are themselves part of the phenomenon under investigation.'⁴⁷⁴ Radical feminism in many ways continues the work of Josephine Butler and the Christian Temperance Union in imagining sex workers as hapless victims of circumstances. Carole Pateman argues that women who sell sex are selling themselves and thus their womanhood.⁴⁷⁵ She claims that the social conditions of prostitution are such that, inherently, the women are subordinated. Christine Overall similarly claims that women are subordinated in prostitution.⁴⁷⁶ Debra Satz argues that although sex work is not inherently wrong, it is wrong to the extent that it influences men's perceptions of women.⁴⁷⁷ Central to the debate is the issue of autonomy: 'Radical feminists say that prostitution is not a harmless, "private" transaction but a powerful

⁴⁷³ The *Oxford English Dictionary* defines a victim as 'a person harmed, injured, or killed as a result of a crime, accident, or other event or action' or 'a person who has come to feel helpless and passive in the face of misfortune or ill-treatment'.

⁴⁷⁴ Satz (note 381 above) 285.

⁴⁷⁵ C Pateman *The Sexual Contract* (1988); K Kesler 'Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends' (2002) 5 *Sexualities* 219.

⁴⁷⁶ C Overall 'What's Wrong with Prostitution? Evaluating Sex Work' (1992) *Signs* 705.

⁴⁷⁷ D Satz 'Markets in Women's Sexual Labor' (1995) *Ethics* 63.

means of creating, reinforcing, and perpetuating the objectification of women through sexuality.’⁴⁷⁸

Scott Anderson resists the liberal treatment of sex work as another form of labor and argues that it reduces female sexual autonomy. He claims:

A person’s sexuality almost always figures prominently as an aspect of his or her self-conception, status in society, and economic and social prospects. . . . It is because sex plays such a pivotal role in the lives of most adults . . . that it creates its own special . . . realm within which one can be more or less autonomous.⁴⁷⁹

In this way, he argues that sex work reduces sexual autonomy. Radical feminists can be said to implicitly subscribe to the theory of asymmetry: ‘Those who hold the asymmetry thesis believe that markets in reproduction and sex are asymmetric to other labor markets.’⁴⁸⁰ They believe that sex markets cannot be compared to other markets because there is asymmetry between the contracting parties in a sex work relationship. Sex is essentialised and universalised in this worldview. ‘[I]n the hegemonic Euro-

⁴⁷⁸ Freeman (note 385 above) 83.

⁴⁷⁹ Anderson (note 423 above).

⁴⁸⁰ Satz (note 433 above) 63.

American culture, sexuality and money are thought of as things that cannot, do not, and/or should not mix.⁴⁸¹

Catherine MacKinnon and other radical feminists argue that sex work is a form of violence against women and that sex workers cannot exhibit agency in a system of male subordination of women.⁴⁸² Andrea Dworkin reduces sex work to the male experience: 'In the male system, women are sex; sex is the whore. . . . Using her is using pornography. . . . Being her is being pornography.'⁴⁸³ She views sex work as a per se violation on the woman and as an act of violence against women. This perspective suggests that those who engage in all forms of sex work are victims of patriarchy based on the sexual objectification of women. Vega argues that '[f]eminist politics as well as theory have declared the incompatibility of coercion and genuine consent. It is precisely this thinking in opposites . . . that paralyzes feminist thought about sexual violence.'⁴⁸⁴

Under radical feminist theory, individual women's choices are given little regard or expression, and it is presumed that women cannot exercise a choice that involves the giving away their bodies. This marks a deliberate deviation from traditional liberal theory. Much of 'traditional liberal theory . . . is committed to autonomy, individualism, and minimal state interference in private choice. Liberal theory is premised on an

⁴⁸¹ Zatz (note 381 above) 294.

⁴⁸² See generally CA MacKinnon 'Prostitution and Civil Rights' (1993) 1 *Michigan J. Gender & Law* 13.

⁴⁸³ Zatz (note 421 above) 277 (quoting Andrea Dworkin).

⁴⁸⁴ Freeman (note 385 above) 98.

assumption that individuals are atomistic, pre-social beings who exist independent of their community.⁴⁸⁵ Radical feminism concerns itself with structural concerns and views the woman who chooses to engage in sex work as either a victim of circumstance or a victim of her own false consciousness. Pornography is condemned for reinforcing the masculinity and patriarchy that demotes women to the satisfiers of male sexual urges.⁴⁸⁶ Jennifer Farley has declared, 'Like slavery, prostitution is a lucrative form of oppression. And both slavery and prostitution are rife with every imaginable type of physical and sexual violence.'⁴⁸⁷ She advocates for a form of radical feminism that intends to save women from the captivity of patriarchy. Unfortunately, her logic may serve more to entangle the very same women whom she intends to save.

In South Africa, sex workers were historically perceived as victims who should be tolerated so long as they did not create a nuisance to the public. As a result of her perceived helplessness, the sex worker frequently received favorable treatment by the law. As previously discussed, a judge of the Eastern Districts Local Division court complained about this differential treatment in *Rex v V*, stating, '[A] prostitute herself whose act in soliciting is not less immoral than that of the accused, and who makes money out of immorality in the ordinary course, is only liable to the £5 fine and not even that if the soliciting by her occurred in a quiet public street where no member of the

⁴⁸⁵ Ibid 86.

⁴⁸⁶ CA MacKinnon 'Sexuality, Pornography, and Method: Pleasure under Patriarchy' (1989) *Ethics* 314.

⁴⁸⁷ M Farley 'Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in order to Keep the Business of Sexual Exploitation Running Smoothly' (2006) 18 *Yale JL & Feminism* 109, 110.

public is annoyed. That . . . seems a glaring injustice.’⁴⁸⁸ The portrayal of the sex worker as victim resulted in her receiving less severe punishment than brothel keepers or ‘touts’ because she was viewed as a victim of circumstance. She was not treated as harshly because she was, after all, a victim. This result created a paradox in depriving the sex worker of her sexual autonomy⁴⁸⁹ as an individual while simultaneously empowering her through more lenient punishment and treatment under the law.

The philosophy underlying the radical feminist approach to sex work, which treats sex workers as victims and sex work as a universal evil, is influential amongst many who are concerned with the lives of sex workers. This perspective underlies much of the work in human trafficking courts, was evident in a letter signed by several Hollywood starlets in opposition to Amnesty International’s support for decriminalization, and is the premise of several movies and documentaries about sex slavery. Radical feminists aim to abolish sex work but argue that sex workers should not be criminalized for engaging in it. They are concerned with the structural harms of sex work and have formed alliances with groups that oppose sex work due to moralistic philosophies. Like radical feminism, this thesis considers the structural harms of sex work and criminalization. However, it arrives at a different conclusion.

⁴⁸⁸ *Rex v V* 1951 (2) SA 178 (EPD).

⁴⁸⁹ DAJ Richards ‘Sexual Autonomy and the Constitutional Right to Privacy: A Case Study in Human Rights and the Unwritten Constitution’ (1978) 30 *Hastings LJ* 957.

As much as it purports to support subjectivity, the radical feminist position is predicated on its presumed objectivity, on its ability to proclaim universal truths about male and female sexuality. Sex is a topic infused with multiple subjectivities and alternate realities but is treated like an immovable object in some of these discussions. Popular artists have come out against decriminalisation of sex work, while ironically portraying characters, which are decidedly sexually liberal and have the choice to frame their own sexualities.⁴⁹⁰ For some reason, these women are enlightened enough to choose manifest their conceptions of sexual liberation but feel the need to limit whether sex workers can do the same for themselves. But the question remains, if all women are subject to male domination and oppressed by it, then how can any of us define this domination, let alone proclaim to identify uniform parameters for it? And whose version of domination do we accept? Are we to accept that of privileged Western feminists without question because they proclaim to have a higher consciousness above their research subjects? Are they not similarly blinded by male domination and thus unable to see(k) sexual liberation or provide consent?

Ronald Weitzer has criticised the methodology of the radical feminist approach:

Violating the canons of scientific inquiry, the radical feminist literature on prostitution and other types of sex work is filled with 'sloppy definitions, unsupported assertions, and outlandish claims'; such writers select the 'worst available examples' of sex work and treat them as representative. Anecdotes are

⁴⁹⁰ Coalition Against Trafficking in Women Letter to Amnesty International Board of Directors (17 July 2015) <<http://catwinternational.org/Content/Images/Article/621/attachment.pdf>>.

generalized and presented as conclusive evidence, sampling is selective, and counterevidence is routinely ignored. Such research cannot help but produce questionable findings and spurious conclusion.⁴⁹¹

To destructively declare sex work advocates as victims of false consciousness while silencing the voices of sex workers with opposing views is a form of violence against the sex worker victim whom the radical feminist presumably aims to protect and save.

Radical feminists have nonetheless captured the imaginations of many, creating a political movement to ban the scourge of sex trafficking and child prostitution. As Hubbard notes, ‘conflicts between different sexualities, moralities and identities are often orchestrated by the press in a lurid and sensationalist manner to create national “moral panics” about particular individuals and groups.’⁴⁹² Western discourses around sex trafficking and its conflation with sex work is very much a testament to the power of moral sensationalism to regulate sexual deviants, even when it purports to protect them. All women who have travelled afar for sex work become included in the blanket label of ‘sex trafficking victim’. Through intense advocacy, the radical feminist movement has managed to pass several anti-prostitution bills and garner global support for a movement aimed at preventing sex trafficking, including the UN Trafficking Protocol 29⁴⁹³ and the 2000 US Victims of Trafficking and Violence Protection Act.⁴⁹⁴ In South

⁴⁹¹ R Weitzer ‘New Directions in Research on Prostitution’ (2005) 43 *Crime, Law & Social Change* 211, 214 (internal citations omitted).

⁴⁹² Hubbard (note 387 above) 53.

⁴⁹³ United Nations Trafficking Protocol 29 (2000) and the US Victims of Trafficking and Violence

Africa, there is the Prevention in the Trafficking of Person Act, 2013, which was enacted to give effect to international agreements regarding trafficking.⁴⁹⁵

The monolithic narrative of the sex worker as victim, without appreciation of the nuances of various sex worker life situations, variations between different classes of sex workers, or disregard for the colonial or post-colonial contexts of particular sex workers, serves only to benefit discussants promulgating a particular moral agenda, coloured by their perceptions of appropriate female conduct.

8.3 Sex Work Abolition in South Africa

In South Africa, the sentiments of the sex work abolitionists are reflected by organisations such as Embrace Dignity, a radical feminist organisation, and the New Life Centre 4 Girls, a rescue organisation. ‘Embrace Dignity recognizes prostitution as a form of violence against women. In conditions of gender inequality and deep poverty, it is false to assume that people involved in prostitution are exercising free choice and agency.’⁴⁹⁶ It is committed to the abolition of sex work in South Africa and does not

Protection Act of 2000 (VTVPA). One of the most influential NGOs in the negotiation of the various UN protocols, Coalition against Trafficking of Women (CATW), was founded by radical feminist Kathleen Barry.

⁴⁹⁴ A UN conference in 1981 in Nice, France, issued a release stating that ‘all prostitution is forced prostitution’. Report of the Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, UN Doc. E/1983/7 and Corr. 1–2 (1983) 8.

⁴⁹⁵ Act No. 7 of 2013.

⁴⁹⁶ Embrace Dignity <<http://embracedignity.org.za>>.

support an individual sex worker's choice to engage in sex work. It aims to preserve these sex workers' dignity. This approach to sex work is consistent with the approach adopted by Catherine MacKinnon and other radical feminists, but slightly different in its concern with poverty and inequality as structuring women's choice for sex work. Similarly, the New Life Centre 4 Girls:

rehabilitates children and women who are commercially sexually exploited and trafficked in South Africa. It was established in April 2005 as a response to the high influx of children and women who are involved or at risk of being involved in prostitution due to child sexual abuse, trafficking, poverty, unemployment, lack of family structure and Orphans.⁴⁹⁷

The organisations embrace a discourse that focuses on the moral regulation of sex work, which finds the nature of sex work as inherently undignified. They are attempting to police the morality of sex work by premising their work on the notion that sex work is distinct from other forms of work and inherently so undignified that it would be a rights violation to allow an individual to choose to engage in it. The South African Christian Lawyers' Association, a very conservative organisation, has also argued that reform efforts should be focused on ensuring that sex work is abolished, evincing the strange

⁴⁹⁷ New Life Centre 4 Girls <<http://www.newlifecentre4girls.org/index.php>>.

bedfellows that radical feminists and conservatives have become in the fight to abolish sex work.⁴⁹⁸

In the context of no progress towards law reform, on 2 March 2016, Embrace Dignity briefed a Parliamentary committee to ‘support measures to stop the menace of sexual exploitation, to enable victims to pursue other purposeful options in life, and to give a proper voice and protection to sex workers’.⁴⁹⁹ The organisation provided life histories that reiterated the narrative of sex workers who had been victimised and was framed as striving to end oppression stemming from sex work. The submission focused on the morality of sex work⁵⁰⁰ and continues in the lineage of morality discourses that were advanced by the Christian Temperance Union, spreading narratives about the inherent indignity of sex work albeit with an explicit focus on poverty and inequality.⁵⁰¹

⁴⁹⁸ R Davis ‘The ANC Women’s League and the World’s Oldest Profession’ *Daily Maverick* (12 May 2012).

⁴⁹⁹ Embrace Dignity, Help Us End the Oppression of Prostitution and Sex Trafficking, Embrace Dignity petition to end all all forms of oppression against women, prostitution & sex trafficking (10 December 2014), http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160302Embrace_Dignity.pdf:

[O]ur concern is the lack of understanding of the harms of the prostitution and its links to sex trafficking. Without addressing prostitution and all forms of commercial sexual exploitation, our effort to end gender oppression and sexual violence will continue to be undermined.

⁵⁰⁰ Parliament of the Republic of South Africa, Select Committee on Petitions and Executive Undertakings: Content of Embrace Dignity Petition and Existing Legal Framework on Sex Work (2 March 2016), <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160302content.pdf>.

⁵⁰¹ See section 3.2.31 for more detailed discussion of the Christian Temperance Union.

8.4 Intersectionality and Managed Risks

The radical feminist body of feminist scholarship suffers from a critique that has long plagued feminism—it is part of the Western middle-class white female agenda that only superficially considers other experiences, particularly those of women of color or women in postcolonial societies. It is generally lacking in its attention to intersectionality⁵⁰² and the unique experiences of women who experience overlapping and intersecting forms of oppression. But, more critically, it is disconnected from classes of women who fall inside this world and thus is plagued by assumptions and premises that simply do not apply in certain contexts. In a world of limited opportunities, sex workers manage risks and have made a calculated choice to adopt a profession within their existing economic paradigm. Sex work, for many, provides higher economic opportunities for women and men within their economic stations. In this manner, it is empowering and provides the sex worker with a lifestyle that would not otherwise be available. There have been efforts to empirically ground feminist theory and ensure its applicability in various contexts. However, the need to consider different contexts and how sex work may at times become a tool for female empowerment, particularly in the Global South, is critical. Martha Nussbaum argues that feminists should protest the stigmatisation of sex work rather than its occurrence.⁵⁰³ She argues that the problems

⁵⁰² See for example K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' *Stanford LR* 1241.

⁵⁰³ MC Nussbaum "Whether from Reason or Prejudice": Taking Money for Bodily Services' (1998) 27 *J of Legal Studies* 693.

with sex work are not inherent to its nature but rather are a result of stigmatisation and working conditions.

Sex workers who are also low-income, or who are also migrant, or who are also women, or who are also black, may already exist in a paradigm where they have limited choices because they exist in an order that prioritises white supremacy, patriarchy, and wealth.⁵⁰⁴ Nonetheless, even under these conditions, and despite experiencing structural barriers, it seems repugnant to suggest that these women do not nonetheless have some agency. Adopting an intersectional lens makes it clear that one could almost always argue that women, particularly women with multiple identities, are making choices in a paradigm of structural disadvantage. Despite this, we cannot say that these women can never exercise any choice. To do so would silence these women and in turn makes the feminist advocates, who seek to liberate these women from their own false consciousness, the oppressors of these women, some of whom may choose to sex work in light of their choices. It begets the question, who is really empowered in these discourses? The sex worker or the scholars or activists who feel they know better than the sex worker herself? As Foucault has stated, to engage in discourse may be an expression of power in and of itself.⁵⁰⁵ Here, the radical feminist advocate or scholar appears to assert her power over and against the sex worker.

⁵⁰⁴ K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' *Stanford LR* 1241

⁵⁰⁵ Foucault above note 5.

Such interpretation of sex work 'produces the fiction of a universal sisterhood, bonded in its experience of victimization and violence. There is no space in this construction for difference or for the articulation of a subject that is empowered.'⁵⁰⁶ I limit my findings to the situation in the locales I studied; however, I suspect that similar stories are found throughout the world and that the position on criminalisation does not rest on agency versus victimization. Sex workers are exposed to increased risks, they are often victims, and yet they have nonetheless developed mechanisms for managing these risks and have perhaps chosen to face the risks associated with sex work over those associated with abject poverty. Because sex work is not static, even within my three research sites, it is presumptively changeable and able to adapt to more ideal conditions. More simply put, the reality of sex work is not black and white.

Sex workers live in a complicated reality and occupy contradictory spaces. They are not mere victims who require saving under any approach regarding criminalising. At times, decriminalisation is over-emphasised as the saving grace for sex workers when in fact they primarily exist under a de facto decriminalisation regime in South Africa. Ellen is a sex worker whose stories highlight some of the complexities of taking a hard-line approach to sex work. A mutual friend introduced me to Ellen, who is a short black woman with a thick build. She has a short haircut and voluptuous curves. Although she used to work at the Hillbrow Inn, I met her in Midrand, near where she now lives. When she first arrived in South Africa from Zimbabwe, she had to 'squat' with her aunt for

⁵⁰⁶ R Kapur 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-colonial Feminist Legal Politics' (2002) 15 *Harvard Human Rights J* 1, 36.

some time because she didn't have a place to stay. She eventually began working as a domestic worker. She was being paid very little and earned no more than R1500 each month. As a domestic worker, she was working for a married man and his wife, the latter of whom was very suspicious of her husband. He told Ellen that she was a 'pretty girl' and promised to take care of her. She soon left this employment.

One day, she saw a group of male friends with some 'beautiful ladies who worked at Royal Park'. The ladies bought all the guys drinks and told Ellen, 'You can use your body to do that yourself.' Ellen asked the guys she was with where to go, and she soon started working at the Hillbrow Inn. The money she was earning was 'too much'. Ellen bought a fridge for R4000, earned in one week. She would go to restaurants, e.g. Ocean Basket in Eastgate, and enjoy life in ways she could not have before beginning sex work. She did not want to do this work, but she had to. Ellen has two brothers, a mother, and two kids. She is the breadwinner in the family, and she 'sacrificed for the family'.

As Ellen frequently told me, 'it's not about men or sex, just money. . . . It wasn't easy [to do this]. This work can sometimes be humiliating.' One client failed to pay her for services rendered. She was very upset because she went to his place for the transaction and he failed to compensate her. She recounted, 'I need my money, and you wasted my time. I can't waste money.' She had been with this client for two days. His wife learned of his infidelity and returned home early from a family trip to her mother's house. When the wife arrived, Ellen informed the wife that she was just a friend and that she did not want her husband. Ellen, who is in her early 30s, said that

she was just passing through and that both the wife and the husband were younger than her. 'Why would your husband want me? I'm old.' However, the husband had not yet paid her for the services she had rendered, and she waited there from 10:00 AM to 4:00 PM as the husband and wife argued. She finally left, but not before she had an opportunity to take his identification and phone number as insurance of future payment. Once the husband realised he was missing his personal items, Ellen was eventually compensated. Ellen found a strategy for adapting to the uncertainty of future payment for services that had already been rendered.

Ellen recently quit working at Hillbrow Inn and is now a domestic worker earning R4000 per month. Ellen's story was echoed by the dozens of sex workers I interviewed during the course my ethnography. Most of them did not want to do sex work, but they enjoyed the financial freedom it provided. Sex work allowed them to provide for their families but also exposed them to certain occupational hazards. Yet these hazards were negotiated by a system of coping mechanisms that allowed sex workers to minimise the risks. Sex workers often recounted working several sex work hot spots before settling on a location where they felt comfortable. They often worked with friends and were able to check out potential clients before entering their cars. Several sex workers had police clients whom they would call if they were having issues with other clients. They found ways to manage the risks of their occupation.

The sex worker was not merely a victim; she made choices but nonetheless had to manage real risks and dangers associated with her job. Treating sex workers as victims is an understandably attractive option. After all, who wants to harm a victim?

However, we must question whether, in the denunciation of sex work and the relegation of its workers to victimhood, radical feminism reinforces male sexual hegemony predicated on the assumption that women are helpless and require protection as they are unable to remain emotionally detached during sex. Men are not perceived as victims in sex work transactions because they are presumed to be emotionally detached from the sex, viewing it merely as physical release. Can't the women be similarly detached, viewing sex as a mere physical act for obtaining money? Furthermore, in adopting a radical feminist approach, do we not simply strengthen arguments that underlie patriarchy and systems that deny female expressions of open sexuality and ability to exploit their sexuality? Several domestic workers in South Africa have confided in me and told me that they feel degraded by their work or would choose other work under more ideal circumstances. Should their form of labour also be criminalised to protect their dignity? Is sex for work really so different from other types of body labour in exchange for income?

There are strong arguments for acknowledging the various contexts in which sex work occurs, particularly where it is used as a survival strategy for marginalised women. Kempadoo criticizes radical feminists for failing to recognize that 'the global sex trade cannot be simply reduced to one monolithic explanation of violence to women':

The agency of Brown and Black women in prostitution has been avoided or overlooked and the perspectives arising from these experiences marginalized in dominant theoretical discourse on the global sex trade and prostitution. Our insights, knowledges, and understanding of sex work have been largely obscured

or dominated by white radical feminist, neo-Marxist or Western socialist feminist inspired analyses that have been either incapable or unwilling to address the complexities of the lives of women of color.⁵⁰⁷

She argues that sex work should be treated as a form of labour. The role of race in the engagement of sex work should not be overlooked. She notes that '[t]hrough recognizing sex worker agency it becomes possible to uncover resistances to, and contestations of, oppressive and exploitative structures and regimes as well as the visions and ideologies inscribed in women's practices.'⁵⁰⁸

Scholars must be able to abandon dominant notions of morality and ethics to fully appreciate the complexities involved in any consideration of sex work. Such notions are particularly dangerous when analysing the agency of sex workers. Partial criminalisation (Swedish model) appears to be an option for many feminists, in certain contexts, it may only serve to place the sex worker at greater risk. At the Rosebank research site, sex workers reported that police officers began to intensify their policing of sex work by focusing on the activities of clients. The clients were subjected to bribes and arrests. As a result of this policing, several sex workers were abused by clients, with one client going so far as to shoot rubber bullets at a street corner filled with sex workers. Sex workers were unable to find alternative forms of work, and others resorted to working in

⁵⁰⁷ K Kempadoo 'Women of Color and the Global Sex Trade: Transnational Feminist Perspectives' (2001) 1 *Meridians* 28, 40.

⁵⁰⁸ K Kempadoo 'Globalizing Sex Workers' Rights' (2003) 22 *Canadian Woman Studies* 233.

central Johannesburg, where there was more open hostility and violence towards sex workers by Metro police. In this particular context, partial abolition would have been devastating. The presumption of abolition is that sex workers are harmed by the criminalisation of client activity; however, the sex worker–client relationship is far from traditional.

Although sex workers may have a level of familiarity with regular clients, there is also an inherent suspicion given the nature of the work. Sex workers are paid to feign interest in men whom they do not know. Sex work is mutually exploitative. The client takes from the sex worker her sex in exchange for the illusion of a sexual act. The sex worker takes money in exchange for her performance of this illusion.⁵⁰⁹ Sex workers are masters of deception, by profession, and the men who frequent them know this. Unlike the scholars who speak about sex workers as weak victims subject to male tyranny, those who interact with them regularly are aware that these women can be cunning, deceptive, and at times manipulative in improving their bottom line.⁵¹⁰ Accordingly, clients can easily become suspicious of sex workers. This dynamic creates a relationship riddled with suspicion, endless bargaining, and shifting power dynamics.

⁵⁰⁹ A McClintock 'Screwing the System: Sexwork, Race, and the Law' (1992) 2 *Boundary* 72: 'The moment of paying a female prostitute is structured around a paradox. The client touches the prostitute's hand in a fleeting moment of physical intimacy in the exchange of cash, a ritual exchange that confirms and guarantees each time the man's apparent economic mastery over the woman's sexuality, work, and time. At the same time, however, the moment of paying confirms precisely the opposite: the man's dependence on the woman's sexual power and skill. Prostitutes stand at the flash points of marriage and market, taking sex into the streets and money into the bedroom. Flagrantly and publicly demanding money for sexual services that men expect for free, prostitutes insist on exhibiting their sexwork as having economic value.'

⁵¹⁰ Trotter (note 67 above).

Given this inherent volatility, it is hardly surprising that any regulation that upsets the dynamics of the sex worker–client relationship may have disastrous results.

8.5 Mutual Exploitation: Economic Freedom as Resistance

It is important to appreciate that even the most exploitative of power relations present complexities. As Foucault has argued, discourses around sexuality and power relations defining them are not one-dimensional. ‘Foucault’s post-structuralist theory posits the emergence of peculiarly modern forms of power that operate via mechanisms of normalization rather than authority and command.’⁵¹¹ Within these discussions around sexuality, there may be expressions of resistance. South African sex workers have historically been penalised and tolerated, regarded as charlatans and renegades, as sites of contagion and disease, yet treated as necessary evils. Within the complexity of the competing views towards the existence of sex work, sex workers have been both required and disdained; they have managed to push the discourse around sexuality and have served as a resisting force against conservative morality around sexuality. Nonetheless, the very act of sex work may be perceived as an exertion of sex workers’ own power through the resistance of the male patriarchal system that relegates female sexuality to private expressions of domesticity. And the economic aspect of sex work simply cannot be ignored. Money is how men have long controlled women—marriage,

⁵¹¹ Munro (note 419 above) 547.

which has been a site for the exercise of patriarchy and male dominance,⁵¹² has historically been about money and access to power.⁵¹³ Sex workers have frequently benefited from the economic independence that sex work has afforded them.⁵¹⁴

Sex work advocates have argued that sex workers' sexual autonomy is not compromised because they retain the right to withdraw the contract at will.⁵¹⁵ Peter de Marneffe argues that sex work contracts should be treated in the same way as other labour contracts involving hazardous conditions.⁵¹⁶ Although the law has prohibited contracts that are voided due to public interest rationales, there may be reasons for it to be particularly careful about labour contracts, especially in contexts where limited labour options provide similar economic benefits in developing countries.⁵¹⁷ Sex workers frequently express their experiences as a form of dual consciousness of resistance and

⁵¹² See e.g. GH Chung, MB Tucker & D Takeuchi 'Wives' Relative Income Production and Household Male Dominance: Examining Violence among Asian American Enduring Couples' (2008) 57 *Family Relations* 227.

⁵¹³ A Bernstein 'For and against Marriage: A Revision' (2003) 102 *Michigan LR* 129.

⁵¹⁴ McClintock (note 509 above) 70.

⁵¹⁵ L Shrage 'Should Feminists Oppose Prostitution' (1989) 99 *Ethics* 347.

⁵¹⁶ P De Marneffe 'Avoiding Paternalism' (2006) 34 *Philosophy & Public Affairs* 68.

⁵¹⁷ *Ibid.*

choice.⁵¹⁸ Sex work does not fall neatly into a binary of choice or victimhood. There is frequently a contingent choice, which can be explored in Foucauldian terms.⁵¹⁹

[The] Foucaultian conception of power as a force which bears out its effects on every social agent, rather than as a commodity to be wielded in the interests of the socially privileged to maintain the ongoing derision of the socially subordinate has been welcomed by contemporary feminist theorists who have become increasingly dissatisfied with the more totalitarian arguments of the radical genre.⁵²⁰

Accordingly, there is no centralised form of power, and power can be expressed through resistance. Power is diffuse and cannot be attributed singularly to one source. In this way, sex workers are subject to male subordination and patriarchy. Yet, like all women, they still manage to retain some power and may express resistance to their subordination. They are still able to organise and exert power against the subordination through their resistance. The denial of this ability is critical to radical feminist arguments. However, the only thing that separates those feminists from their sex worker 'sisters' is that sex workers exert their power through sex rather than scholarship. Is the choice to be a scholar under male patriarchy really much different than the choice to be a sex worker? Why can we exercise our choice and not them? The only reasonable answer is

⁵¹⁸ Sanchez (note 411 above) 544.

⁵¹⁹ Ibid 545.

⁵²⁰ Munro (note 419 above) 549.

that there is something about sex itself that creates a bar to this. But who should decide whether sex should make the difference?

Sex work has the ability to change lives and create greater freedom from the male patriarchal structures in its ability to change the economic reality of sex workers. The question then becomes whether economics is an accurate measure for assessing freedom. In capitalist societies, it is undoubtedly a measurement, if not the measurement. Money does not discriminate and affords its holders access to opportunities otherwise unavailable. Suggesting that sex work can empower sex workers provides many moral dilemmas. For many, on its face, it is a suggestion that is morally reprehensible and should be avoided at all costs. As Embrace Dignity argues in South Africa, if women must resort to sex work, then we must do more to create economic empowerment and economic freedom. This argument is fine and should be considered; however, it does not preclude sex work as an alternative avenue for seeking such freedom. Various approaches can be adopted to encourage the same outcome. There is nothing to prohibit this from occurring. Rather, sex work should not automatically be excluded as a possible approach, especially in a developing country with high unemployment and low growth prospects such as South Africa.

It is critical to explore whether discourses around female sexuality and sex work reflect certain processes to reproduce particular modes of power as described by Foucault: 'Often the argument is simply a circular appeal to "sex".'⁵²¹ Discourses around

⁵²¹ Zatz (note 381 above) 277.

sexuality often serve to reinforce the power of those dictating the sexual norms. While open discussions about sexuality often serve to reinforce the power of those dictating the sexual norms. While openly discussing sexuality and the role of sex workers serves to make the discussion more robust and transparent, it may also serve to reiterate models of sexuality that strengthen male dominance by presupposing that men sit at the top of the sexual hierarchy. Or are we to assume that men are naturally more sexual beings and thus the sole beneficiaries of anything relating to sex? Admittedly, contemporary feminist perspectives are not so black and white. We must question whether sex work is always sex. If we position ourselves in the place of the male client, then sex work is a sexual transaction. However, for some sex workers, sex work is solely work, not at all sex. It is not necessarily an expression of their sexual prowess, and they are not mere victims in the exchange of their services. They are merely engaged in bodily work. In this sense, sex work is not merely a debate around sexuality and sexual appetite; it is to be considered as a form of labour and an alternative employment for women with limited employment options. While sex is occurring in actuality, in the experience of the sex worker, it is merely reduced to work in this transactional relationship, and she may in fact only perceive herself as having sex when she is with her domestic partner or spouse. The next question is whether we can separate our sex from ourselves. I believe we can. Men have been encouraged to think of sex in such a manner, thus why should women not be allowed to do the same? Some men cheat on their spouses, claiming that the infidelity was 'only sex'. Men have been lauded for being able to separate sex from emotion, viewing sex as a release or as a transaction. Why should women be deprived of this option where it would allow them to

benefit economically? Because such an approach ignores patriarchy? Because such an expression of sex belies our essentialisation of the sex experience?

The history of sex work in South Africa reveals that sex work has been used as a means for economic gain for women since the 1650s. There are reports of female slaves purchasing their freedom using the proceeds of their work as sex workers.⁵²² While these women were undoubtedly in a position of lesser power, such power imbalance does not erase the fact that sex work was a tool for empowerment in their particular circumstance. This begs the question whether feminist debates around sex work need to consider more thoroughly the pragmatic considerations and consequences that flow from the varying stances on it. As a matter of practicality, sex work was the tool that empowered women in this particular historical context to quite literally buy their freedom.

It is important to acknowledge connections between concepts and phenomena without simply reducing them to each other. In addition to crushing conceptual complexity and cultural variety under the heel of totalising theory, such a move encourages us to forget the variety of meanings that participation in a 'single' practice can have for different individuals or groups, even within a single historical moment; there is great evidence to suggest, for instance, that

⁵²² See Trotter (note 67 above).

prostitutes experience their profession in widely varying ways and that johns go to prostitutes for similarly various reasons.⁵²³

Feminist discourses should focus on how to improve and create the ideal conditions for sex workers in practical terms.

Prabha Kotiswaran has suggested that there is a middle ground for feminism that allows for the consideration of sex workers as agents without going as far as the 'sex work advocate' approach.⁵²⁴ She claims that the majority of feminists are actually situated somewhere in the middle and that there is room for the toleration of sex work as a form of labour.⁵²⁵ She suggests that material feminism provides a mode for understanding the evolution of sex work in its sensitivity to the historical position of gender and other structures to understand gender.⁵²⁶ Material feminism recognises that gender implications are situated within a particular historical context and reflect the political economy of the time.⁵²⁷ This approach is favorable in its recognition of female social positions as shifting.

⁵²³ Zatz (note 381 above) 301, 279–80.

⁵²⁴ Kotiswaran (note 406 above) 579.

⁵²⁵ Ibid.

⁵²⁶ Ibid.

⁵²⁷ Ibid.

Within the particular context of Johannesburg sex workers, all the women with whom I interacted were independent workers. Almost all of them had children, and none of them were skilled to engage in work outside domestic work in South Africa. In a country with 23 per cent employment,⁵²⁸ it is difficult to fathom outlawing the primary means of work that allows these women to provide a good lifestyle for their families. They were managing their risks within a particular societal context. 'In prostitution, the consequences of risk are different across markets because different categories of women have different risk profiles. . . . They have different degrees of control over their exposure to these risks.'⁵²⁹ Sex workers in Johannesburg adopt various strategies to protect themselves against the inherent dangers of their profession, but none of them had been coerced into the business. Abolitionist models ignore the economic realities of developing countries and the post-colonial social condition. Police members in Hillbrow acknowledged the economic necessity of sex work for many women and suggested that decriminalisation might actually reduce crime against sex workers:

DENI: Prostitution is done because of poverty. Poverty is the reason why there is prostitution. There is no more prostitution on the streets in Hillbrow. We have cleaned up the streets. Prior [in the 1990s and earlier], there was prostitution on the streets in Hillbrow. There was a lot of crime because of all the prostitution. They were involved in

⁵²⁸ S Klasen & I Woolard *Surviving unemployment without state support: unemployment and household formation in South Africa* (2009) 18 *Journal of African economies* 1.

⁵²⁹ Sanders (note 380 above) 1704.

other crimes and would be involved in robbery and would catch clients with organised criminals. There was a lot of violence on the streets when there was street-based prostitution. Some [now] are doing because of drugs and to support habits. Before, prostitutes were used as bait to get at other victims. They would cooperate with criminals to get victims. Now, we don't have too much problems [with street-based prostitution]. Legislation and legalising might drop rapes.

As Sanders has observed,

[W]omen use space strategically to avoid physical violence, arrest, criminalisation and harassment. The debates of agency and victimhood within prostitution have set out the complex parameters of whether a woman can consent to sell access to her body parts or whether all forms of prostitution are exploitative. . . . In this sense, the space on which women rely to advertise, negotiate and supply commercial sex is strategically used to their advantage in order to make cash and minimise chances of harm.⁵³⁰

The strategic use of space becomes its own form of resistance and enables women to negotiate power within oppressive structures.

⁵³⁰ Ibid 1708.

8. The Role of Police in Understanding Criminalisation

Police may prove unexpected allies as sex workers manage the risks of their work. Much of South African policy work paints the police and sex workers as non-cooperative entities when in fact their interests frequently align. There is great diversity in the relationship between police and sex workers, despite being actors with seemingly differential access to power. The police and sex workers are sometimes in sync. Police members indicated that there should be a policy in place that protects sex workers and addresses their concerns:

INDIA: [W]hat are your thoughts on prostitution?

APRIL: I think there must be a system or a department that deals with it because they are human and they need to be helped so that they can deal with the challenges that they are facing. If need be, they can be put in a very secure place so that they can trade.

Sex workers frequently displayed autonomy and agency in their relationships with police members, evincing dispersed power relations and that even those who have been labeled as 'vulnerable' or marginalised retain the power to resist and act upon others.⁵³¹ Engagement with the state is complex, and power can be harnessed by various actors, even the seemingly vulnerable. This complexity can become lost in policy debates advocating for legalistic rights-based reform.

⁵³¹ Michel Foucault *The History of Sexuality 6* (Robert Hurley trans., 1978).

In many instances during the course of my study, police members abused their authority and failed to protect sex workers in fulfillment of their legal mandate. However, the relationship between police and sex workers was complicated. Sex workers often recounted times when they called upon the police for assistance and indicated that their relationship with police was individualised. Police members generally expressed a willingness to improve their relationship with sex workers and indicated that the current state of affairs was quite poor. Police are frequently described as oppressors and abusers of sex workers in the literature. Much of the literature focuses on the instances of police abuse and police mistreating sex workers. However, sex workers often stated that they went to the police for assistance, demonstrating that there is potential for the police to be viewed as collaborators in improving the working conditions of sex workers:

CARY (CENTRAL JOHANNESBURG SEX WORKER): We meet some bad guys on the streets . . . guys were trying to rob us, and they [SAPS] helped so many times. . . . Metro is full of shit. They chase us way, if you don't run it's a problem.

INDIA: Do prostitutes call police for assistance?

CHRIS (HILLBROW POLICE MEMBER): Yes, they do. When they need help, they do.

INDIA: Have you responded to prostitutes' calls for assistance?

CHRIS: Yes, once. He slept with someone else so the guy didn't pay the lady. So they came to the police station. She wanted to open a

case, but it was an argument between two parties. I talked to the guy to give the lady the money that she deserves.

Some sex workers indicated that the criminalisation of sex work prevented them from seeking police assistance:

ANNIE (CENTRAL JOHANNESBURG SEX WORKER): Clients are beating us sometimes, taking our money.

INDIA: Do you feel comfortable going to the police?

ANNIE: No, going to say [I'm] selling my body, they took something. . . . [I would] feel embarrassed.

The continued criminalisation of sex workers makes it difficult for sex workers to seek open, civil legal assistance for their client disputes. While advocates frequently argue that sex workers need to access police for criminal remedies, in case they experience violence through clients, there is little attention paid to the civil remedies that would be available to them in a de jure decriminalisation system. Formal decriminalisation may improve access to justice by encouraging sex workers to enforce contracts that they have with others in the sex industry and to be forthcoming about the nature of their disputes when seeking police assistance. Some officers believe that sex workers resort to criminal charges to coerce clients into making outstanding payments:

SAM: They [prostitutes] come and say the person didn't pay. And they fabricate stories. The police must go in now, but it becomes a civil

matter. Those issues become civil matters. The problem is that this person will be saying that I was robbed. Then as police we must handle the case. But if the guy is prepared to pay then the case settles. Most times the lady will say, he raped me. The guy will be looking so scared that he will just pay the money that he owes her.

Human rights have been successful in influencing aspects of policing. While the perfect ideals of human rights are not maintained, a vernacularized version where police adopt the terminology and implement those aspects that resonate with them is in place.⁵³² Police members acknowledged that sex workers have human rights that require protection:

ZOLO: I think as police, according to the Constitution, we have to treat every person with dignity and respect. We have to be respective [sic] of whoever, of that particular person and how he is dressed and as a client, we just have to respect him and not to discriminate that this one or I heard someone that is no. As a police official, the man who is speaking peace in the country, we have to treat that person all equally irrespective of colour or nation because if that particular person then refers the NGOs and other organizations so we have to.

⁵³² SE Merry 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108 *American Anthropologist* 38, 39 (discussing how human rights has been translated to the local contexts through the process of vernacularization which allows global norms to be 'adapted to local institutions and meanings').

THEMBA: There definitely has to be [respect], there's no way that we can be saying, 'Hey you're a prostitute.' Those people are mothers, they are sisters to others, they are still human, the right to human dignity.

All the police members I encountered acknowledged that there were some merits to human rights. Some police members indicated that police officers need additional training in interviewing sex workers and hearing their complaints. They expressed a willingness to learn about what the policing of sex workers should appear. What are their obligations to the sex workers? How should they operate in this quasi-legal realm?

INDIA: OK, what is the relationship between police and prostitutes?

MIKE: It is not that properly. The prostitution is illegal. They are doing it illegally and have no permission to do those things and the police are arresting them without interviewing them before . . . To improve the relationship between the police and the prostitutes, if the police can give them a chance just to sit and interview them and why they are doing it and they are taking drugs, it would improve the relationship. The police are just arresting the prostitutes.

Both police members and sex workers confirmed that sex workers do call upon the police for assistance:

INDIA: OK. Do prostitutes ever call the police for help?

MIKE: Usually. Mostly, yes. They only call the police if there are any problems like someone stole their money or broke into their room. They are not segregating themselves.

Formal decriminalisation may encourage greater cooperation between police and sex workers in Johannesburg. Moreover, police members were interested in practical recommendations about how they should police sex workers and complained that they had very little guidance. Most of the police members I met believed that sex work should be a low priority policing task and several were able to recount specific situations where they served as mediators for sex workers. Several police members indicated that they were hesitant to form formal partnerships with sex workers because they were engaging in unlawful activities:

THEMBA: We're going, really, as a police officer, whatever is not legalised in the country there is no way that we can work hand in hand with them. You hear what I'm saying? It's like; it's like it's saying: 'I won't be charged,' like being a friend of a drug dealer. You cannot say, I'm not saying you should hate them but we are not supposed to have a relationship since it's not legal as yet.

SIPHO: To be honest with you now, being a police officer working in an area where there are some prostitutes it's not easy at all because sometimes they feel like we are after them. So it is not easy at all.

So even the prostitutes they don't feel safe where there is the police because what they think of is to get locked up if they do it.

INDIA: What are some of the challenges you face when you are policing and dealing with prostitutes?

APRIL: Since their trade is illegal it is hard to deal with them because they are too much. They are human beings and you feel for them, but their kids need some food, so it like you are still a criminal. It doesn't help to prevent it because they are there on the street. If you arrest them it is going to be like it is personal, so we just have to ignore them even though we know it is wrong.

The police members called for decriminalisation of sex work and clear rules about how sex workers should be policed. They believe that definitions about their roles in policing sex work were necessary:

INDIA: What are your thoughts on prostitution?

SIBELA: Must be a control mechanism, it is illegal right now. As police, it's useless. You cannot enforce that thing. They must find a way to work with that thing. You won't even see the magistrate. It is only to inconvenience for that evening. I think they must legislate it. We thought it would be a deterrent but it is not a deterrent.

INDIA: How do you think the policing of prostitutes can be improved?

SIBELA: Create red-light districts; these people are operating here. It is illegal only by name.

SIPHO: There should be proper legislation on how they do their operations. The criminalisation of prostitution only promotes crime and *creates a gap in how the law operates with regard to prostitutes*. We need more laws that tell us how it should happen and provide us with guidance concerning the regulation of prostitution. The current gap in the law is not helpful to police.

Prostitution also gives rise to robberies where the transaction goes wrong. Then the client doesn't pay, and then the prostitutes wants to come in to report the faulty client. Sometimes they are working with the criminals [and there is organised crime relating to prostitution]. They [organised criminals] are working with the prostitutes. Sometimes they get killed and are caught up in their involvement in these other crimes.

Contrary to what is often claimed, these data indicate that police may be potential partners for groups advocating on behalf of sex workers. Many police members appear interested in more clearly defining their role in the protection and policing of sex workers. Moreover, the majority of police members indicated that they would like sex work to be decriminalised and were frustrated by the inefficiencies associated with continued criminalisation. In these police stations, there may already be space to begin defining how the policing of sex workers should be improved, redefining the informal

practices that effect policing, as well as developing a discourse that normalises sex work and thereby reduces the stigmatisation of it.

Police participants were asked whether prostitution should be decriminalised. Table 7 presents a frequency table for the responses of Hillbrow and Rosebank police interviewees. As observed, a majority of the participants, with 15 (78.9 per cent) from Hillbrow and all ($n = 5$) from Rosebank, responded that prostitution should be decriminalised. Only a minority from Hillbrow ($n = 4$, 21.1 per cent) responded that prostitution should not be decriminalised.

Table 7

Hillbrow and Rosebank police interviewees' opinions on decriminalisation of sex work

Should prostitution be decriminalised?	Yes, n (%)	No, n (%)	Total, n (%)
Hillbrow	15 (78.9)	4 (21.1)	19 (100)
Rosebank	5 (100)	0 (0)	5 (100)

Participants were asked how they feel about sex work. Table 8 presents a frequency table for the perceptions of the police participants of sex work. As observed, a majority from Hillbrow ($n = 16$, 84.2 per cent) and Rosebank ($n = 4$, 80 per cent) felt that sex work permissible, and a minority from Hillbrow ($n = 3$, 15.8 per cent) and Rosebank ($n = 1$, 20 per cent) felt that sex work was very immoral.

Table 8

Hillbrow and Rosebank police interviewees' perceptions of sex work

How do you feel about sex work?	Very immoral, n (%)	Permissible, n (%)	Total, n (%)
Hillbrow	3 (15.8)	16 (84.2)	19 (100)
Rosebank	1 (20)	4 (80)	4 (100)

Participants were asked whether they should get more respect from prostitutes. Table 9 presents a frequency table for the responses of Hillbrow and Rosebank interviewees. More than half of the participants from Hillbrow ($n = 11$, 57.9 per cent) perceived that they should get much more respect from prostitutes, more than one-third of the participants from Hillbrow ($n = 7$, 36.8 per cent) perceived that they should get somewhat more respect from prostitutes, and only 1 participant (5.3 per cent) perceived that no more respect should be received from the prostitutes. All Rosebank interviewees ($n = 5$) perceived that they should get much more respect from the prostitutes.

Table 9

Hillbrow and Rosebank police interviewees' perceptions on prostitutes' respect for them

Should police get more respect from prostitutes?	Much more, n (%)	Somewhat more, n (%)	Not at all, n (%)	Total, n (%)
Hillbrow	11 (57.9)	7 (36.8)	1 (5.3)	19 (100)
Rosebank	5 (100)	0 (0)	0 (0)	5 (100)

By contrast, it is not convincing to claim that decriminalisation would be the ultimate resolution for sex work everywhere. Even where there is decriminalisation (or de facto decriminalisation), sex workers may still be marginalised and subject to various forms of social control. Moral policing occurs outside the law and may be an effective method for regulating the activities of clients and upsetting the sex market where sex workers work. Over-emphasis on criminalisation fetishises the penal law without critically examining its limitations and ability to disempower vulnerable women. Ultimately, any approach to sex work must consider the particular social and economic

contexts and the variables that make the various approaches to regulating sex workers suitable and be localised to recognise the different ways that sex work manifests itself.

CHAPTER 9. CONCLUSION

Multiple discourses that reflect various approaches, assumptions, and practices influence the policing of sex workers. These discourses reflect perceptions of beauty, hygiene, and female sexuality; expressions of masculinity; race; continuities with historical practices regarding the regulation of sex work; the evolution of the police organization; and the expectation that police will play a greater role in regulating private relationships. Police members' own perceptions of their role as enforcers of human rights and protectors of the public, a public that questions their power, play a role in how sex workers are policed in Johannesburg. As the ethnographic chapters show, these factors create a complex geography of sex that reproduces social hierarchies and patriarchy. The various approaches to policing sex work illustrate that even within the same city, the policing of sex work is widely varied. As my ethnographic findings demonstrate, there is no static 'sex work,' as in even in the same location it evolves over time. Mapping sex work in the city reveals how hierarchies and patriarchal structures are reflected in the sex work geography. Rosebank, central Johannesburg, and Hillbrow have distinct expressions of sex work that are strongly influenced by how police understand their role in the policing of domestic disputes and appropriate levels of transparent sexualities.

There are continuities between discourses relating to the sex workers' public health and hygiene and police's approach to the policing of sex workers. As discussed

in Chapter 3, South Africa has a long history of competing and complementary discourses that regulate the sex worker's body and shape public's perception of it.

The history of sex work in South Africa also demonstrates how sex work can be both oppressive and an exercise of resistance, both economically and socially transformative albeit in a social order that promotes patriarchy and female social oppression. Sex work has enabled some women slaves to purchase their freedom, widows to provide for their families, and enterprising women to earn an income that surpassed that available to them given their other skills. Although sex work may be viewed as the outcome of a system that is born of inequality and unfair social access, it may equally be viewed as a form of practical economic adaption. I cannot say it better than one Hillbrow police member, who recounted the complex social conditions that allow sex work to be lucrative for some sex workers:

JOHN: We find that the prostitutes,⁵³³ some of them do it just to commit crime and others want to do it to better their lives. Like I said, some of them do it because they want to commit crime, they don't know any other life, but others do it to better their life. I know I once interviewed a lady, I think in the late nineties she said she is only going to be here for a little while, by the time I had arrested her she had been here for about eight months if I'm not mistaken and she

⁵³³ Although I prefer to use the term 'sex worker' more generally in this dissertation, during my interviews with police, I used the term 'prostitute'. It is the term more commonly used by police, and I did not want to distance myself from the research participants while interviewing them.

had already accumulated 80 000 in the bank she deposited and I was surprised. And she told me she just wanted to give it one more year and then she was going to leave it and she is going to get herself her degree. So you find people who are forced to do it to better their lifestyles. Others want to do it because they don't know anything else. It's the only life that they know.

As discussed in chapter 3, during the Victorian era, the public health of sex workers was a curiosity that spurred the enactment of the Contagious Diseases Act, an exercise of bio-power upon the sex worker. The Act permitted state intervention through the inspection of the sex worker body. Contemporary approaches to the policing of sex workers are deeply influenced by these historical discourses. As discussed in Chapter 5, Hillbrow police are now less likely to police hotel-brothels that they view as less hygienic. In central Johannesburg, Metro police brutalise sex workers because they view them as unhygienic, yelling expletives at them while calling them dirty. These perceptions of the sex worker body as a site for discussions regarding public hygiene are consistent with socially engrained discourses that seek to regulate the female body, which is also a kind of bio-power that guides the application of state force.

Police in all three of the research sites relied upon their understandings of private and public to determine the appropriate method for policing sex work, reflecting historical discourses regarding the sex worker as a public nuisance and female sexuality as a thing to be regulated. In chapter 5, I discussed the exercise of police power through a licensing scheme in Hillbrow, and bio-power through the violent

policing practices in central Johannesburg. As a general matter, sex work is perceived as an act that should occur in private spaces. However, police's interpretation of what was private varied in the different sites. In Hillbrow, sex work was permissible so long as it occurred in private hotel-brothels. A complex system of licensing registrations and agreements creates a de facto state of decriminalisation in Hillbrow. The central Johannesburg Metro police resorted to historical approaches to policing sex work that relied upon public nuisance ordinances and maintenance of public order as discussed in chapter 5. The police were overtly hostile towards the sex workers there because they perceived them as threats to the public order. As I showed in Chapter 6, in Rosebank, the approach to sex work was constantly evolving and varied from being overtly tolerant of sex workers in an attempt to respect human rights to perverting human rights mandates to focus on the sex workers' clients to police members' individual financial benefit. As discussed in Chapter 4, dissatisfaction with salaries as expressed through nostalgia for apartheid-era policing made any form of security in the relationship between police and sex workers fragile.

The policing of sex work in Johannesburg is informed by understandings of human rights, and the law is often used to rationalise police actions, even when the police act unlawfully. The formal criminalisation of sex work was less relevant to the policing of sex workers than the police's interpretation of sex workers' rights and police's attempts to maintain order in the city. As discussed in chapters 5-7, police often coopted human rights and legalistic language to explain conduct that was outside of the law. Describing hotel-brothels as having 'licenses' became a way of informally legalising hotel-brothels in Hillbrow. Informal 'understandings' were how provisional agreements

facilitated street-based sex work in central Johannesburg. In Rosebank, police vernacularized human rights by refraining from the arrest of sex workers while taking bribes from the sex workers clients. All of these sites are in the same city. Yet, they illustrate the diverse ways that sex work may be expressed. Even within the same research site, 'sex work' evolved and was not static.

The ethnographic findings illustrate that patriarchy is not expressed in a singular manner, and it can take on surprising forms. In both Rosebank and Hillbrow, the sex workers who perceived as most hygienic had more police interactions and were more heavily policed although our intuitions might suggest the opposite should happen. The type of policing that these sex workers experienced reflected a benevolent police gaze, that is a type of biopower, but relies on less brute force.

The policing of sex work also demonstrates the continuities in the historical policing of sex work and the exercise of "bio-power" to define the sex work community. The public health of sex workers remains prominent in contemporary discourses about sex work. In fact, much of the contemporary research on sex work focuses on biomedical questions and interrogates how to reduce sex workers' exposure to HIV,⁵³⁴ as South Africa has a high HIV rate.⁵³⁵ As discussed in Chapter 6, the focus of a significant portion of the local research on sex workers relates to the HIV status of sex workers, sex workers' vulnerabilities, and public health features of the sex worker

⁵³⁴ See e.g. note 4 above.

⁵³⁵ Rees (note 21 above).

community. This research is undoubtedly well intentioned, but several of the studies are premised on the notion that sex workers' bodies are inevitably sites of contagion given their occupation. The 2016 SANAC program is important in expanding sex workers' access to healthcare and focusing on the social and political rights. However, it also fostered discourses that focus on the sex worker as a site of contagion and reinforced views about the sex worker as being unclean, while ignoring the sex worker's client as part of the public health agenda. This focus reflects a continuity with the Contagious Diseases Act, which was expressly concerned with protecting the public health, and exclusively focused on the sex worker's body as a tool for advancing the public health. In fact, this public health discourse is so powerful that it may be the basis for ultimately decriminalising sex work in South Africa.⁵³⁶ Public health discussants must be especially careful in how they talk about sex workers and deliberately build a narrative that develops the sex work beyond her public health profile and how regulating her ends the spread of disease.

It is frequently treated as a foregone conclusion that sex workers are more diseased than the general population. This has promoted certain campaigns that advocate for decriminalisation by arguing that it would be in the interest of public health. This is not inherently problematic; however, it continues the tradition of treating the sex worker body as a site for public inspection and investigation—a place for surveillance. The sex worker's interests matter to the extent that they protect the public from her

⁵³⁶ C Albertyn 'Debate around sex work in South Africa tilts towards decriminalisation' *The Conversation* (15 May 2016) ('If history is to be our guide, then public health arguments are powerful motivators for reform. Many hope that the combination of public health and human rights in Ramaphosa's address will underpin progressive law reform in this area to accelerate the decriminalisation of sex work.').

hygienic practices. This assumption is problematic because it reinforces the stigmatization of the sex worker and reinforces the public's imagination of the sex worker as dirty and undignified. Accordingly, South African sex workers' increased HIV rate is not a foregone and inevitable occupational hazard. These public health discourses have the unintended consequence of reinforcing the narrative of the sex worker body as site of contagion by failing to examine why the South African context differs from other contexts. They unintentionally continue the discourse that enables lawmakers to exert power over the sex worker body by employing a public health rationale, suggesting continuities between past forms of regulation and contemporary forms. And, they rarely mention the sex worker's clients or highlight the client's role in advancing the public health.

The question of criminalization is also central to understanding the policing of sex workers. As discussed in Chapter 8, the contemporary feminist discourse has in large part focused on the issue of criminalisation. Feminists generally agree that sex workers should not be criminalised for engaging in sex work. However, feminists disagree as to whether sex should ever be viewed as viable work. Radical feminists argue that abolition is the ultimate goal because sex is never a viable employment option, and they consider the structural harms of patriarchy in assessing how sex work should be treated. They argue that sex work reinforces a structure that supports patriarchy and the availability of women for sex at the disposal of men.

This thesis also considers the structural harms of patriarchy, but it arrives at a very different conclusion than radical feminists. Abolitionist arguments are problematic

because they rely upon the essentialisation of sexuality, womankind, and sex. Radical feminists reify patriarchy by assuming that sex is necessarily harmful to women without acknowledging circumstances where women are able to exploit the desires of men to their economic benefit. They are premised on the notion that sex is necessarily an oppressive act for women and that women are incapable of separating their bodywork from their personal selves. These arguments also completely ignore the autonomy of the individual sex worker subjugating her choices for the better of a larger structure, which works against her individual interests. The ethnographic chapters illustrate that eliminating the ability to engage in sex work is at times more harmful to women than engaging in sex work itself. And even after considering the structural harms of patriarchy and racism, sex workers may be more empowered within these oppressive structures when their power to resist and survive is acknowledged rather than erased to serve a singular womankind. Abolitionists frequently argue for the Swedish model for sex work regulation as a universally suitable approach. The Rosebank case study highlights just a few of the problems with the Swedish model in the South African context, such as making women who are desperate for work even more desperate as their primary source of income is eliminated.

Other feminists argue that women should be able to make the choice to use sex for employment options. Though clearly sex work is often dangerous and hazardous, these dangers can be mitigated under decriminalisation. Accordingly, decriminalisation seems suitable in most contexts in its recognition of the sex worker's autonomy and liberty. However, a singular model for sex work regulation should not be transposed to all contexts. The treatment of sex work must be localised. As seen during the course of

my ethnography, there is no singular sex work, even within the same city or the same locality. Sex work is continuously shifting, and its formations are vulnerable to minor geopolitical changes. The appropriate regulation of sex work will vary by location and may require different solutions to accommodate this. In South Africa, stark economic realities make sex work a viable option for some women. Taking away these women's clients does nothing to redress their economic situation and treats them as infants incapable of independent decision-making. In this way, a perspective that is decidedly intersectional, that is sensitive to overlapping systems of oppression by considering the sex workers' gender, race, and economic status, allows for a nuanced analysis of the realities of using sex for work. Several sex workers, all of whom were black women with no comparable economic alternatives, complained about the economic realities that brought them to their work, and they best describe the reality of their options:

ANNIE (ROSEBANK SEX WORKER): I come every day for money. I have children. The hotels are full so I'm working in the street.

CATHI: They are taking our clients. The clients now know about it that in Rosebank that the police take money. This is our money. These Rosebank police must stop, Norwood must stop. Some are from Norwood and Johannesburg Central. Our clients are under threat. We are raising our children and we need this money. . . . All police are involved, men and women.

Although I agree with the sex workers and police members I encountered that sex work should be decriminalised in Johannesburg, I do not think that the question of

how sex work should be treated stops there. There has been an over-emphasis on legal change and a fetishisation of the law during discourses of criminalisation. There are strong reasons why sex work should not be criminalised,⁵³⁷ but there should be an infrastructure in place that guides police on how to interact with sex workers, circumventing the need for the informal rules that generally dictate the police approach to sex workers in the current state of de facto decriminalisation. It is inadequate merely to state that there should be decriminalisation without specifying what decriminalisation should look like. Furthermore, over-emphasising formal criminalization, even if only of clients, places too much confidence on the penal system to address issues relating to sex work. The history of the policing of sex work in South Africa reveals that sex work has mostly been policed informally and treated as a public nuisance matter.

The overemphasis on pushing for or against (de)criminalisation fails to appreciate how other discourses indirectly police sex workers' bodies while empowering the discussants rather than the sex workers. The continuous tension between policy and practice indicates that policies have been unsuccessful in responding to the lived reality of sex work. In this sense, broad pronouncements about the decriminalisation of sex work require additional nuance that appreciates the historical conditions that inform sex work as well as localization to address the particular concerns of the relevant

⁵³⁷ For an overview of the various debates concerning the decriminalisation of sex work, compare K Abrams 'Sex Wars Redux: Agency and Coercion in Feminist Legal Theory' (1995) 95 *Columbia LR* 304, 328–29; CS Vance *More Danger, More Pleasure: A Decade after the Barnard Sexuality Conference, Please and Danger* (1992) xvii (critiquing radical feminist approaches to sex work that view women as victims), with K Barry, *Female Sexual Slavery* (1979) 9; A Dworkin & C Mackinnon *Pornography and Civil Rights: A New Day for Women's Equality* (1988) 24 (treating sex work as inherently problematic and violent for women).

community. In fact, activist attempts reinforced the discourses that police sex workers' bodies, for example in the public health context, while advocating for decriminalisation.

The law is viewed as the solution for sex worker issues, and the thrust of the debate focuses on criminalisation. However, the law can be violent and discriminatory, especially towards disenfranchised women. In South Africa especially, it is important to a broader regulatory framework that recognizes the realities of sex workers. This framework might include police manual guidelines and training specific to the treatment of sex workers; messaging and communications manuals and toolkits that educate stakeholders about how to talk about sex workers and advance a narrative that empowers them; partnerships, and community forums comprising police and sex workers to discuss concerns and problem-solving strategies; increased sensitivity in the public health research that pertains to sex workers in the language used to speak about sex workers and the inclusion of sex workers' clients in the discussions; and partnerships that ensure that police are educated about the human rights protections that they are mandated to provide sex workers under the South African human rights framework. These reforms would create much-needed transparency in the policing of sex workers. Where the negotiation of relationships is explicit and not the result of informal responses, more favorable rules can aim to balance existing power imbalances. This may help insulate against negative expressions of masculinities and protect against discrimination.

In thinking creatively about the policing of sex workers, police can be viewed as possible collaborators with sex workers. Although in some instances police abuse their

power, police can often be viewed as allies to sex workers. The interests of police and sex workers frequently align, although this relationship is often treated as static, flat, and polarised. There is an assumption that the police enforce sex work regulation against sex workers at a much higher rate than clients. This is no doubt true in certain circumstances, but the reality is most likely more complicated. Police may be targeting clients with alternative motivations, and clients may be able to buy their way out of trouble, creating the perception that only sex workers are being arrested on the books. In imagining a state where decriminalisation exists, creating meaningful partnerships with police may ensure that sex workers' rights are protected.

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