PROSTITUTION AND THE STATE IN VICTORIA, 1890-1914

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LIST OF ABBREVIATIONS USED

C.D. Acts - Contagious Diseases Acts
Vic. P.R.O. - Victorian Public Records Office
V.P.D. - Victorian Parliamentary Debates
V.P.P. - Victorian Parliamentary Papers
W.C.T.U. - Woman's Christian Temperance Union
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The later decades of the nineteenth and the early decades of the twentieth centuries were marked by considerable change in Victorian society. Rapid urban expansion and industrialization were among the most profound of these developments. They resulted in increasing problems of urban over-crowding, poverty, sanitation and, despite the youth of the cities, decay. Those in power began to see these urban problems as being partly related to the nature of working-class life, so sought to control aspects of working-class culture to an unprecedented degree. During this period, legislation relating to liquor, tobacco, drugs, and gambling, for example, were brought into effect for the first time or became more intrusive. Street life was becoming increasingly regulated. In 1891, for example, amendments to the Victorian Police Offences Act made important changes to the social construction of anti-social behaviour and placed increased power in the hands of the police and legal institutions to control the behaviour of individuals in public places. As part of this development, soliciting prostitution was made an offence for the first time.

Women, too, had become subversive. Feminists demanded the vote, increased educational opportunities and threatened the established power differential between the sexes. At the same time, legislation was being passed and medical practices were emerging which increasingly impinged upon women's bodies and upon the areas of women's traditional power - life itself and child life. Kerreen Reiger has traced the increasing attempts to professionalize and rationalize family life, resulting in greater intrusion into the lives of women in relation to childbirth and motherhood.¹ Increasing

attempts to control prostitution in Australia date from this same period, and can be seen as part of these processes. It was from the 1860s that an edifice of laws was constructed. Firstly, legislators were concerned with how women were forced into prostitution (procuring), the relationships between women working in prostitution and their children, and the spread of venereal disease. Later, from the 1890s, there was a new spate of legislation related to soliciting, the ownership and management of brothels, procuring, and living on the earnings of prostitution. During the same period a centralized, bureaucratized police force, which was crucially involved in the increasing control of prostitution, was established in Victoria. The prison system, too, became more organized and intrusive. By the later part of this period the move toward greater state intrusion into the area of prostitution was clear; the years 1890 to 1914 have been chosen for detailed study. This period was marked at the beginning by important new amendments to the Police Offences and Crimes Acts in 1891 and at the end by the advent of the First World War, which created new contexts and problems.

Despite the fact that Melbourne was deemed to be 'Marvellous' in 1890 by many contemporary commentators, women were always in a precarious economic position in nineteenth century Australia. The edge may have been removed from early colonial harshness for Victorian women by 1890, yet women, overall, had fewer economic alternatives than men. Women were expected to gain all or some of their economic support from men, depending on their class and marital status. This assumption was built into wage structures so that women who did have to earn their keep often received insufficient for subsistence. Marriage was probably the most attractive option for most women, but despite the predominance of men in the Victorian population, not all women married. Even when they did marry, they were usually in their mid-twenties by the time they made this transition. For single women, employment options were severely limited. Domestic service was the most common form of employment. This was often gruelling and unattractive work, offering little incentive or personal freedom. Even if they did marry, many women were not
guaranteed economic security; men's wages, too, were often insufficient to provide adequately for the contingencies of life and there was little job security. A significant proportion of work available to men was itinerant, and there was no comprehensive welfare system or charity network which could provide adequate support for everybody who found themselves in financial crisis. Aboriginal women faced additional problems. Racial discrimination denied them many work options available even to white women. So the economic reality for all women, that social expectations demanded that they relied upon male support in exchange for sexual services, was even starker for Aboriginal women. Consequently prostitution became both an economic necessity for some women and a relatively attractive option in a severely limited job market.

It follows that the 1890s depression must have resulted in numbers of women who had not previously worked as prostitutes being forced to do so. However, it is difficult to determine the exact impact of depression on the prostitution trade. It is not possible to conclude from increased arrest statistics that prostitution was more prevalent because such statistics may simply reflect an increase in police activity. Something can, however, be deduced from a brief examination of the economic effects of the depression. Those poor women forced into prostitution would have probably taken up the occupation at different stages of the depression depending upon whether or not they were married. In 1887, the small apparel factories and shops employing female labour fell on hard times. Young single women who depended upon work in these industries would in some circumstances have found it necessary to work as prostitutes, at least on a part-time basis, years before the main crisis began. Married women, on the other hand, would have been more likely to enter prostitution as a result of the unemployment of their husbands in the early 1890s. Although the depression would clearly have influenced the choices available to individual women, and quite probably affected the
Introduction

The exact timing of some legislation, it is mentioned here as important context rather than a primary focus of this study.²

Economic background is important to the consideration of prostitution as women's work. This work, however, is fundamentally related to sexuality, in the same way that women's work in the home is connected with the sexual systems which our society has constructed. Prostitution has in different social contexts acted as a bastion of established sexual practices.³ A particular ideological construction related to sexuality, important in shaping prostitution, has been the double standard of sexual morality. Many scholars have examined the way in which this was particularly acute in Victorian times; it is not the intention of this thesis to add to these detailed studies, yet an understanding of it is necessary to comprehend the ambivalence of the state to prostitution in the period from 1890 to 1914. The ideal, good woman was expected to display no interest in sex. As the English physician William Acton wrote:

The best mothers, wives and managers of households know little or nothing of sexual indulgence. Love of home, children and domestic duties are the only passions they feel ... As a general rule, a modest woman seldom desires any sexual gratification for herself.⁴

² Frances Finnegan, Poverty and Prostitution: A Study of Victorian Prostitutes in York, Cambridge University Press, Cambridge, 1978 is a study which focusses in a valuable way upon the economic basis of prostitution.


On the other hand, male sexuality was regarded as urgent and compelling and sexual adventure the measure of the man. Australian doctors, too, wrote of the stronger male sexual drive and the way in which wives 'submit to ... intercourse [more frequent than once or twice a month] only out of a sense of duty or affection'. In this context prostitution was recognized as a 'necessary evil', yet because prostitutes were the antithesis of the idea of the good woman, women working as prostitutes were vilified. This was the other side of the coin; there was a legacy of regarding women's sexuality as dangerous and demonic; the whore became the repository of this potent and persuasive sexuality while the good woman was pedestalized and desexualized. This distinction of women into two mutually exclusive groups has helped to ensure paternity in patriarchal and patrilineal societies while ensuring men sexual access to a number of women. Anne Summers in her germinal book *Damned Whores and God's Police* has shown how this idea that prostitutes were profoundly 'bad', because their work was seen simply as an expression of deviant sexuality, has actually controlled the way in which all women have lived their lives in Australia. With appropriate feminine sexual behaviour rigidly defined, women were divided into 'damned whores' and 'god's police', the existence of the 'damned whores' a constant reminder to all women of the fate which might befall them if they strayed from the straight and narrow path. Laws and the practices of state agencies have served to institutionalize the categories of 'good' and 'bad' women; some aspects of this are discussed later in the thesis. At the same time, although the ostensible aim of the laws has been to limit prostitution, these

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laws have also reflected the idea that men have sexual rights over a group of women in the community.7

The peculiar interaction of these gender ideologies with the increased state incursions into working-class life at this period resulted in a lack of continuity and ambivalence in state policy toward prostitution. It became the subject of a compromise between total repression and formal state regulation. Total repression was not acceptable, because it would deny men sexual access to prostitutes, but formal regulation risked sanctioning sex outside of marriage and undermining the central

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position of the family. On the other hand, the bourgeois desire for urban order required that action be taken, at least against the most visible elements of the trade. The laws that resulted, and the ways in which they have been administered, have shaped the prostitution trade and the experiences of women working as prostitutes over the last hundred years or so.

What was the nature of the prostitution trade in the late nineteenth century? A number of sources generated in the period immediately preceding that covered by this thesis make it possible to describe the phenomenon which the state sought to control to a greater degree in the 1890s and early twentieth century. Prostitution was an extremely visible phenomenon in the central area of the city. From contemporary accounts it seems than any man walking through the eastern part of the city represented potential work for the prostitute. Street soliciting was rampant with 'some of the best streets in Melbourne ... the nightly promenade of hundreds of fallen ones'.

Soliciting was also common in bars and theatre vestibules. At the request of the Government Statist in 1892, Chief Commissioner Chomley requested returns of the number of known prostitutes from all Victorian police districts. There were 482 women living in brothels in Melbourne, 491 others earning their living by prostitution but not residing in brothels and 261 country-based prostitutes, making a total of 1,234. However, it is very difficult to determine the extent of prostitution in any community. Even the observations of authorities in immediate contact with prostitution contain marked discrepancies. At the 1906 Royal

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10 'Social Statistics. Prostitution Return', Box 357, Chief Commissioner of Police, Inward Registered Correspondence 1852-1893, Series 937, Vic. P.R.O. Contemporaries often multiplied numbers of known prostitutes by a factor of between three and four to come to some estimate of total numbers: Varley, *Mr Varley's Full Address*, p. 16; Dr. Singleton in Report re. Contagious Diseases 1878, p. 67; Sergeant Dalton in the same report, p. 16.
Commission on the Victorian Police Force, one plain-clothes policeman stated that he believed the level of prostitution had been diminishing for some years while another thought it had remained about the same. Police surveys can never reveal the women who worked as prostitutes yet remained unknown to the police and criminal statistics cannot reveal the level of prostitution related activities. It is therefore impossible to correlate accurately fluctuations in the prostitution labour market with other social factors such as war, depression, changing economic opportunities for women, and changing attitudes to women and to female sexuality. Nevertheless, there are many useful ways of understanding prostitution without reliable labour market statistics.

To the outside observer, there were clear divisions within the prostitution trade. The hierarchy of houses consisted of 'the higher-class brothel, the respectable receiving house, the low accommodation house. Then there is the lowest style of brothel, such as exists in Romeo-lane, Bilkig-square, and similar places.' 'Flash girls' operated from high-class brothels in both the city and Carlton. These were lavishly furnished: one in Neil Street Carlton was furnished by Samuel Nathan at a cost of £2,000. Those entering and leaving such establishments could only be described as 'gentlemen.' In some of these brothels the women handed over their takings to the madames, were provided with a wage and dressed in silks and satins—hence they were called 'dressed

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12 See Chapter Three.

13 Report re. Contagious Diseases 1878, p. 3.

14 "Royal Commission of Enquiry into the Circumstances of the Kelly Outbreak, the Present State and Organization of the Police Force, etc.; Reports and Minutes of Evidence', V.P.P., 1880/81, 4, p. 1153, No. 97; 1881, 3, p. 1, Nos. 22 & 31; 1882/83, 3, p. 807, No. 66; 1883, 2, 1st Session, p. 593, No. 10 & p. 967, No. 21, p. viii. Future references to this Royal Commission are to the final report and minutes of evidence published in the 1883 V.P.P. See also Varley, Mr. Varley's Full Address, p. 6 and Varley, Melbourne and Its Sin, Alex McKinley & Co., Melbourne, 1880. Published at the request of the Melbourne Evangelistic Association.

15 Royal Commission on Police 1883, p. 31.
girls'. Others, such as Mother Henry's in Flinders Street, were run as 'short-time houses' where a 'flash girl' could go with a gentleman and pay ten shillings for the use of a bed, presumably pocketing the balance of her earnings. Mrs. Kemp's in Drummond Street was even more exclusive, charging a one pound fee. Mother Fraser's in Stephen Street, another high-class establishment, was not a short-time place. The lower echelons of the prostitution trade therefore did not have a monopoly on the system of bed-letting.

The prostitutes of the 'lowest class' worked from the brothels in the back-slums of Little Bourke Street, Little Lonsdale Street, Little Latrobe Street and the multitude of lanes which laced this area. The cottages were small, often comprising just two rooms, and the rents high: between one and two pounds per week. Women clubbed together to rent these places, usually in twos, sometimes in groups of three or even four. Sometimes they would have 'a bully or two' living with them in crowded conditions, offering little chance of working in private. The cottages were supposedly rented furnished but furnishings were meagre, being limited usually to old stretchers, bags and mattresses. The landlords also gave no security, throwing the tenants out if rent became at all overdue. The life, however, would have had its compensations. There was obviously a sense of comradeship amongst the dwellers of the slums. The women who lived together called each other 'chums' and 'mates' and helped each other pay fines. An atmosphere of public sociability was noted by the 'Vagabond' who observed:

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16 Report re. Contagious Diseases 1878, p. 3.

17 That this was the case is indicated by a story told by Sergeant Dalton: 'A prostitute and a man went past and I heard them making a bargain. It was to be a pound, and he was to pay for the bed 7s 6d.' Royal Commission on Police 1883, p. 32.

18 Ibid., pp. 31-32.

19 Report re. Contagious Diseases 1878, pp. 10, 12, 14 & 70.
society in the neighbourhood to be of a very public kind, the doorsteps, the kerb-
stones, and the centre of the road forming convenient resting-places for the female
population, who sun themselves and interchange ideas and opinions.\textsuperscript{20}

The largest group of women working as prostitutes were probably those who
worked part-time, coming in from the suburbs to the city when they needed work, or
operating in smaller numbers around the inner suburbs. They either took men back to
their rented rooms, utilized the 'short-term' houses or simply took men into any of the
numerous gardens around Melbourne—perhaps the Fitzroy Gardens, the Carlton
Gardens, Richmond Paddock or the scrub lined banks of the Yarra.\textsuperscript{21} Many of these
women would have constituted the 'middle ranks' of prostitutes.

Hotels, and even some tobacconists, cigar and fruit shops were involved in the
prostitution trade, either providing beds or meeting places.\textsuperscript{22} In July 1884, Sergeant
O'Meara suggested that sixty hotels in the city were implicated in some way. Some
were quite simply brothels with licenses. In 1884 it was discovered that Green's
Victoria Hotel on the corner of Russell and Lonsdale Streets was run as a 'flash'
brothel with practically no bar trade.\textsuperscript{23} At the Royal Commission into the Police in
1883, Sergeant Dalton testified that prostitution was an essential business activity in
many city hotels. Some houses operated only as assignation houses where prostitutes
and customers could meet before going to a nearby brothel. Hotels classed as

\begin{itemize}
\item \textsuperscript{20} James, 'The Outcasts of Melbourne' in James, \textit{Vagabond Papers}, p. 31.
\item \textsuperscript{21} Report re. Contagious Diseases 1878, pp. 3, 4 & 16.
\item \textsuperscript{22} Ibid., p. 5.
\item \textsuperscript{23} Chris McConville, 'Outcast Melbourne: Social Deviance in the City, 1880-1914', M.A.
\end{itemize}
'providers' were in the money spinning business of providing beds. Here the women took their clients after meeting them on the streets or in a bar.\textsuperscript{24}

An enormous demand for the services of prostitutes must have existed right across the social spectrum in order to support such a diverse and flourishing trade. In the 'saddling paddock', a bar in the Theatre Royal notorious as a rendez-vous for prostitutes and clients, one would rub shoulders with men 'of all classes—"gentlemen", betting men, sharpers, clerks, junior officers of merchant vessels, and new chums'.\textsuperscript{25} 'Respectable' young fellows used prostitutes and some lamented 'the low tone of morality among many of the married [men] in this city'.\textsuperscript{26} This huge demand was created by the particularly acute double standard of morality discussed earlier. This blatant and seemingly all-pervasive nature of Victorian prostitution, common in urbanizing societies, has been seen to be integrally related to the peculiar nature of Victorian sexuality. While insights gained from many studies which focus upon Victorian sexuality remain important, this thesis has drawn inspiration from a variety of sources.\textsuperscript{27}

A number of more recent studies in the history of sexuality form one historiographical context for this thesis. Among these I place the work of French theorist Michel Foucault, and British historians Judith Walkowitz and Jeffrey Weeks. Foucault has targeted several important sites of the operation of power in Western societies over the modern period: madness, medical discourse, the nature of

\textsuperscript{24} Royal Commission on Police 1883, pp. 30-1.

\textsuperscript{25} James, The Theatre Vestibules' in James, Vagabond Papers, p. 234.

\textsuperscript{26} Report re. Contagious Diseases 1878, p. 15; Varley, Melbourne and Its Sin, p. 6.

\textsuperscript{27} See note 6.
incarceration and sexuality, many of which coincide in a study of prostitution.\textsuperscript{28} His insight that sexuality is historically constructed was not new—his work was a revision of much of the writing on Victorian sexuality noted above. Furthermore, feminist historians had been examining various aspects of the history of sexuality for a number of years; as already indicated, some of these earlier insights are important to this thesis. However, Foucault's argument refuting 'the repressive hypothesis' about Victorian sexuality, suggesting instead that the Victorian period was characterized by ever more incisive discourses about sexuality which created a positive technology of power in the area, is an important and liberating one, for it leads to a whole new line of inquiry about the nature of this type of control. While Foucault's main concern is with the operation of power at the level of discourse, the increased attempts at state incursion into prostitution and the lives of prostitutes in Victoria can be seen as part of the institutional processes associated with the greater distinction between the licit and the illicit which Foucault suggests was occurring at the level of discourse at this period. It could even be said that the particularly acute form of the double standard in the Victorian era which is important to a feminist understanding of prostitution is consistent with Foucaultian notions of the new technology of power in the area of sexuality—it was part of the whole process of increasing definitions and distinctions, in this case, between female and male sexuality. However, Foucault's study does not serve as a direct model for this thesis, in particular, because of the absence of speakers and actors from his genealogies of discourse. Jeffrey Weeks in \textit{Sex, Politics and Society} takes Foucault's starting point and begins to introduce the protagonists in an illuminating way.\textsuperscript{29} This thesis can be


placed in this context and seen as part of this broad attempt to understand the nature of
the increasing control of sexuality around this time.\footnote{There is a considerable body of scholarship emphasizing various aspects of the social
construction of sexuality. Some which I have found valuable are: Ellen Ross & Rayna Rapp, 'Sex and
Society: A Research Note from Social History and Anthropology' in Ann Snitow, Christine Stansell
York, 1983; Introduction to Ann Snitow et. al. (eds), Powers ; Another useful collection is Catherine
R. Stimpson & Ethel Spector Person (eds), Women, Sex and Sexuality, The University of Chicago
Press, Chicago, 1980; Radical History Review, 20, Spring/Summer 1979 is a special issue on
sexuality, much of which is valuable material—see especially Robert A. Padgug, 'Sexual Matters: On
Conceptualizing Sexuality In History', pp. 3-23; Jon Cook, 'Notes on History, Politics and Sexuality'
Martha Vicinus, 'Sexuality and Power: A Review of Current Work in the History of Sexuality',
Feminist Studies, 8, 1, Spring 1982, pp. 133-156.}

Foucault's notions of power are also important. In particular, I share his interest
in the operations of:

power at its extremities, in its ultimate destinations, with those points where it
becomes capillary, that is in its more regional and local forms and institutions ... at
the point where it is in direct and immediate relationship with that which we can
 provisionally call its object, its target, its field of application, there—that is to
say—where it installs itself and produces its real effects.\footnote{Michel Foucault, 'Two Lectures' in Power Knowledge: Selected Interviews & Other
Foucault, Power, Truth, Strategy, ed. Meaghan Morris & Paul Patton, 'Working Papers' Collection 2,
Feral Publications, Sydney, 1979; Gary Wickham, 'Power and Power Analysis: Beyond Foucault?”,
Economy and Society, 12, 1983, pp. 468-98 provides a useful analysis and critique of Foucault and
comes to the same conclusion that results from my feminist perspective: that it is necessary to avoid
the way in which Foucault privileges knowledge and discourse over lived experience. He uses the idea
of practices being the combination of techniques and discourses which is one useful way of looking at
what I have done in this thesis.}

This emphasis has combined in this thesis with the influence of the 'new social
history', concerned to write history from the bottom up, and that of the collected works
of feminist history, concerned to recover lost worlds of female experience. All have
contributed toward my focus on the question: 'what happened to the women in the
trade' rather than simply on state policy, the process of reform and what the middle
class was saying about prostitution. This emphasis led me to seek the extremities of the
operation of state power, which Foucault has pointed out to be an essential task. It was in their contact with state agencies—the police, courts and prisons—that women experienced the operation of state power in their lives. This was crucially related to the formal process of law-making but this was one step away from the lives of women working as prostitutes. Nowhere in Victoria have I come across the type of organized worker resistance to legislation which occurred in some of England's port towns during the operation of the Contagious Diseases Acts. Once workers become involved in this type of resistance the law-making process itself can be regarded as an area of power-play in which the women are involved, in much the same way that unionized workers participate in the determination of their working conditions. This is now to some extent the case in Victoria where the Australian Collective of Prostitutes has been active in the recent process of law reform. However, in Victoria from 1890 to 1914, it was in their day-to-day contact with the police, courts and prisons that women in prostitution experienced state power and offered their resistance to it. Resistance at this level is subversive because it challenges the dispersed ways in which power operates in society. Arguably, it does not need an articulated political philosophy to be effective in some ways, as the relationship between police and prostitutes discussed in Chapter Two indicates.

This view of the dispersed nature of power is consistent with some recent studies in Australian history. In particular, while not presenting a single view of the history of the state in Australia, the collection What Rough Beast has challenged the historical view of the state as a monolithic entity simply reflecting the intentions of the ruling class. The book draws attention to the need to examine both the complexities of relatively autonomous institutions and social forces which mediate state policy. Conflict and lack of cohesion characterize many areas where social life and state power intersect.32

Within Australian historiography there has also been specific interest in the pivotal role of the various sites of power within the state (primarily the legislature, the police and the courts) in shaping prostitution. In her study of prostitution in Perth and Kalgoolie from 1895 to 1924, Raelene Davidson (now Frances) has focused particularly on the role of the police, illustrating clearly the power they had over the lives of women who worked as prostitutes.33 Challenging reinterpretations abound in Judith Allen's article in which she has analysed some possible links between the legislative process, methods of selective police enforcement of the law and the growth of organized criminal involvement in prostitution in New South Wales. Her concern was to illuminate the ways in which these considerations affected the option of prostitution for women in New South Wales. While there are problems associated with finding for the study of extortion and corruption both the type and quantity of sources upon which historians are trained to rely, Allen has nevertheless come to some important conclusions. Her central argument is that the Police Offences Act, 1908 (including the creation of the offences of soliciting, living on the earnings of prostitution, knowingly letting premises to prostitutes, and the alteration of brothel-keeping from an indictable offence to summary disposal, with the object of more certain convictions) facilitated the development of monopoly control of prostitution by organized crime. The new legislation opened the way for an almost imperceptible shift from earlier types of selective enforcement to monopoly extortion rackets. The effect for women working as prostitutes was monumental. No longer able to operate as freelancers in control of their own work conditions, they became proletarianized, employees of the interests controlling the brothels, their working conditions controlled by criminal statute. While this work has not been a direct model for this thesis—conditions in Victoria were substantially different from those in New South Wales—Allen's central questions about the extent to which state agencies shape

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prostitution and her particularly acute interrogation of her sources have guided this study.34

Judith Walkowitz's contributions during the 1970s, culminating in the publication in 1980 of her impressive study, *Prostitution and Victorian society: Women, Class and the State*, have been particularly illuminating.35 Her book is a study of prostitution in Victorian England, with particular emphasis placed upon the Contagious Diseases Acts of the 1860s, the repeal campaigns, the consequent defence of the Acts by others and the impact of the administration of the Acts upon the lives of prostitutes and the working class in general. The connection Walkowitz has drawn between the increased state control of prostitution and the 'new enthusiasm for state intervention into the lives of the unrespectable poor'36 was an inspiration to ask similar questions in an Australian context. Her book is distinguished by her attempt to 'examine how sexual and social ideology became embedded in laws, institutions, and social policy.'37 Similarly, in this project an attempt has been made to analyse the relationship between ideology and the multiple aspects of the technology of power

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36 Walkowitz, *Prostitution and Victorian Society*, p. 3. See also, for example, pp. 4, 71, 78-9, 88-9, 92, 243-53.

37 Ibid., p. 5.
which structured prostitution rather than focusing exclusively on the cultural meanings of legislation related to prostitution.

'Women's history' originally aimed to redress the balance by studying the experiences of women which were largely missing from the historical record. Since women's history began to be written in the late 1960s, a number of different theoretical trends have emerged. More recently many women historians have chosen to call themselves 'feminist historians' rather than 'women's historians' and have taken on the task of writing all history from a feminist perspective rather than concentrating on the subject matter defined by 'woman'. A subject such as prostitution can be used as an entrée into an exploration of wider social, institutional, medical and political developments, as Walkowitz has pointed out. This is a way of contributing to the radical new history, rather than simply regarding prostitution as an object for empirical study. This thesis can be distinguished from a number of purely empirical accounts of various aspects of prostitution in Australian history by its attempt to shed light on the ways in which power structures based upon gender, class and race were reflected in various institutional and political practices in Melbourne.

Another aspect of feminist history which has influenced the way I have viewed women working in prostitution has been the project to find women not only as victims of oppression, but also as the makers of their own history. Within the severe restraints of difficult economic circumstances and working conditions, discriminatory social

38 Ibid., p. 7.

39 The Australian studies which I criticize for their lack of theoretical grounding include: Susan Horan, 'More Sinned Against Than Sinning' in Kay Daniels (ed.), So Much Hard Work, pp. 87-126; M. D. Schedvin, 'Prostitution in South Australia: A Proposal for Reform', The Push from the Bush, 4, September 1979, pp. 33-38; Christopher Nance, 'Women, Public Morality and Prostitution in Early South Australia', The Push from the Bush, 3, May 1979, pp. 33-43; D. C. S. Sissons, 'Karayuki-san: Japanese Prostitutes in Australia, 1887-1916', Historical Studies, 17, 1976-77, Part I, pp. 323-41; Part II, pp. 474-88. The issue of race has not emerged in quite the clear-cut way that gender and class have in this particular study—probably because the study has concentrated upon the city of Melbourne. Most Aborigines had been pushed out of the urban area by the period around the turn of the century.
relations and legal structures, and limited opportunities, women who worked as prostitutes forged for themselves their own modes of economic and social survival. In the following study we can glimpse some aspects of this creative aspect of the lives of women in the prostitution industry in Melbourne. Nevertheless, in the final analysis, the degree of choice which many prostitutes had was limited by the fact that hegemonic middle-class and patriarchal values defined them as deviant and consequently surrounded them with a multitude of repressive institutional structures which constantly impinged upon their lives. It is the intersection between these structures and the lives of prostitutes which is one of the primary focuses of this study.

Nevertheless, I have tried to avoid 'taking on board' these very same values which have actually imbued the history of prostitution written by a number of Australian historians concerned to illuminate the nature of early colonial society. One of the favourite occupations of such historians has involved trying to determine how many women were prostitutes and how many were 'good colonial wives. Lloyd Robson was the first to ask questions about female convicts in the 1960s, yet his main concern in The Convict Settlers of Australia appears to be an attempt to illuminate how 'abandoned' Australia's first women convict settlers were. Even historians of women have fallen into the trap of classifying the women of early colonial Australia into moral categories. Portia Robinson in her paper 'The First Forty Years', published in 1979, entered the debate about early colonial society in defence of the moral standing of the

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40 Kay Daniels in her article 'Prostitution in Tasmania During the Transition from Penal Settlement to "Civilized Society"' in Daniels (ed.), So Much Hard Work, pp. 15-86 provides a good analysis of this tendency in Australian historiography.

majority of early female settlers. She concluded that 'the misplaced emphasis on that section of the women who remained immoral and criminal has given the majority of these women an undeserved reputation.' Despite initially establishing critical distance from the values of the transportation era, Deirdre Beddoe, in her highly specific study of 300 Welsh women transported to Australia, has fallen into the same trap as Robson and Robinson, pursuing a primary goal of classifying the early colonial female settlers into the 'good' and the 'bad'. One of the first full length studies of women in Australian history, Miriam Dixson's *The Real Matilda*, is also closer to the mainstream historiography of convict settlement than to the more recent feminist and social history of prostitution. As Dixson seems to share with the early colonial observers a belief in the 'loathesomeness and horror' of prostitution and convictism in general, her work has not provided any theoretical contribution to this thesis.

It is important to recognize, then, that while women working as prostitutes were segregated by the ideology which classified them as deviant, and consequently experienced specific kinds of constraints and harassment, their experiences in fact had a lot in common with other working-class women of their day. This study avoids the trap fallen into by the historians criticized above because, while concentrating upon the institutions and ideology which constrained and segregated women working as

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44 Miriam Dixson, *The Real Matilda: Woman and Identity in Australia 1788 to 1975*, Penguin, Ringwood, Vic., 1976. Her main argument about prostitution is that 'widespread prostitution perhaps especially in formative times for a small community, diminishes all women, because ... men tend to generalize their contempt for prostitutes so that it falls on all women.' (p. 138). She accepts that women working as prostitutes did suffer low self-esteem and dignity because the middle-class writers who provided her sources said they did and/or should. This is symptomatic of one of the major flaws of her study overall; she jumps constantly from descriptions of women written by middle- or upper-class observers to conclusions about the sense of identity of the women about whom she is writing. With little critical distance from her middle-class sources it is not surprising that she fails to develop a sensitive analysis of the place and meaning of prostitution in Australian history.
prostitutes, it seeks to deconstruct these very features, rather than taking them as given
guiding truths.  

Another historiographical context for this study is the small stream in urban
history which has concerned itself with prostitution. In these studies interest in
prostitution is derivative of a desire to illuminate the social and political dynamics of the
city. Often there is a particular concern with urban geography, as in the case of Chris
McConville's article 'The Location of Melbourne's Prostitutes' and some work in the
American context. McConville's work is also preoccupied with illuminating the nature
of deviance in the city from the perspective of labelling theory. Changes in urban
context are prioritized in any explanations of changes in aspects of prostitution whereas
this thesis regards this as only one of a number of inter-related considerations.

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45 Even historians seeking to revise the history of convictism fail to radically challenge the
established way of looking at prostitution in this early period. Although Michael Sturma claims to
have written a fundamentally revisionist history of crime and convicts in Mid-Nineteenth Century New
South Wales, he pays only scant attention to prostitution - *Vice in a Vicious Society: Crime and
Convicts in Mid-Nineteenth Century New South Wales*, University of Queensland Press, St. Lucia, 1983.

Zone of Prostitution, 1880-1934', *Journal of Historical Geography*, 7, 1, 1981, pp. 71-89; Richard Symanski, *The Immoral Landscape: Female Prostitution in Western Societies*, Butterworths, Toronto, 1981. This last work is fundamentally flawed by the sociobiological approach it takes to sexuality.

47 Chris McConville, 'Outcast Melbourne'. Early in this project I was interested in
the criminological theory of deviance. While I recognize the central importance of this work in drawing
attention to the social process of naming, by seeking to 'situate the criminal as the victim of processes
of labelling and punishment which serve the interests and represent the values of the establishment' it
is easy to lose sight of the complexity and contradictions in power relations in specific historical
contexts - quote from Paul Q. Hirst, 'Marx and Engels on Law, Crime and Morality' in Ian Taylor,
Paul Walton & Jock Young (eds), *Critical Criminology*, (International Library of Sociology ed. John
Rex), Routledge and Kegan Paul, London, 1975, p. 204. See also Kai T. Erikson, *Wayward Puritans:
A Study in the Sociology of Deviance*, John Wiley & Sons, New York, 1966; Paul Rock & Mary
McIntosh (eds), *Deviance and Social Control*, Tavistock, London, 1974; Earl Rubingun & Martin S.
Weinberg, *Deviance: The Interactionist Perspective: Text and Readings in the Sociology of Deviance*,

48 McConville, From "Criminal Class" to "Underworld" in Graeme Davison, David Dunstan
and Chris McConville, *The Outcasts of Melbourne: Essays in Social History*, Allen and Unwin,
Sydney, 1985, pp. 69-90. Other urban historians deal with prostitution only in passing; Alan Mayne, for
example, in his study of the urban development of Sydney, focusses particularly on issues of
sanitation and public policy dealing only briefly with prostitution—Alan Mayne, *Fever, Squalor and
Vice: Sanitation and Social Policy in Victorian Sydney*, University of Queensland Press, St. Lucia,
1982.
In seeking to avoid the pitfalls of previous Australian historiography of prostitution, Kay Daniels, in the collection of essays *So Much Hard Work*, has sought to develop an alternative theoretical framework within which to write about prostitution. In short, she has emphasized the fact that prostitution is on a continuum of women's work:

The isolation of prostitutes as a separate group defined by their willingness to engage in sexual exchange for payment, masks the extent to which other jobs involve the barter or sale of sex and force or encourage women to offer sexual services or accept sexual exploitation as part of the context of their work.49

This insight about prostitution is emphasized by other contributors to this book and is also important in much recent feminist history of prostitution.50 A socialist perspective has also led other writers to stress the economic foundations of prostitution.51 In attempting to correct the view of prostitution as being solely about sex and morality rather than work and the economy52 it is nevertheless important not to ignore the fact that prostitution is fundamentally related to ideas about sexuality and sexual practices. The theoretical emphasis upon prostitution as work has been the result of the need to present a strong argument against the prevailing ideology in the present political struggle to achieve decriminalization. It is also in the interests of women currently working as prostitutes to stress the error in the definition of these women as deviant.

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49 Daniels (ed.), *So Much Hard Work*, p. 38.


While recognizing that prostitution is on a continuum of women's work, this thesis recognizes the central importance of the relationship between prostitution and sexuality in any explanation of the incoherence of state police and practice concerning prostitution. 

In order to carry out this study of the intersection between the lives of prostitutes and state power, I had to deal with one outstanding problem: how was I to recover the lives of these women of the working class who worked as prostitutes? Both Judith Walkowitz and Ruth Rosen have been able to reconstruct fascinating detail about the lives of prostitutes in England and the United States respectively. Sources for this particular task are far more difficult to find in Australia; here, there were no Vice Commissions as there were in America during the Progressive Era. There are no letters, diaries or memoirs such as those available in the American context. Raelene Davidson (now Frances) has successfully reconstructed considerable detail about the lives of Western Australian prostitutes from an extraordinarily detailed collection of police records. A comparable rich source for a detailed study of the lives of prostitutes has not been unearthed in Victoria. Women in the trade left only traces of what would have been complex, multifaceted and sometimes powerful lives. Only when they came in

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53 This is not to suggest that all the writers in the above two notes ignore the relationship of prostitution to sexuality. For Daniels, see for example pp. 2-3 where she discusses some aspects of sexuality and prostitution. Her theoretical emphasis is, nevertheless, on prostitution as work as she regards this approach as providing the greatest radical potential for deconstructing the controlling myths about prostitution. On the other hand, while noting that women working as prostitutes regarded prostitution as work, Roper's analysis concentrates on examining the place of prostitution in the sexual politics of Reformation Augsburg which, among other things, leads to the fascinating central suggestion of her paper - that the shift of 'whore' from a social to a moral category can be located in the Reformation.


contact with police, courts or prisons were moments of their lives inscribed in registers or reports, from which the dust of decades can now be blown. Most of these women would have been destined to remain in the silence of obscure death had they not come in contact with state agencies. It is only this one dimension of their lives, filtered through the lenses of authority and the often censorious press, which can be reconstructed here. So their lives take on a meaning now which they did not have in the past. This feature of the way in which their lives have been textualized can only be countered by recognizing its partial nature. The sources which enabled some contact with the passage of individual women through the criminal justice system contained only brief and sometimes enigmatic entries for each individual woman. The registers of arrest cases heard before the Melbourne Court of Petty Session, and two different sets of prison registers, one recording daily receptions at the Melbourne Gaol, the other the complete criminal records of those who entered gaol for at least one period of six months or more, all identify women individually at least by name. Supreme Court depositions, police correspondence and press reports also enable identification of some individual women. However, the possibility to build legal biographies was limited. It was also not the only task necessary to come to some understanding of the way in which state power operated in the lives of women in the trade. Some of the registers mentioned, together with published general criminal statistics, have been used to prepare various statistical accounts in which to place the individual experiences discussed. These have been supplemented by sources which enable a broader understanding of the institutions with which the women were dealing, and the process of social reform: legislation, parliamentary debates and papers, contemporary press and other publications, other police correspondence and charity records.

My argument is that the period 1890 to 1914 was one marked by greater effort on the part of the state, state agencies, charity organizations and the professions to regulate, professionalize and rationalize broad aspects of social life. As industrialization and urbanization created new social contexts, the middle class increased efforts to
control what appeared to be informal and threatening aspects of social life. Greater intervention into prostitution and the lives of women in the trade was part of this process. Prostitution was a mode of working-class female employment and public activity which not only offended the expressed morality of the middle class, but which also was seen to threaten public health and undermine eugenic considerations; these had become increasingly urgent concerns by the second decade of the twentieth century. Increased intervention was accompanied by a gradual reduction in the emphasis upon purely moral considerations. As prostitution came to be seen as part of wider social problems, it was increasingly regarded as a fitting area for social intervention.

Yet the nature of this intervention was never unambiguous because it was always mediated by the society’s gender system. The increased efforts at intervention were only partially successful. First, the women themselves who worked as prostitutes, faced with pressing economic needs imposed by a gender system which denied them economic independence, were forced to find ways of evading efforts to control and limit their activities. Secondly, those in authority did not act in unison in a fashion which could have led to successful elimination of illicit sexual trade because they, too, were subjected to a complex range of pressures.

Even during the twenty-five years studied there were significant changes, especially on the level of state policy. These, together with aspects of the process of reform, are discussed in Chapter One. It has been more difficult to chart with confidence any radical shifts in the nature of the policing of prostitution and the administration of justice in the courts during this twenty-five year period. Certainly, the new soliciting legislation of 1891 marked an important watershed in the policing of prostitution, as it would have encouraged a greater level of police surveillance of prostitutes. Chapter Two can be regarded as descriptive of a more intrusive style of policing and of the ambivalence of the police in carrying out their administrative responsibilities. Chapter Three seeks some understanding of the role which the courts
played in the legal process relating to prostitution during this particular period. The theme of increasing surveillance is followed through in Chapter Four where some aspects of the incarceration of women working as prostitutes are discussed. Examination of a selection of legal biographies of women who entered the prison system adds depth to an understanding of the degree to which the criminal justice system intruded into the lives of a group of women, most of whom were simply working-class women intent upon economic survival.
CHAPTER ONE
THE LAW IN THE MAKING

By 1890 many groups and powerful institutions in society had become interested in prostitutes and the organization of the prostitution trade. As objects of public attention, women working as prostitutes were increasingly subject to legal controls which influenced the lives of many in a direct way. Arguably, the lives of all prostitutes and indeed of all women were touched by some of the deep seated ideologies embodied in the laws. For both these reasons, discussion of the nature of the laws and of the legislative process is fundamental to an understanding of the lives of prostitutes and the meaning of prostitution as a cultural phenomenon in turn of the century Melbourne. By 1890 both the individual woman earning a living from prostitution and those who gained from the organization of the trade were subject to legal controls. It is essential to understand the many aspects of the law relating to prostitution which were established prior to 1890 in order to fully explore the increasing encroachment which occurred during the period 1890 to 1914. Amendments to the Police Offences and Crimes Acts in 1891 marked the beginning of new efforts to increase state control of the trade. By the beginning of World War I most principles of the law relating to prostitution as it has existed in Victoria until the recent reforms in the prostitution law were established.

Prior to 1890 the individual woman working as a prostitute was the object of legislation in several areas: vagrancy law; licensing legislation; street offences legislation and laws relating to neglected children. Between 1890 and 1914 some important changes were made to laws relating to street offences and vagrancy. The provisions in the Licensing and Neglected Children's Acts, already in force by 1890, remained unchanged during this period. It was not only the individual prostitute who received attention from the law. The more organized section of the prostitution
trade—those who ran brothels and generally profited from prostitution—was also the target of early colonial legislation. The exploitation of young women and children by people seeking to profit from prostitution was a subject of particular concern. As well as legislation designed to control brothels, the earliest of which was contained within the 1835 vagrancy legislation enacted in New South Wales, there was specific legislation contained within the Crimes Act from 1864 which aimed to protect women and children. Both the laws relating to exploitation and brothel keeping underwent important changes during the period from 1890 to 1914.

The law relating to the individual woman working as a prostitute

By 1890, there were already established a number of areas of law which affected the individual woman in the trade. However, in 1891 there were significant new attempts to increase control of street prostitution, while changes to vagrancy legislation in the same year would have also affected prostitute women. Some of the laws which were operative by 1890 were remarkable for the way in which they discriminated against women working in prostitution, reflecting and reinforcing the distinctions drawn between 'good' and 'bad' women in nineteenth century Victoria. Two aspects of the law which affected the everyday lives of women working as prostitutes—their exclusion from places of public sociability and the intrusion into their parenting roles—can be described in this way. They were already operative by 1890 and remained unchanged during the years leading up to World War I, yet need to be reviewed to understand the position of women in the trade during the years from 1890 to 1914.

In 1849 the New South Wales legislature passed An Act to consolidate and amend the Laws relating to the Licensing of Public Houses, and to regulate the sale of Fermented and Spiritous Liquors in New South Wales. Many licensing Acts had preceded this one, but here, for the first time, prostitutes were specifically mentioned. It
was made an offence for any person who kept a public refreshment house to allow prostitutes to 'meet together and remain therein'.

In 1864 in Victoria provisions similar to this were contained in both The Wines Beer and Spirit Sale Statute, which covered licensed premises only, and The Police Offences Statute, which covered a broad range of refreshment places. The publican was liable to a fine of twenty pounds for each offence. The penalty under The Police Offences Statute was even harsher: for a first offence, a maximum fine of twenty pounds, combined with deregistration of the business and for a second offence, the above penalties could be imposed together with a term of imprisonment not exceeding three months. The sanctions were certainly enough to encourage the proprietors of both licensed and unlicensed refreshment houses to banish prostitutes from their premises.

Significant changes in these laws after 1864 were few. In 1876 The Licensing Act provided that the prostitute could remain on licensed premises long enough to obtain 'reasonable refreshment' without the licensee becoming liable. Clearly, such a provision still prevented prostitutes socializing in hotels. Under the Police Offences Act it was decided in 1900 that the person charged must have suffered the assembling of prostitutes in their capacity as prostitutes, and not for the legitimate purpose of partaking in refreshments. Whether this decision would actually have affected the

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1 An Act to consolidate and amend the Laws relating to the Licensing of Public Houses and to regulate the sale of Fermented and Spirituous Liquors in New South Wales, 1849, 13 Vict. No. 29, s. XXXVII. The maximum penalty was a ten pound fine.


3 The Licensing Act 1876, 40 Vict. No. 566, s. 55.

behaviour of a coffee shop owner when confronted by a group of boisterous or bleary-eyed 'off duty' prostitutes wanting to relax is debatable.\textsuperscript{5}

As well as affecting the way in which women working as prostitutes filled their leisure hours, the laws intervened early in the relationships between prostitutes and their children. Provisions which defined the children of women in prostitution as neglected children \textit{per se} were particularly discriminatory, and remained a part of Victorian law for a period of 114 years.\textsuperscript{6} First introduced in 1864,\textsuperscript{7} by 1890, the relevant provisions not only defined the children of prostitutes as neglected, but also contained the assumption that such children were by definition in need of 'reform'. The 1864 Neglected and Criminal Children's Act, which established a system of single-sex 'industrial' and 'reformatory' schools for the detention of 'neglected' and 'convicted' children, simply classified any child who lived in a brothel or associated or dwelt with a prostitute as 'neglected' and provided for the commitment of the child, along with the many other children so classified, to an industrial school.\textsuperscript{8} The Neglected Children's Act of 1887 implied criminality to the child; it provided that any child apparently under the age of sixteen years who was found 'residing in a brothel or associating or dwelling with a prostitute whether the mother of the child or not' should be committed to a reformatory school.\textsuperscript{9} Reformatory schools, unlike industrial schools, were specifically

\textsuperscript{5} These laws remained in force over the period under discussion and remain today in the \textit{Summary Offences Act 1966} and the \textit{Liquor Control Act 1968}. Both provisions have a history longer than all surviving legislation in Victoria concerned specifically with prostitutes and prostitution.

\textsuperscript{6} They were only repealed in 1978 by the \textit{Community Welfare Services Act 1978}, s. 19.

\textsuperscript{7} \textit{The Neglected and Criminal Children's Act 1864}, 27 Vict. No. 216, s. 13.(III).

\textsuperscript{8} Under the Act the child of a woman working as a prostitute could be taken away from the mother by a constable without a warrant. If it were established to the satisfaction of two or more Justices that the child was 'neglected' within the meaning of the Act, the child could be 'detained' in an industrial school for between one and seven years. (ss. 14 & 15). Not only could the state deprive the mother of her child but the Act also empowered the state to demand that the parent or step-parent of a 'neglected child' contribute to the child's support while the child was detained in a state institution. (ss. 24 - 28. The liability of parents for maintenance has only recently been repealed in 1980 by the \textit{Statute Law Revision Act 1980}, s. 6.(1)).

\textsuperscript{9} \textit{The Neglected Children's Act 1887}, 51 Vict. No. 941, s. 21.
for the 'reform' of children convicted of criminal offences. Only if in the opinion of the
two or more justices hearing the case, the child had 'not been leading an immoral or
depraved life' could the child be placed in the care of the Department of Neglected
Children rather than in the reformatory school system.\textsuperscript{10} This was an interesting shift in
definition, for the 1887 Act embodied the attitude that daughters of women working as
prostitutes had little hope of becoming anything but prostitutes.\textsuperscript{11}

Despite the fact that this part of the provision allowed for the harsher treatment
of such children, a rider included may have resulted in some prostitutes being able to
keep their children: 'Provided always that in case special and exceptional circumstances
are proved which satisfy them that it would be inadvisable to commit such child they
may order such child to be discharged.'\textsuperscript{12} It is difficult to imagine what 'special and
exceptional circumstances' were in the minds of the legislators at a time when it was
considered essential for the middle class to intervene personally in the lives of the
depraved and the deprived in order to forge for them more moral lives. Special
emphasis was placed upon 'saving' children before they had been corrupted and it was
considered quite appropriate action to take children away from their parents in order to
remove them from their 'evil surroundings'. An \textit{Age} editorial praising the
philanthropic work of Lady Brassey captures these ideas:

\textsuperscript{10} See chapter Four for more information on the reformatory school system.

\textsuperscript{11} Another notable amendment was related to the method of arrest. The officer detaining the
child now had to be of senior constable rank or above, or could be 'any person specially authorized by
the Governor in Council'; however, a warrant was still not necessary. (s. 21). This amendment suggests
that there may have been some misuse of the powers granted to constables under the Neglected and
Criminal Children's Act of 1864. People specially authorized were generally clergy or members of
philanthropic organizations. (They were notified in the \textit{Victoria Police Gazette}. See for example: The
Reverend Edwin Iredale Watkin D. D., \textit{Victoria Police Gazette}, August 20 1890, p. 265; Mrs. Sarah J.
Swinborn, of Argo Street South Yarra, \textit{Victoria Police Gazette}, March 8 1893, p. 69.) The state had
legislated in collusion with 'rescue' organizations to enable greater middle-class intervention into these
women's lives.

\textsuperscript{12} \textit{The Neglected Children's Act} 1887, s. 22.
The Law in the Making

The snatching of children from the squalid environments of moral death is not less salutary than their salvation from suffering and physical destruction ... what are the prospects of a race, a considerable percentage of which is reared in crime and squalor? ... Walter Savage Landor meant something much more than is involved in the hereditary principle when he said—"Children are what their mothers are." Children are what they are made ... And the greatest of all Teachers said in the very spirit of this new Society to save infancy—"Suffer the little children to come unto Me, for of such is the kingdom of heaven."13

It is clear that the lower courts did remove the children of prostitutes from their mothers' custody. In 1887, for example, when it was discovered that twelve-year-old Elizabeth Bird lived with her mother who worked as a prostitute at the Chinese camp outside Echuca, the Echuca Bench sent her to an Industrial School until she turned sixteen. Her brother, Bertram Bird, was sent to a Reformatory school for boys until he was seventeen years of age.14 The degree to which the courts took advantage of the fact that they could allow the children to stay with their mothers under special circumstances cannot be ascertained without further detailed research.

While the laws which excluded prostitute women from socializing in hotels and restaurants and threatened their relationships with their children were operative but remained the same during the period from 1890 to 1914, vagrancy and street offences legislation was amended in important ways. Despite the importance of the changes, there was little public participation in the political process in relation to these issues.

First, let us examine the vagrancy law as it applied to the individual woman working as a prostitute. In 1852 the Victorian Parliament passed the first Victorian

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13 The Age, leader, 18 May 1896, p. 4, cols 5-6.

14 File G 1706, Box 138, Chief Commissioner of Police, Inward Registered Correspondence 1852-1893, Series 937, Vic. P.R.O.
vagrancy legislation which was substantially the same as the vagrancy law enacted in New South Wales in 1835, apart from the fact that the Victorian legislation dramatically increased penalties.\textsuperscript{15} Vagrants were defined as ‘idle and disorderly’, ‘rogues and vagabonds’ and ‘incorrigible rogues’. Amongst those who could be arrested as idle and disorderly persons and, after 1852, sentenced to up to one years’ imprisonment with hard labour under the provisions of section two, were ‘every common prostitute wandering in any street or public highway or being in any place of public resort who shall behave in a riotous or indecent manner’.\textsuperscript{16}

This legislation contained the quintessential part of the vagrancy law which made liable to arrest as idle and disorderly ‘every person ... having no visible lawful means of support or insufficient lawful means of support’.\textsuperscript{17} This was used frequently by the police as a means of arresting prostitutes while working as a prostitute was not considered to be a ‘lawful means of support’.\textsuperscript{18} As with any offender under the vagrancy law, once arrested as an idle and disorderly person, the prostitute became liable to arrest as a rogue and vagabond which carried a maximum penalty of two years’ gaol. Once classified as such, for a subsequent offence, she was deemed an incorrigible rogue for which she could be sentenced to three years’ gaol. However, an examination of various court records produced during the 1890s suggests that in fact, prostitutes were not subjected to the harsher vagrancy penalties, usually being imprisoned for a maximum of twelve months.

The Police Offences Act of 1891 made an important change to the vagrancy law. The mere fact that a person charged with having insufficient lawful means of support

\textsuperscript{15} An Act for the better prevention of Vagrancy and other offences 1852, 16 Vict. No. 22. An Act for the prevention of Vagrancy ... 1835, 6 Gul. IV, No. 6.

\textsuperscript{16} An Act for the better prevention of Vagrancy and other offences 1852, s.2.

\textsuperscript{17} Ibid.

\textsuperscript{18} See Chapter Three for discussion of the role of the judiciary in determining the use of this law against women working as prostitutes.
could prove that s/he possessed money or property was no longer sufficient defence. It became necessary for the defendant to prove that s/he had honestly obtained the money or property.\footnote{Police Offences Act 1891, 55 Vict. No. 1241, s. 11.} According to concerns articulated in parliament at the time, the legislation was passed in order to apprehend a number of well known men known as 'magsmen' and 'spielers', men well versed in the gentle art of swindling.\footnote{V.P.D.,(Council) 66: 557, 28 July 1891, The Hon. J. Service.} Clearly, however, it would have made the woman who worked as a prostitute with savings from her trade vulnerable until judicial interpretation determined that prostitution was a lawful means by which to acquire money.

The law also tried to contain the most important means by which nineteenth-century prostitutes earned a living: soliciting custom in the streets. The new legislation creating a specific offence in 1891 represented a really concerted attempt to control these activities, although prior to this time, prostitutes were apprehended for soliciting. In 1878 an ex-police magistrate believed the police to be 'over zealous' in their arrests for soliciting prostitution.\footnote{Report re. Contagious Diseases 1878', p. 57.} By soliciting for the purposes of prostitution it is possible that prostitutes committed offences under non-specific street offences legislation which had been in force in Victoria since 1852. A maximum penalty of ten pounds or three months' gaol was the fate of anyone found guilty of using 'profane indecent or obscene language' or 'threatening abusive or insulting words or behaviour' in a public place.\footnote{An Act for the better prevention of Vagrancy and other offences 1852, s. V.} However, it is unlikely that a prostitute's approach to a prospective customer would often have included anything which could technically be defined as obscene language, or that policemen would have frequently heard what was said. Furthermore, to be arrested specifically for their street activities under the vagrancy law, women soliciting had to behave in a 'riotous manner'.

\begin{quote}
\textit{Police Offences Act 1891, 55 Vict. No. 1241, s. 11.}
\end{quote}

\begin{quote}
\textit{V.P.D.,(Council) 66: 557, 28 July 1891, The Hon. J. Service.}
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\textit{Report re. Contagious Diseases 1878', p. 57.}
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\begin{quote}
\textit{An Act for the better prevention of Vagrancy and other offences 1852, s. V.}
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Police undoubtedly felt fettered by these problems which would have been one reason for the introduction of the new offence of 'importuning' in the Police Offences Act of 1891.23 This was part of a provision which made important changes to the social construction of anti-social behaviour and placed increased power in the hands of the police and legal institutions to control the behaviour of individuals in public places. The effect of this particular law was that a woman working as a prostitute no longer had to behave in a riotous or indecent manner to be apprehended under a provision which specifically labelled her as a prostitute.24 She simply had to importune any person in a public place to become liable to a penalty not exceeding five pounds or one month's imprisonment. The definition of 'importune' was contentious and convictions, in fact, difficult to obtain under this section, but clearly, the intent was a widening of the ambit of the law.

Despite the importance which the control of street behaviour has in retrospect, at the time, there was little public debate about the issue. The prostitutes who were affected by the increasing control had little voice to protest. The working class would have been more concerned with the immediate economic reality of boom shifting rapidly to depression than with encroachment upon their street culture. Middle-class social reformers were at this time much more concerned with changes to the criminal law raising the age of consent than with amendments to the street offences legislation.25

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23 Police Offences Act 1891, s. 7.

24 The only one to this date being the provision in the vagrancy law discussed above.

25 See pp. 22-3 & 28-9 for discussion of this debate.
Contagious Diseases Legislation

During the 1890s and 1900s there were several attempts made in Victoria to bring Contagious Diseases style legislation into operation in order to attempt to control the spread of venereal disease. In fact, at this time, Contagious Diseases legislation had already been passed by the Victorian parliament—as An Act for the Conservation of Public Health 1878—yet it had never actually been brought into force; no hospitals had been gazetted for the purposes of receiving patients suffering from venereal disease. Nevertheless, it is important to discuss the passing of the Act itself and the various attempts made by the health authorities to bring it into operation because these issues enable an examination of both the way in which repressive gender ideologies became embedded in statutes and the various power relationships which operated when attempts were made to enforce the Act. The Victorian Contagious Diseases legislation can be contrasted with the police offences legislation (discussed earlier) which was brought into force. While the obstacles to the full operation of the intent of the latter legislation were to be found in various aspects of its administration, combined with the tactics of resistance of prostitute women, the attempt to control women in the prostitution trade using Contagious Diseases legislation must be seen as a failure in Victoria due primarily to the persistence of an organized and articulate lobby group. However, thwarted or not, the whole area of the control of venereal disease demonstrates a shift toward the domination of scientific medical considerations over moral concerns.

Whereas the preamble to the Act for the Conservation of Public Health of 1878 stated the general intention of the Act to be the prevention 'as much as possible' of the further spread of syphilis, in actual fact, the Act singled out only prostitutes for special treatment. Effectively, it was made a criminal offence with a maximum penalty of three

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months' detention for a prostitute to be suffering from "syphilis" in all its forms.\textsuperscript{27} Singling out one group in this way in an attempt to control an infectious disease which afflicted all classes and both sexes was bound to fail. The attempt by the state to impose such a 'solution' was made possible by the double standard of sexual morality which ostracized the prostitute woman; she became the fitting object for the outrage of many occasioned by venereal disease, especially syphilis. In our age of a simple penicillin cure for this form of venereal disease we no longer know its worst effects. James Dalton of Russell Street Police Station did know:

And I have often had to stir them, and I have noticed that if you stir their clothes or themselves the stench is something awful from the effects of their prostitution and the bad drugs they get from the chemists in ______ and ______ streets; ... There was one in ______ street was showing me the calf of her leg - the whole calf of her leg had disappeared from the effects of prostitution.\textsuperscript{28}

\textsuperscript{27} Ibid., s. 2. This was the definition of 'the disease' for the purposes of the Act. Power was granted to any police magistrate to order a woman working as a prostitute to place herself in a particular hospital for medical treatment. Such an order could only be made upon complaint made on oath by a policeman of at least the rank of sergeant: 'that a female is or is reputed to be a common prostitute or has within fourteen days prior to the making of such complaint solicited prostitution and that he has been informed and has reason to believe that she is suffering from the disease ... '(s. 4). The fact that the woman was or was reputed to be a 'common prostitute' had to be proved to the satisfaction of the police magistrate by the oath of 'two credible witnesses'. In addition the woman was given the opportunity of proving by the evidence of some legally qualified medical practitioner that she did not have syphilis. If a woman either failed to appear before the police magistrate as ordered (after the original complaint had been made by a police officer), or failed to comply with the order of the court to place herself in a particular hospital within the time mentioned in the order, a warrant could be issued by a Justice of the Peace to order any constable to arrest her and take her to the hospital. The warrant was then sufficient authority to all persons for the arrest and detention of the woman in the hospital until she had 'recovered' from the disease. The maximum period of detention was set at three months (ss. 5 and 6). It was also made an offence for a woman to refuse to submit to medical treatment after detention or to leave the hospital before being 'lawfully discharged'. Upon conviction for such an offence provision was made for a woman to be committed to gaol to be detained under treatment until she had recovered; the maximum term, once again, was three months (s. 8). Other provisions provided for the voluntary submission of a woman to detention until cured, the granting of a certificate of cure by the medical officer in charge of the hospital to authorize the detainee's discharge, a method whereby the woman could appeal to a police magistrate for her discharge if the hospital neglected to give her a certificate and the hearing of all cases under the Act in private (ss. 7, 9, 10 and 11 respectively). The final section was the precursor of section twenty-six of the V.D. Act 1916 (see Epilogue). A penalty of twenty pounds or a maximum of six months' gaol was imposed upon the owner or occupier of any premises who permitted a woman with syphilis to resort there for the purpose of prostitution. The burden of proof was reversed for this offence. Only if the person proved that s/he did not know that the woman prostituted herself while in a state of disease could s/he be not guilty of an offence under the Act.

\textsuperscript{28} 'Report re. Contagious Diseases 1878', p. 15.
'The effects of prostitution'; the language is revealing. It was the belief of many that prostitutes spread V.D. which was the fundamental basis of the Act. This was the conclusion of David Blair who in 1873 had been appointed by the Victorian Government to inquire into 'The Social Evil', a euphemistic term for prostitution. Prostitution he described as:

A hideous secret pestilence which destroys infant life; generates, perpetuates, and spreads the most loathsome diseases; saps the strength of manhood, blights the bloom of woman-hood, ruins domestic happiness, blasts the purest natural affections, increases poverty and destitution, and wastes the national wealth by wasting its most productive force.\(^{29}\)

He averred that prostitution had been found in all human societies, that it was ineradicable as a 'vice arising from an inextinguishable natural impulse on the part of one sex, fostered by confiding weakness in the other',\(^{30}\) that prostitution was inaccessible to moral and religious influence and that all attempts to suppress prostitution by law had only aggravated its intensity. Blair consequently concluded that it was the government's responsibility to recognize prostitution as 'an incurable moral malady' and to legislate to lessen its worst consequence—venereal disease. This, he stated,

can only be done effectively by means of legislation dealing directly with the agents in spreading contagion.

\(^{29}\) 'Report on the Social Evil: Considered with a View to Legislation', \textit{V.P.P.}, 1873, 3, p.9 (henceforth 'Report on the Social Evil 1873').

The simplest kind of legislation is that which compels every such agent, by forcible arrest, to abstain from spreading contagion, and detains her in custody until her cure is effected.\textsuperscript{31}

That women working as prostitutes were blamed in this way was fundamentally linked with the construction of sexuality in the society at that time. With sexually promiscuous women rigidly defined as a small group of abnormal women, it appeared practically possible to isolate the 'agents of contagion' and morally justifiable that disease be the metaphor for the condition of such sinful women. It was not in the interests of men to conceive of themselves as being equally responsible for the spread of sexually transmitted diseases.

Although Parliament expressed no interest in passing contagious diseases legislation at the time the Blair report was tabled, only five years later it was exactly what they did. It was quite appropriate legislation in a society where it was possible for one medical opinion to hold that the disease syphilis 'has arisen by a man having connexion with a woman having an aggravated state of her natural discharges'\textsuperscript{32} and where the only work considered appropriate for a prostitute while she was being treated for syphilis in hospital was to 'make up shrouds for the dead'.\textsuperscript{33}

The legislative approach adopted in Victoria was not original. It was inspired by the English Contagious Diseases Acts of 1864, 1866 and 1869 and received added impetus from the fact that Queensland had passed an Act for the Prevention of Contagious Diseases in 1868. These legislative precedents led to the appointment of David Blair to inquire into the 'Social Evil' with a view to legislation. There were,

\textsuperscript{31} 'Report on the Social Evil 1873', p. 16.

\textsuperscript{32} 'Report re. Contagious Diseases 1878', evidence of William McCrea, Esq., M.B., Chief Medical Officer, p. 20. Note - this opinion not necessarily held by William McCrea.

\textsuperscript{33} Ibid., p. 11.
however, some important differences between the English and Victorian legislation. In England, legislation was introduced in order to supply women free from disease for the sexual gratification of those men who were responsible for the defence of the nation. English legislators were horrified by the loss of manpower caused by venereal disease. It was claimed during debate in the House of Commons that incapacitation was equal to the loss of 'two whole regiments and one fully-manned ironclad frigate'.

Consequently, although the degree of the surveillance eventually employed was more draconian in England, the Acts were limited in their application to garrison and naval towns in England and Ireland. The final form of the English legislation after the new Act of 1866 and its 1869 amendment provided for the periodic medical examination of women deemed by the police to be working as 'common prostitutes'. Once issued by a Justice of the Peace the order for examination was effective for a year. Such women could be detained in a certified hospital for up to nine months if found to be suffering from any venereal disease. In Victoria the overt system of state control which would have been introduced with a system of periodic medical examination was indefensible when the legislation was, from the outset, intended for the whole population.

Even though moderate when compared with the English legislation the Victorian Bill did not have an easy passage through Parliament. It was introduced in the 1877-78 session as a private member's Bill but due to opposition to the measure debate was not completed by the end of the session. Mr Bent, who had introduced the Bill, allowed the matter to be stood over until the next session on the understanding that a royal commission would be appointed to inquire into the matter during the recess. This was not done but the new Bill, introduced by Mr Bent in the 1878 session, was referred to a select committee. This measure had been refused on the first occasion when the Bill was introduced because such a proceeding on the part of the Government 'would amount to affirming the principle of the measure, which they regarded as objectionable

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34 V.P.D. (Assembly) 26: 1206, 24 October 1877, Mr. Bent.
The weight of the evidence presented to the select committee must have swayed the Legislative Assembly in favour of the Bill. The strenuous opposition mounted by a minority of the Council was to no avail; the Bill passed into law as An Act for the Conservation of the Public Health 1878. The euphemistic name was probably an attempt to deflect public opposition by avoiding any linguistic association with the now highly contentious C.D. Acts in England. However, according to the Age, it was the strength of the arguments against the Acts in England which influenced successive Victorian Governments to take no action to bring the Act into effect.

Although the Act was never actually brought into force, by the 1890s, the police and courts of petty sessions constructed their own reasonably efficient method of dealing with women in the prostitution trade who had venereal disease. This is an important example of major discrepancies between administrative practice and the letter of the law which involved the exercise of rather arbitrary power by police over the lives of women who worked as prostitutes. When plain-clothes constable Albert Tucker was asked about the legislation during the 1906 Royal Commission on the Victorian Police Force, he replied:

It is never used here. When we know that a woman is suffering from syphilis and is soliciting about the streets, we get hold of her and lock her up, charge her under the Vagrancy Act, and inform the magistrates in the morning, and they will send her to the gaol hospital. There is a provision in the Health Act to deal with that, but it is a round-about way.

35 V.P.D. (Assembly) 26: 957, 3 October 1877, Mr. Grant.

36 It has certainly thrown modern historians off the track; no historian of prostitution in Australia, including Chris McConville who has made Victoria his special focus, has shown evidence of awareness of the fact that contagious diseases legislation was an issue in Victoria.

37 The Age, leader, 10 January 1896, p. 4, cols 7-8.

38 'Royal Commission on the Victorian Police Force 1906', p. 453. See Chapter Three for further detail about these practices.
The latter comment also hints that Constable Tucker may not have been aware that the relevant clauses of the Health Act could not be administered because no hospitals had been gazetted.

It is doubtful whether the women and men who campaigned against the implementation of the C.D. clauses of the Health Act during the 1890s and 1900s in Victoria were aware of this collusion between the police and lower courts which resulted in the control of prostitutes with venereal disease. Although groups such as the Woman's Christian Temperance Union knew of British activist Josephine Butler's warning that contagious diseases legislation could be worked secretly, there is no evidence that social reform activists made detailed inquiries into the activities of police and courts of petty sessions. Perhaps it did not occur to them that these respected individuals and institutions could be acting without any legislative authority at all.

It was a letter which galvanized the W.C.T.U. to action on the issue of the compulsory treatment of prostitutes with venereal disease. In about September 1895 Dr Gresswell, the Chair of the Board of Public Health, wrote to the Board of Management of the Alfred Hospital explaining that while no hospital had yet been gazetted for the compulsory detention and treatment of prostitutes suffering from venereal disease (as provided under the Health Act 1890) the Minister of Health and the Board of Health believed that the large hospitals of the colony should be gazetted for that purpose. The Board of Health eventually sought the co-operation of the various hospitals, requesting them to set aside a ward for the reception of prostitutes with venereal disease. It was

39 Eighth Annual Records and Methods of Work Done by the Woman's Christian Temperance Union of Victoria During the Year 1895, Spectator Publishing Co. Ltd., Melbourne, January 1896, p. 18. (These reports will henceforth be quoted by short titles as follows: W.C.T.U., Eighth Annual Report, 1895.)

40 The White Ribbon Signal, III, 12, October 1895, p. 303.

not only the women of the Victorian W.C.T.U. who were concerned about the unfolding events in Victoria. Immediately upon realising that attempts were to be made to enforce the C.D. clauses of the Health Act, the Secretary of the W.C.T.U. wrote to Josephine Butler (who had assumed a leading position in the W.C.T.U.) who then kept a careful eye on events in Victoria. Furthermore, before the Victorian branch had worked out exactly how to react, two round-the-world missionaries of the W.C.T.U., Mrs Andrew and Dr Kate Bushnell, wrote to the Victorian W.C.T.U. as follows:

We do feel to urge you lovingly and earnestly to take up, as soon as you possibly can, as a colonial W.C.T.U., special work to get these 'Health Acts' repealed, which would set in motion the infamous State regulation of vice in Victoria. We possess a copy, and have thoroughly studied it, and know that they have all the elements of danger to women in them that are usually to be found in the C.D. Acts.

The Victorian Branch of the W.C.T.U. quickly sent circulars to all doctors in Victoria. The various Hospital Committees were requested not to comply with the requirements of the Board of Health and were supplied with literature on the subject. Most hospitals agreed with the position of the W.C.T.U.; the Homeopathic Hospital was particularly adamant in its refusal. Only the Alfred Hospital made any commitment to the proposal of the Board of Health, and even that was rather half-hearted; they agreed to set aside one bed. They could scarcely have considered this to be sufficient

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44 Ibid.
for the realistic operation of the relevant provisions in the Health Act! Letters were sent to the Presbyterian and Baptist Conferences. A memorial was prepared protesting against the introduction of the C.D. Acts into Victoria with the aim of getting some leading people of the colony to sign it. As the Society of Friends had always been eager to lobby on this subject in other countries, the W.C.T.U. approached them for support. Several of their members brought the issue before the Council of Churches with the result that on 8 January 1896 a deputation of ministers, representing nearly all the churches, was received by the Minister of Health and the Chairman of the Board of Health. Apparently, the gentlemen who received the deputation had a lively quarter of an hour and were then confronted with a deputation of women from the Executive of the W.C.T.U., also desiring to present the case against the C.D. clauses. In response to publicity that there would be a campaign launched at the Intercolonial Medical Congress in New Zealand in February 1896 to lobby for the enforcement of the C.D. Acts throughout Australia, the W.C.T.U. sent a memorial of protest which was also circulated to all Victorian doctors. The Presbyterian Assembly and Women's Suffrage League in New Zealand passed resolutions supporting the W.C.T.U. in its action of sending the Memorial to the Medical Congress. The activities of the Victorian women did not go unnoticed on the international scene: Mrs Josephine Butler, Miss Agnes Slack (World's W.C.T.U. Secretary), Mr Dyer (editor

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46 W.C.T.U. Eighth Annual Report, 1895, p. 34


of the London based *Sentinel*) and the Friend's Association for Abolishing the State Regulation of Vice all wrote commending the Victorian Executive on the action taken.²⁵

This series of communications and events reveals some interesting aspects of the relationships of power which were operating at this time in Melbourne. The fact that the W.C.T.U. considered it essential to circularize all Victorian doctors and took the trouble to communicate with the Intercolonial Medical Congress indicates that there was awareness in Melbourne that the medical profession had gained a position of considerable strength. Yet it was the churches in which the W.C.T.U. invested most of their hopes and it was, they believed, 'God' who guided their mission.³³ The 'deputation' was an important part of the lobbying process at this time so it is noteworthy that the W.C.T.U. did not seek the support of either sympathetic doctors or hospital committees to form a deputation to the responsible Minister. It was the deputation with representatives from 'nearly all the Churches' which presented first to the Minister on 8 January 1896. The women from the W.C.T.U. came second, indicating their own submission to this authority. Furthermore, the women did not speak of sex, prostitution and venereal disease in the same manner as the men. If the meeting between the secular and sacred ministers had been marked by lively exchanges, that between the women and the male representatives of the state would undoubtedly have been formal and awkward.³⁴ It was described in the annual report as follows:

> although in some particulars it was the most unpleasant mission we had ever gone on for the W.C.T.U., we went in the strength of the Lord, and although our hearts

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³³ W.C.T.U. *Ninth Annual Report, 1896*, pp. 10-11. Josephine Butler wrote to the Victorian women advising them to 'Face the situation in the strength of God .... the sacred fire is needed in the hearts of the women and men of the opposition, and the highest aspect of the question must always be kept in the front': *The White Ribbon Signal*, IV, 6, p. 381.

were thumping, we fearlessly delivered our message and prayed that God would bless our feeble efforts.55

By forming a deputation and speaking on the subject of prostitution, the women of the W.C.T.U. were claiming power by breaking an expected silence. The manner in which sexuality was discussed in late nineteenth century Melbourne was an area of contention, especially when women's words were concerned. Some people in Melbourne would have preferred it if issues related to sexuality were never spoken about at all. When Madame Antoinette Stirling spoke in August 1893 on the subject of the Social Evil and the dangers of lowering the age of consent for girls from sixteen to fifteen years, some Melburnians 'worked themselves into a well nigh hysterical state'.56 It is not surprising that in such a context the women of the W.C.T.U. were acutely embarrassed by the subject of their deputation.

The combined efforts of the lobbyists was sufficient at the time to defer consideration of the matter by both the government and the Intercolonial Medical Congress.57 Discussion of the treatment of venereal diseases soon subsided without repeal of the relevant provisions being achieved. The W.C.T.U. maintained a low key interest in the prevention of the state regulation of vice over the next few years58 but were quick to respond in 1904 and 1906, when once again there appeared to be a serious danger that a centralised system of controlling prostitution would be instituted. The 1904 Police Commissioners' Conference recommended that prostitutes be subjected to regular medical examinations and geographically concentrated in a


56 The Age, leader, 15 August 1893, p. 4 cols 8-9. See pp 22-3 & 28-9 for further details about the campaigns associated with the age of consent.


The parameters of the debate about venereal disease shifted in important ways from this time until World War I. The focus was taken from women working as prostitutes and emphasis placed upon medical rather than moral considerations. Considerable change occurred in both medical and social science between the 1870s and the second decade of the twentieth century. In Victoria between 1910 and 1911 a broadly based medical study which would have been inconceivable only a few years earlier was funded by the Government to determine the extent of syphilis in the

59 The White Ribbon Signal, XII, 6, April 1904, pp. 123 & 128; XII, 7, May 1904, p. 133; XII, 8, June 1904, p. 153.


community. This was hailed as the most forward thinking approach in the world at the time. The discovery of the Wasserman blood test and the drug 'salvasan' or '606' about this time enabled an unprecedented degree of confidence in the ability of the medical profession to both diagnose and cure the 'red plague'. In this context the government was seeking to establish an educational programme, an efficient medical approach to the problem and made it clear that it was not interested in implementing Contagious Diseases Acts. One doctor applauded the Government for its altered attitude 'in regarding the victims, not as moral derelicts, but as sick people' and the Argus for 'being the first great newspaper which has determined to call these things by their right names'. Dr Ham, the Chair of the Board of Public Health, strongly believed that 'women of the unfortunate class should be dealt with solely as a matter of law and order' and Mr Gregory, a visiting lecturer from the International Federation for the Abolition of State Regulation of Vice, contributed to the debate the opinion that women and men should be treated alike when the issue of venereal disease was considered.

Nevertheless, moral considerations remained but they were focused less dramatically on a single stigmatized group of women. The fact that moral considerations were still important in the play of power was symbolized by the presence of representatives of Church groups at important public meetings on the subject of venereal diseases, together with Government representatives and members of the medical profession. Although important changes had occurred in the parameters of

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63 The Argus, 7 July 1911, p. 10, col. 2; 11 July 1911, p. 5, cols 8-9; 26 September 1911, p. 9, col. 9; 14 March 1912, p. 8, col. 2.

64 The Argus, 13 July 1911, p. 4, col. 8.

65 The Argus, 22 August 1911, p. 9, col. 5; 24 August 1911, p. 8, col. 9.

66 The Argus, 14 February 1912, p. 10, col. 3.

67 The Argus, 30 May 1912, p. 9, col. 3.

68 The Argus, 26 September 1911, p. 9, col. 9; 21 May 1912, p. 8, col. 5.
The venereal diseases debate, the fact that disease had become the metaphor for the prostitute's social position could not be eliminated overnight. Debates still contained some of the old attitudes. Lecturing to a meeting of men of the Surrey Hills district in 1911, Dr W. S. F. Bottomley explained that the 'problem of venereal disease was insoluble by any legislative and police methods dealing with fallen women. ...They wanted power to put women of a certain character under lock and key until cured'.

One correspondent to the Argus critical of the proposed syphilis wards in public hospitals claimed that no self-respecting man would allow himself to be hospitalized in such a ward, and that treatment should be carried out in secret. However, these remarks, he wrote, 'do not apply to certain women. They require special consideration and legislation, in order to check the spread of disease.' The contradictory positions outlined were to be reflected in the new legislation relating to V.D. which was to be passed in Victoria during World War I.

The law relating to the organized aspects of the prostitution trade together with some discussion of brothel prostitution

The legislation discussed so far was primarily directed towards the individual woman working as a prostitute. Those who ran brothels and sought to recruit young women into the business were also subject to early colonial legislation which underwent important changes during the period under discussion.

While legislation against procuring—that is, against the application of pressure, persuasion or inducement to a woman to prostitute herself—was enacted in 1864,

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69 The Argus, 31 October 1911, p. 5, col. 9.

70 The Argus, 20 January 1912, p. 16, col. 2.

71 See Epilogue.
sweeping changes were made to this law in 1891. The age of consent was raised from twelve to sixteen. For the first time the wording of the Act explicitly pronounced the 'Suppression of Prostitution'. The main purpose of the Bill, explained Mr Duffy in the Legislative Assembly, 'was to give protection to women, and especially to girls of tender age'. The Bill, modelled on British legislation, had first been introduced in 1885 but had lapsed a number of times since, due, apparently, to lack of public support. However, in 1891, there was sufficient public support for the Bill to pass into law. A representative deputation asked the Premier to use his influence to have the Criminal Law Amendment Bill passed during the 1891 session. A petition in support of the Bill signed by over three hundred doctors and philanthropists was sent to every Member of Parliament. Memorials from the W.C.T.U Annual Convention in 1891 were presented to the Speaker and Members of the Legislative Assembly, and to the Premier, urging the early passing of the new laws. A further memorial and various letters to members of Parliament were sent after the convention. A large meeting of 'ladies' held at the Athenæum resolved unanimously in favour of the Bill; copies of

72 In Victoria the first provisions relating to procuration and abduction of women were enacted in The Criminal Law and Practice Statute 1864, 27 Vict. No. 233. Contained under the heading 'Rape Abduction and Defilement of Women', they would have provided sanctions against people who forced some women into prostitution, although prostitution itself was not mentioned. Only if a girl were under sixteen years of age was she protected from abduction per se. The simple fact of her being unlawfully taken away from her legal guardians was sufficient to bring upon the abductor a maximum penalty of two years' imprisonment (s. 52). A woman twenty-one years of age or more was not protected from being procured at all and if the woman concerned were between sixteen and twenty-one the procurer was only guilty of an offence if she procured by false pretences false representations or other fraudulent means. Such an offence carried a maximum sentence of two years' imprisonment (s. 44). All women, however, were intended to be protected by the section which made it an offence to 'by force take away or detain against her will any woman of any age with intent to marry or carnally know her'. This carried the harsh penalty of a maximum of ten years' imprisonment (s. 51). There was also a long, intricate provision designed to protect wealthy women and heiresses from being abducted or fraudulently allured. The value attached to property by legislators was measured in the length of the maximum penalty - fifteen years' imprisonment (s. 50).

73 Crimes Act 1891, 55 Vict. No. 1231, heading of Part II.

74 V.P.D. (Assembly) 68: 3124, 18 August 1891, Mr. Duffy.

75 V.P.D. (Council) 50: 2138-47, 2194-7, 2397-2402, 2407; 2 December 1885, 3 December 1885, 15 December 1885. The Bill passed through the Council but was discharged from the notice paper in the Assembly.
Their resolutions were forwarded to every member of the Legislative Assembly. This meeting was organized by the W.C.T.U in an effort to galvanize 'some decided expression of public feeling' in support of the Bill to prevent it, once again, being passed over because of the pressure of other business.

There were now two complicated sections dealing with procuring, one dealing with procuring *per se* and the other with procuring with the use of some kind of force or fraud. Section fourteen created the offences of procuring a woman under twenty-one to have 'unlawful carnal connexion' and of procuring any woman or girl to become a prostitute or inmate of a brothel either within or without Victoria. An important exclusion, however, was contained in this clause. Any woman or girl, no matter of what age, who was 'a common prostitute or of known immoral character' or who was a resident of a brothel, was not 'protected' by this legislation. That is, it was quite lawful to procure women already involved in the prostitution trade or, in fact, any woman or girl of 'known immoral character.' Thus the law embodied the Victorian definition of all women and girls who had had pre-marital sex as 'fallen' and entrenched the distinction between 'damned whores' and 'god's police'.

Section fifteen contained the offences of procuring by threats, intimidation, false pretences or false representation and of administering drugs to a woman or girl in order to enable any person to have unlawful carnal connexion with such woman or girl. The latter offence, as Sir B. O'Loghlen pointed out during debate in the Assembly, 'was rape in law, and ... men had been hung for having connexion with

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78 *Crimes Act* 1891, s. 14.(a), (b), (c), and (d).

79 Ibid., s. 15.
women to whom they had first administered drugs.\textsuperscript{80} It was probably introduced here as well in order to gain convictions which were difficult under the rape law which carried the death sentence.\textsuperscript{81} There was an interesting distinction made between procuring by threats or intimidation and procuring by false pretences or false representations. The latter was no longer a crime if the woman was 'a common prostitute or of known immoral character', but all women were protected if the procuring were achieved by threats or intimidation. It was therefore legal in 1891 to lie to or to trick a woman working as a prostitute into having 'unlawful carnal connexion', but not to threaten or intimidate her in order to achieve this!

Attempts were covered by all the provisions on procuration. The new 1891 legislation set punishment for all offences discussed at a maximum of two years' imprisonment, except for administration of drugs which carried a maximum sentence of ten years. All were also governed by a new evidential requirement; the evidence of the woman against whom the crime was committed had to be corroborated 'in some material particular by evidence implicating the accused'.\textsuperscript{82} This requirement was introduced in order to protect the accused against false accusations. With only the word of the accused and of the victim as direct evidence, this requirement in effect meant that the woman's word on sexual matters was not trusted and that the court was to some extent placing the woman on trial. Mistrust of women's evidence in relation to sexual crimes was endemic. There were frequent accusations in the press against women, especially young women, making 'false accusations' of sexual assault. A quite extraordinary one:

\textsuperscript{80} V.P.D. (Assembly) 68: 3135, 16 December 1891, Sir B. O'Loghlen.

\textsuperscript{81} Crimes Act 1890, 54 Vict. No. 1079, s. 42.

\textsuperscript{82} Crimes Act 1891, ss. 14.(2) and 15.(3).
A short time ago a girl was found in a Brighton railway carriage lying under the seat, with her clothes torn and her body bruised. She told a circumstantial story of how she had been assaulted and abused. Subsequent events showed that she had concocted a tissue of lies merely to draw attention to herself, impelled by a species of egoism.83

The law relating to the abduction of women and girls was significantly widened by the 1891 Crimes Act. While the provisions originally enacted in 1864 remained in force, others were added. The abduction of a girl or woman under the age of eighteen years with intent to have carnal knowledge was a new offence. Until 1891 the abduction or detention of a woman with intent to marry or carnally know had been a felony. This crime remained but a lesser misdemeanour which covered detention (abduction, presumably, remained felonious) was introduced. Any person who detained a woman or girl against her will in any premises for the purposes of unlawful carnal knowledge, or in any brothel, was guilty of an offence. Detention in a brothel was now sufficient to gain a conviction whereas previously, it had been necessary to prove intention to carnally know. Both sections relating to abduction included for the first time the specific statement that the intended carnal knowledge could be 'with any particular man or generally', thus eliminating the necessity to prove a particular intention. The fact that 'detention' became easier to prove under the 1891 legislation was offset by the huge reduction in the penalty for the new misdemeanour - a maximum or two years' gaol compared with ten years for the felony.

As well as these provisions which extended the law relating to procuration and abduction, there were several completely new offences and definitions introduced by the Crimes Act 1891. One of these changes was specifically directed against brothel owners and keepers who employed child prostitutes. It was made an offence for owners, occupiers or managers of premises to induce or knowingly permit girls under

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83 The Age, leader, 18 September 1895, p. 4, cols 6-7. Other articles from the same period with the same emphasis include: The Age, leader, 22 March 1893, p. 4, cols 6-7; 17 July 1895, p. 4, col. 7.
sixteen to 'be in or upon such premises for the purpose of being unlawfully and carnally known by any man whether such carnal knowledge is intended to be with any particular man or generally.'\(^8^4\) If the girl were under thirteen, the owner, occupier or manager was guilty of a felony with a maximum term of imprisonment of ten years. If the girl were thirteen or more but under sixteen, the offence was a misdemeanour with a maximum penalty of two years' gaol.

A new definition of 'detention' was introduced into the law. With-holding clothing or other possessions of a woman or girl, or, where clothing was lent to the woman, threatening her with legal proceedings if she took the clothes away, were specifically defined as methods of detention. Such a practice was apparently of major concern in England, where this provision was contained within the Criminal Law Amendment Act of 1885, but as British legislation was often adopted wholesale in Australia, it is difficult to determine whether or not this was a genuine legislative response to a perceived problem in Victoria.\(^8^5\)

Section twenty introduced a new power of search when it was supposed that a female was detained for immoral purposes. A Justice could issue a warrant authorizing any person to search for and detain in a safe place any woman detained for immoral purposes, until she could be brought before a Justice. The Justice could place her in the custody of her parents or guardian, or she could be 'otherwise dealt with as circumstances may permit and require'; wide powers which clearly enabled the court to charge the woman. The Justice was given power to issue warrants for the arrest of persons accused of unlawfully detaining women, nevertheless, the overall construction of the section made it clear that the central intention of the legislation was to widen the power of the law to 'rescue' women. A girl under sixteen was automatically deemed to

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\(^8^4\) Crimes Act 1891, s.16.

\(^8^5\) The provision was discussed in Council debates on the 1885 Protection of Women Bill, which failed to pass through the Assembly: V.P.D. (Council) 49: 2139-40, December 2 1885, The Hon. J. Campbell.
be unlawfully detained for an immoral purpose if she were 'detained for the purpose of
being unlawfully and carnally known by any particular man or generally.' If the
young woman were sixteen but under eighteen, however, the detention had to be either
against her will or against the will of her father, mother or legal guardian. If she were
eighteen years of age or more she had to be detained against her will. A shift toward an
apparent benevolent concern of the law to 'rescue' 'fallen' women was reflected by the
efforts of various groups of middle- and upper-class women and men; benevolent
attention to prostitutes was frequent at this time.

The final alteration made to the law by the Crimes Act 1891 gave the court
power to divest the 'father mother step-father step-mother guardian master or mistress'
of all authority over their daughter if such guardian 'caused encouraged favoured or
knowingly permitted the seduction or prostitution of a girl under sixteen.' The
Secretary of the Department of Neglected Children or any other willing person could be
appointed the girl's guardian until she turned twenty-one. This can be seen as part of a
general, broadly based shift toward an increase in the centralized control of parenting
and of children, most obvious in the institutionalization of children defined as
'neglected' and in the establishment of compulsory, institutionalized education.

Even after the new amendments were passed, the women of the W.C.T.U. did
not let the issue rest. In their pamphlet publicizing the women's meeting held in 1891 to
express support for the proposed amendments to the Crimes Act, the W.C.T.U. rallied
women to the cause:

Women are the natural guardians of home, and of that Purity without which family
life could not exist. The matter is one of vital importance to our Sex, and to our
Nation, we dare no longer ignore it; let us then resolve to face it; to assist in

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86 Crimes Act 1891, s. 20.(4).
87 Ibid., s. 21.
removing the prevalent ignorance on the subject amongst our fellow women, and to
do all in our power to educate public opinion, thus by our example and influence
encourage others to come forward in a Holy Cause, having faith that in all these
things we shall be "more than conquerors through Him that loved us."**88**

Their determination to act in this area thwarted an attempt to have the age of consent
lowered from sixteen to fifteen in 1893. A member of the W.C.T.U. spied a small
paragraph in the newspaper announcing the reading of a Private Member's Bill which
sought to lower the age of consent. Quickly, the women distributed press releases,
organized interviews with members of Parliament and sent letters to Church
organizations and members of Parliament. Madame Antoinette Sterling, at that time
visiting Melbourne, agreed to assist with the campaign. She 'came forward and with
burning, passionate vehemence, spoke out for purity and truth.'**89** The first meeting
was held in conjunction with 'the Pleasant Sunday Afternoon services' in the Alexandra
Theatre.**90** A second meeting, also crowded with an attentive audience, was held at the
Theatre Royal. The campaign 'caused quite a sensation', in the words of the W.C.T.U.
annual report.**91** While one daily charged the women with being 'indecently morbid'
and 'a shrieking sisterhood', the Age, together with others, supported the women in
their attempts to thwart Captain Taylor's Crimes Act Amendment Bill.**92** In the end, the
Bill was withdrawn. The women of the W.C.T.U. continued their campaign in other
ways. There were large numbers of carnal knowledge and sexual assault cases before
the courts. Many men in the community resented the new laws and some judges were

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**92** Ibid., p. 29. *The Age*, leader, 15 August 1893, p. 4, cols 8-9; 26 August 1893, p. 8, cols
6-7. Other information related to this campaign: *The White Ribbon Signal*, II, 3, January 1894, p. 36;
extremely lenient with men before the courts on such charges. Women of the W.C.T.U. attended the courts regularly in an attempt to expose such injustice to women. In certain ways, such actions were extremely radical; when judges requested all 'decent' women to leave the court because of the explicit nature of the evidence, the W.C.T.U. women remained steadfast, preferring to be regarded as 'indecent women'. By such actions, they both exposed the hypocrisy of the double standard and challenged the distinction between 'damned whores' and 'god's police.' The public profile achieved by W.C.T.U. campaigns relating to this legislation and the administration of the law probably contributed toward the fact that the age of consent remained at sixteen, despite considerable criticism.

As well as the laws which attempted to prevent the recruitment of young prostitutes, people who ran brothels and generally profited from prostitution were subjected to other controls. The legislative path to a legal structure which attempted to 'suppress' brothels, and which remained in Victoria until the recent period of reform in the prostitution law, was strewn with heated parliamentary debates. The source of much of the confusion was the unresolvable contradiction between the expressed desire of many parliamentarians to legislate to make society more moral and the view that the law could be instrumental in shaping the nature of prostitution but was powerless to 'suppress' it. The year 1907 can be regarded as a watershed in the law relating to brothels for it marked the first attempt to introduce comprehensive statutory controls of brothels. Prior to that date there were, however, legal sanctions against brothel keepers.

The offence of being the occupier of a house frequented by persons having no visible lawful means of support was first a part of the vagrancy law, but passed into The Police Offences Statute in 1864 and subsequently remained part of police offences.

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legislation. It was certainly used against brothel keepers although the following cases cannot be taken to indicate common practice. In 1867 the Supreme Court determined that being 'the occupier of a house frequented by thieves or persons who have no visible lawful means of support' disclosed an offence within the meaning of this section and was supported by evidence of being the occupier of a house frequented by prostitutes. Prostitutes, it was determined, 'were undoubtedly persons having "no lawful means of support"'. In another case, concerned with a house frequented by prostitutes, it was determined that a woman may have 'frequented' a house, within the meaning of the section, although she may have happened to live there. The law, however, was clearly not implemented with any thoroughness. In 1885 Mr Coppin, M.L.A., in a long question directed to the Chief Secretary, Mr Berry, complained that this section of The Police Offences Statute was not being enforced by the police. Mr Berry replied that he had discussed the problem with Mr Chomley, the Chief Commissioner of Police, who pointed out that it was impossible for the police to interfere with brothels about which they had received no complaints for fear of being 'public persecutors rather than prosecutors'. The central point, that prostitution is not effectively suppressed by legislation but rather shaped by legislation and police practice, was realised by Mr Berry and some other legislators of the time. In 1884 the police did close down the more disorderly houses in the Lonsdale Street area. 'But even the partial action taken last year', observed Mr Berry, 'resulted in neighbourhoods that

94 The first statutory provision was contained within early New South Wales legislation: An Act for the prevention of Vagrancy ... 1835, s. 2. This was re-enacted in Victorian legislation in 1852: An Act for the better prevention of Vagrancy and other offences 1852. As mentioned at the beginning of this chapter, this Act increased the penalties for vagrancy dramatically. After 1852, an occupier of such a house was liable to imprisonment for one year for a first offence, two years for a second and three years for third and subsequent offences. The Police Offences Statute 1864, s. 21.

95 Regina v. Sayers (1867) 4 W.W. & a'B (L) 46.

96 Leister v. Short (1870) 1 A.J.R. 151.

97 V.P.D. (Assembly) 49: 1201, 23 September 1885, Mr. Coppin.

98 Ibid., p. 1203, Mr. Berry.
had hitherto been free from this particular evil being flooded with it'. Hence, legislation which did exist was used cautiously.

Prior to the passing of specific legislation in 1907 the common law offence of keeping a 'bawdy-house', a 'common, ill-governed and disorderly house', was also a sanction against brothels in Victoria. Whether this law also was enforced as rigorously as it could have been is, however, doubtful. Although J. Balfour, who spoke in favour of the 1907 legislation in the Legislative Council, stated that cases dealing with the common law offence 'came before the Court frequently' evidence given before various parliamentary inquiries and commissions suggests that the common law offence was only prosecuted as a public nuisance. During the 1880s, however, there were two court cases in England which made it clear that there was no necessity 'to constitute the offence that there should be any indecency or disorderly conduct perceptible from the exterior or that the premises should have caused a nuisance to the neighbours'. Nevertheless, both before and after these decisions, it appears that the Victorian police only acted after complaints had been made. At the 1906 Royal Commission into the Police Force one policeman testified:

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99 Ibid.

100 Under common law, 'every person commits an indictable misdemeanour known as common nuisance who, by any act unwarranted by law or by any omission to carry out a legal duty endangers the life, health, property, morals or comfort of the public'. Keeping a bawdy house was, and is, a public nuisance liable to be punished criminally at common law. Halsbury's Laws of England, Third Edition, Butterworth and Co. (Publishers) Ltd., London, 1959, 28, pp. 128 and 144.


102 During the 1870s, when complaints were made by 'respectable people', the police charged people with keeping brothels and brought them before the magistrates. The magistrates usually gave the women seven days notice to move from the neighbourhood and only if they remained did they have to appear again to be sentenced. Usually the women simply set up business somewhere else (Report re. Contagious Diseases 1878', pp. 11 & 14). The police apparently believed they had no power to act if the women lived quietly and did not disturb the neighbours (Report re. Contagious Diseases 1878', p. 41).
The thing has been tolerated for a number of years, and unless the inhabitants complain about the people we do not take action. We look upon it as a necessary evil, and as long as they are quiet and there are no complaints, we do not interfere with them.\textsuperscript{103}

Caution and respect for the 'liberty of the subject' may have been explanations for selective enforcement of both the police offences legislation and the common law. It is possible, however, to argue otherwise. Raelene Davidson (now Frances), who has completed a detailed study of prostitution in Western Australia, has demonstrated the way in which selective enforcement in Perth and Kalgoolie was systematically used by the police in order to establish 'red light' districts.\textsuperscript{104} Chris McConville, urban historian, has argued that selective enforcement was also used systematically in Melbourne during the 1870s and 1880s to confine prostitution to the north-east corner of the city where 'police did not interfere' and 'allowed brothels to operate freely.'\textsuperscript{105}

A close look at some sources for the study of nineteenth century prostitution in Melbourne, however, reveals a more complex situation, and points to the central importance of carefully examining how the issue of class is bound up with the enforcement of the law relating to prostitution. A survey of brothels which was conducted in 1884 came to the conclusion that there were at least 162 brothels in the inner suburbs - Carlton, Collingwood, Fitzroy, Richmond and Brunswick - and 'only' seventy in the city, so there were clearly other enclaves of toleration.\textsuperscript{106} Yet numerous women came before the court on charges of disorderly conduct or for drunkenness. There were 'superior women' who never came into the clutches of the police, just as


\textsuperscript{104} Davidson (now Frances), 'Dealing with the "Social Evil"'.

\textsuperscript{105} McConville, 'The Location', p. 89.

\textsuperscript{106} Chief Commissioner's Correspondence - Prostitution Report, 20 March 1884. Information collated and included in McConville, 'Outcast Melbourne', Appendix One, pp. 280-86.
the 'flash' brothels were left undisturbed as much as possible.\textsuperscript{107} As Police Superintendent Winch explained to the 1878 Inquiry into Contagious Diseases:

> There are plenty of brothels where women live, and those houses are outwardly as well conducted as any other house in the place. You never hear of any row or disturbance going on, but in those houses only a superior class of people live, and a superior class of men visit them.\textsuperscript{108}

Such houses were not disorderly houses within the definition of the Victoria Police and therefore were left undisturbed.\textsuperscript{109} It must have been the lower class prostitutes who comprised the bulk of the women who came before the courts. These were precisely those women who lived and worked in the 'back slums' in the north-east corner of the city, which McConville has suggested was a zone of toleration. Police certainly allowed the trade to flourish and protected the interests of men, particularly 'gentlemen', by allowing the necessary institutions to remain in business but succeeded in harassing the most vulnerable of the prostitutes themselves, especially those who were attempting to work independently.

Suspicions of selective enforcement need to be tempered by an understanding of the way in which attempts by police to administer the law were always constrained by the courts. As Winch again explained to the 1878 Inquiry: 'The presiding magistrates have over and over again ruled that as they say, those women must live somewhere. If you turn them out of one house they must go to another'.\textsuperscript{110} During the 1906 Royal

\textsuperscript{107} James, 'The Outcasts of Melbourne' in James, The Vagabond Papers, p. 27; 'Report re. Contagious Diseases 1878', pp. 4, 10, 11, 16, 41, 45, 46, & 70. See pp. 8-9 for details of the law on soliciting. At this time there were no provisions creating the specific offence of soliciting. Prostitutes would have been apprehended for this activity under vagrancy or general street offences provisions.

\textsuperscript{108} 'Report re. Contagious Diseases 1878', p. 41.

\textsuperscript{109} Ibid.

\textsuperscript{110} Ibid.
Commission into the Police Force, Plain-Clothes Constable Albert Tucker gave evidence that the efforts of the police to close down an expensive house in Lonsdale Street and obtain the conviction of the owner, Madame Brussells, were thwarted by a bench sympathetic to Madame Brussells. During an earlier Royal Commission into the Police Force, Sergeant Dalton complained that when the police brought charges against prostitutes, prosecutors often lacked the support of the lower court magistrates. When one examines statements such as these, however, it must be remembered that the police would certainly not have been eager to reveal to a Royal Commission or Commission of Inquiry any selective enforcement if it had been taking place.

After the police had moved in to clear a brothel often another one soon opened up in the same premises. This suggests a practical example of the hypocrisy engendered by the double standard of the time. Many 'gentlemen' ranted about the 'social evil', yet knowingly let their properties for the purposes of prostitution because it was more lucrative than normal residential use; men who were described in 1907 by Mr. Prendergast, leader of the Opposition, as 'those whited sepulchres who let their houses for immoral purposes, and yet carry their Bibles to church.'

One such gentleman was J. Rosenthal, an estate agent and furniture merchant who had considerable property in the Lonsdale Street area, much of which was used for prostitution. Some women were also the owners of property rented out for prostitution. In 1878, Mrs B________ (possibly Madame Brussells) had 'two splendid

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111 'Royal Commission on the Victorian Police Force 1906', p. 452.
112 'Royal Commission on Police 1883', Minutes of Evidence, p. 29.
113 V.P.D. (Assembly) 117: 1312, 1 October 1907, Mr. Prendergast.
114 Chief Commissioner of Police Correspondence 28 July 1883; Police Report on Brothels 27 March 1884 Chief Secretary's Correspondence; 22 October 1887 Chief Commissioner of Police Correspondence (all at Public Records Office Laverton) used by McConville, 'Outcast Melbourne', p. 86. The Age, leader, 8 January 1892, p. 4, cols 7-8.
houses ... that cost her £1,300', and six other properties, receiving three and four pounds for each of them weekly'.\textsuperscript{115} A survey of brothels in the Lonsdale Street area conducted in 1883 revealed that there were six female owners who between them owned eleven of the thirty-three brothels listed. Madame Brussells was listed as a 'brothel-keeper' but Mrs. King, Mrs. Allen, Mrs. Johnson, Mrs. Judd and Mrs. Quinn were all designated as 'lady'.\textsuperscript{116} Whether they were members of the bourgeoisie and upper classes in collusion with the men of their class is not clear. Chris McConville was only partly right when he concluded that 'men ... actually controlled and fostered the business.'\textsuperscript{117} This needs to be re-examined and questions asked about the opportunities which existed for women to end successful careers as prostitutes in control of property used for prostitution.\textsuperscript{118}

One situation, however, is clear. Under the law as it existed until 1907, no-one could be prosecuted for simply owning a brothel, that is, for leasing a property for the purposes of prostitution.\textsuperscript{119} Becoming a landlord of a brothel was clearly one option for successful prostitutes who wanted to escape the clutches of the law. Although the double standards of the male landlords can be criticized it must also be noted that the lack of criminality of leasing premises for the purposes of prostitution would have made the working conditions of nineteenth-century Victorian prostitutes superior to those of women working in the trade after the laws controlling landlords were tightened. The ready availability of accommodation would have provided the prostitute with greater freedom of choice as to where she worked; there was less incentive for the

\textsuperscript{115} 'Report re. Contagious Diseases 1878', p. 18.

\textsuperscript{116} Chief Commissioner's Correspondence, 2 November 1883 in McConville, 'Outcast Melbourne', Appendix Two, pp. 287-89.

\textsuperscript{117} Ibid., p. 86.

\textsuperscript{118} For an example of a woman who achieved this in the Western Australian context see Raelene Davidson, "As Good a Bloody Woman", pp. 186-87.

unscrupulous and for criminal elements to attempt to establish a monopoly on the rental 
market.\textsuperscript{120}

An old English provision designed to enable the prosecution at common law of 
anyone who appeared to be the keeper of a brothel, but could not be proved to be the 
actual keeper, was probably in force before 1907 in Victoria.\textsuperscript{121} It is difficult to 
determine the exact status of this law in Victoria prior to the enactment of a similar 
provision in the Police Offences Act 1928.\textsuperscript{122} When in 1922 Justice Cussen had 
completed the enormous task of determining which Imperial Acts were in force in 
Victoria at that time the above-mentioned provision was placed in the 'doubtful' 
category. That is, it had not been expressly or by implication repealed for Victoria by 
enactment of the New South Wales, Victorian or Imperial legislatures, but its

\textsuperscript{120} This shift in the organization of prostitution is impossible to document from the sources 
utilized for this thesis. It is suggested by Judith Allen in 'The Making' and in the earlier article by 
Hilary Golder and Judith Allen, 'Prostitution in New South Wales'. A recent American study has 
pointed to the increased involvement of organized criminal elements in prostitution which resulted from 
the national campaign during the 'Progressive Era' in the United States, 1900-1918, which succeeded in 
closing down the red light districts in U.S. cities and towns: Ruth Rosen, \textit{The Lost Sisterhood}. As 
Judith Allen herself wrote, however, of the problem of examining the increased involvement of 
organized crime in prostitution in New South Wales, 'the contours and chronology of this restructuring 
of prostitution in New South Wales are more readily conjectured than documented with certainty.' ('The 
Making', p. 215). Despite McCoy's conclusion that organized crime failed to gain a substantial 
foothold in Victoria (McCoy, 'How Sydney Succumbed') the extent to which legislative change such as 
the introduction of the offence of leasing premises for use as a brothel may have increased the 
involvement of organized criminal elements in prostitution in Victoria is a subject worthy of further 
detailed study.

\textsuperscript{121} And whereas, by reason of the many subtle and crafty Contrivances of Persons keeping 
Bawdy-houses, Gaming-houses or other disorderly Houses, it is difficult to prove who is the real Owner 
of Keeper thereof, by which means many notorious Offenders have escaped Punishment: Be it enacted 
by the Authority aforesaid, That any Person who shall at any Time hereafter appear, act or behave him 
or herself as Master or Mistress, or as the Person having the Care, Government or Management of any 
Bawdy-house, Gaming-house or other disorderly House, shall be deemed and taken to be the Keeper 
thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not 
in Fact by the real Owner or Keeper thereof. (An Act for the better preventing Thefts and Robberies, 
and for regulating Places of Publick Entertainment, and punishing Persons keeping disorderly Houses 
1752, 25 Geo. II, c. 36, s. VIII).

\textsuperscript{122} Police Offences Act 1928, 19 Geo. V, No. 3270: '80.(2) Every person who appears acts or 
behaves as master or mistress or as having the care government or management of any brothel bawdy 
house or other disorderly house of any kind shall for the purpose of this Act or any other Act or law 
relating thereto be deemed to keep the same whether the real keeper thereof or not.'
applicability had not been clarified by judicial decision. That is, there had probably been no legal dispute about whether a person was or was not in fact the keeper of a bawdy-house. This suggests that the type of police practice and court decision described above may have been regarded as routine and remained undisputed by the women concerned in the same way that many prostitutes today plead guilty to charges which would probably not stand if contested in a court of law.

The law relating to the keeping of brothels changed radically with the passing of the Police Offences Act 1907. At the end of debate in both houses of Parliament, as well as brothel keeping being made a statutory offence with a maximum penalty of two years' imprisonment, letting or renting a house for the purposes of prostitution were criminalized. The new offences carried maximum penalties of twenty pounds.

This legislation was passed despite the realization by some parliamentarians that it would alter the way prostitution was organized. Mr Prendergast and The Hon. W. Cain were especially concerned that the 'unfortunate women' would have nowhere to go, that 'they would be hunted from place to place and would be, perhaps, driven on to the streets'. Mr. Watt, in reply for the Government, argued for the sanctions against landlords from moral principles and would not admit the connection between such legislation and the lives of the women:

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123 It was saved from repeal by being set out in Part II of the Imperial Acts Application Act 1922, but remained subject to judicial decision—that is, it was one of the laws which were to have only 'such force and effect, if any, as they had at the commencement of the Act'. (Imperial Acts Application Act 1922, 13 Geo. V, No. 3270. The provision was headed 'Division 5 - Disorderly Houses').

124 Police Offences Act 1907, 7 Edw. VII, No. 2093, s. 5(4).

125 Ibid., s. 6.

126 V.P.D. (Assembly) 117: 1312, 1 October 1907, Mr. Prendergast. For Mr. W. Cain's comments see V.P.D. (Council) 116: 416, 6 August 1907.
There are men who are supposed to be observers of religious principles, and who yet
draw a large revenue from the social evils of this character ... The Government appear
to me to have taken the correct conception of the thing. We do not want houses let
for that purpose. ... But it does not follow that these women shall have no house to
stop in. 127

Other members also seemed unable to draw the connection. 128 There was a clear moral
imperative behind the legislation. The Hon. J. Balfour who proposed the clause in the
Legislative Council (it was not contained in the original Bill drafted by the
Government) explained that 'his suggestion came from a society in Melbourne dealing
with morality and other subjects of that kind'. 129

Moral condemnation of landlords of brothels, however, was not universal. Clearly, some members were eager to protect the landlords many of whom, it was
contended, did not know that their premises were used for prostitution. After the Bill
had passed through the committee of the Legislative Council it was forwarded to the
Assembly where an interesting amendment was made to the original clause so that it
read as set out above. Prior to amendment, part two of clause six had made any person
who was wilfully a party to the use of any tenanted house as a brothel guilty of an
offence. This was designed to make landlords liable if they discovered, after leasing
their premises, that they were used for prostitution. The amendment inserted the words
'being the tenant, lessee or occupier of any house' at the beginning of clause two. This
amendment clearly established the liability of prostitutes who rented premises. At the
same time the new wording actually prevented landlords from being liable if the fact
that their premises were being used for prostitution was discovered after the property
was leased. This radical change was described by the Hon. J. M. Davies in a brief

127 V.P.D. (Assembly) 117:1316, 1 October 1907, Mr. Watt.
128 For example, Mr. Mackey at Ibid., p. 1312.
explanation of the amendment to the Legislative Council as 'a little modification'.

'He did not think the matter was of great importance', despite the effect it would have on prostitutes who could not afford to buy premises.

The other provision in the Police Offences Act 1907 relating to brothels was also the result of an amendment passed while the Bill was passing through the legislative process. It provided that: 'Any person who keeps or manages or acts or assists in the management of a brothel shall be liable to imprisonment with or without hard labour for any time not exceeding two years.' This sub-clause had apparently been inserted by the Legislative Assembly with the aim of placing women in the same position as men as regards the offence of living on the earnings of prostitution. In fact, it did nothing of the sort. Although the provision did not radically change the law, as keeping a brothel was already an offence at common law, the Assembly's amendment actually resulted in an interesting Council debate which dealt broadly with the problems surrounding any attempt to legislate to suppress brothels. The Hon. N. Fitzgerald suggested that it would simply drive prostitutes underground which would lead to the development of 'private establishments which were more conductive to immorality than the well known places'. Perhaps he was alluding indirectly to the type of 'immorality' of which earlier speakers had specifically warned:

> It was too great a temptation to place any man in such a position that he could say to an unfortunate woman, "If you pay me so much I will not notice you." Of course,

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130 V.P.D. (Council) 116: 1500, 9 October 1907, the Hon. J. M. Davies.

131 Ibid.

132 Police Offences Act 1907, s. 5(4).


134 See below for discussion of the different positions of women and men under this law.

135 V.P.D. (Council) 116: 1500, 9 October 1907, The Hon. N. Fitzgerald.
most of the police were above suspicion, but, all the same, the proposed provision was a dangerous one. 136

Despite this awareness of the danger of the growth of police corruption, the Police Offences Bill 1907 passed into law with provisions designed to suppress brothels. Until the passing of the *Planning (Brothels) Act* 1984, later legislation would simply refine and extend the 'principles' established by the 1907 Act.

While the laws relating to brothels would have altered the working lives of prostitutes, the creation of the offence of living on the earnings impinged radically upon the personal lives of women in the prostitution trade. The history of each offence is also very different. While brothel keeping has had a long history in the common law, living on the earnings was first introduced in Victoria as a statutory offence in 1907. The effect of the new provision was to criminalize a male person living with, or habitually in the company of, a woman working as a prostitute. If such a person had no lawful means of support or insufficient lawful means of support, unless he satisfied the court to the contrary, he was deemed to be knowingly living wholly or in part on the earnings of prostitution.137 For the woman in prostitution this law affected both her work options and her private life. It made the option of working as a 'freelancer' with the aid of her husband, lover or male accomplice much more difficult. Prior to the passing of this legislation a man could provide protection and assistance to a prostitute in return for a share in her takings without fearing the law but after 1907 he was liable to the penalty of a maximum of two years' imprisonment with or without hard labour.138 The law took away the freedom of a woman working as a prostitute to dispose of her income as she chose; it was made illegal for her to support a man with her earnings.

136 Ibid., p. 1499, The Hon. W. H. Embling. Police corruption was also mentioned by the Hon. W. S. Manifold at Ibid.

137 *Police Offences Act* 1907, s. 5.

138 Ibid.
There is no evidence in parliamentary debates of awareness of the radical implication of this legislation. Surprisingly, there is also no evidence of the argument usually brought to bear in defence of legislation relating to living on the earnings of prostitution, that is, that such legislation is necessary to prevent the coercion of prostitutes. There was very little debate at all on the provision while it was passing through the committees of both the Legislative Assembly and the Council. The passing comments made in second reading speeches were moralistically condemnatory of 'bludgers': 'Whatever might be the evils of prostitution there could be nothing, he thought, more degrading than for any man to live upon the proceeds.'\(^{139}\) Certainly, there was no overall underlying philosophy behind this provision.

There was, indeed, no coherent policy behind the many changes made to the law relating to prostitution during the years from 1890 to 1914. It has been established that there were three major areas where there were legislative efforts to control prostitution during the nineteenth century—attention to the individual woman in the trade, venereal diseases legislation and attempts to control the more organized aspects of prostitution. In the first and third areas, there was a clear increase in state control at the legislative level, despite the lack of a coherent underlying policy. Contagious Diseases legislation was thwarted by an influential women's lobby group which continued to be less moved by the public health debate than by nineteenth century notions of morality.

General comments made upon the Police Offences Bill by several members of Parliament, but especially those by Mr Watt, underline the lack of coherent legislative policy and point toward the central role which the police played in creating the laws which they then administered. Control, it appears, had become so ingrained that those

who did the controlling (the police) were entrusted to define the nature of their activity, its limits and extent:

This Bill is necessary in order to deal with the reputed thief and the vagrant, and with the people who live upon the worst of our social vices. The law should be strengthened with regard to those, and in doing that we must be guided very largely by the requests which have come to us time after time during the last three or four years from every responsible police officer who has given this matter attention.¹⁴⁰

The central importance of the police in the legal process related to prostitution has been alluded to in this outline of the prostitution law in Victoria. The following chapter expands an understanding of the nature of police intervention into prostitution in Melbourne during the twenty-five years preceding World War I.

¹⁴⁰ V.P.D. (Assembly) 117: 1316-7, 1 October 1907, Mr. Watt. Judith Allen in 'The Making' pointed out in relation to similar New South Wales laws that 'the police played a focal role in their advocacy, while mostly being the sole agents of their enforcement'. (p. 194). These comments made in the Victorian parliament suggest the importance of further exploration of the dynamics of the relationship between the police and the legislature, and the ways in which the police were able to extend their own powers.
CHAPTER TWO
POLICING PROSTITUTION

The crucial role played by the legislature in shaping prostitution discussed in the previous chapter cannot be understood in isolation. The police, as those primarily responsible for the administration of laws related to prostitution, necessarily played an important part in making prostitution and the experiences of individual prostitutes what they were in the late nineteenth and early twentieth centuries. Similarly, the court and prison systems structured the experiences of women in the trade in fundamental ways. The following three chapters explore the functioning of the legal system at these points where it was in the most immediate contact with those it effected.

By 1890, Victoria had established a centralized, bureaucratized police force on the modern model. In 1853 an Act for the Regulation of the Police Force was passed in order to establish '... a Force ... effective in organisation and discipline, to carry the Laws into execution, and afford protection and security to Life and Property.'¹ The new force combined the previously separate functions of seven distinct bodies of police - the City Police, the Geelong Police, the Gold Fields Police, The Water Police, The Rural Bench Constabulary, The Mounted Police and the Escort - under the one administration. Although this development in Victoria was influenced by certain specific factors, it can be seen as part of a much broader trend throughout the West toward the establishment of 'policed societies', societies where the central political authority penetrated throughout daily life with the help of a highly visible (uniformed)

administrative arm. So in being forced to deal with 'the police' on a regular basis women working as prostitutes in turn-of-the-century Melbourne were enmeshed in a peculiarly modern power structure.

It was on the streets that Melbourne's prostitutes frequently came in contact with the men whose task it was to administer the law related to prostitution. Amongst other things this discussion will try to illuminate what that contact may have been like. During the first half of 1898 individual women working as prostitutes in Melbourne tended to work the streets with other women from their own loosely knit network of working women. Women arrested for being common prostitutes importuning in public places were frequently arrested in pairs or in groups of three or four. An examination of patterns of these arrests in the area which fell under the jurisdiction of the Melbourne Court of Petty Sessions suggests that there were a number of fairly discrete groups of prostitutes in Melbourne. For example, Lizzie Wilson was a woman who may have been new to the business in 1898. The first time she appeared before the court in that year she was dismissed and on her second appearance she received the lightest sentence of a fine of two shillings and sixpence or six hours' imprisonment. The first time she was arrested she was with Minnie Dalton, an experienced prostitute who appeared

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3 For an idea of some ways in which communities policed prostitution in early modern societies see Roper, 'Discipline and Respectability', especially pp. 7-8; Jones, 'Prostitution and the Ruling Class', pp. 10-11.
before the Melbourne Court five times during the period examined. Minnie Dalton was a member of a group of about eighteen women, individual members of which were often arrested in the company of other members of the group. Lizzie Wilson was the only woman who was arrested with anyone outside this group during the period under discussion. The second time she was arrested she was with Mary Hansen (who appeared five times on charges of importuning during the first half of 1898) and Nellie Miller (who appeared three times on similar charges) who were members of another group. It may be that Lizzie Wilson was new to the business and had not yet become established in a network. It is possible that the groups revealed by the arrest patterns corresponded to 'beats' which were worked regularly by the same women, and that Lizzie Wilson had not yet determined a particular area where she preferred to solicit custom. Some women formed especially strong bonds with particular women within the group, choosing to work almost exclusively with the same person. Annie Patten was arrested four times for soliciting between January and June 1898 and every time she was working with Maude Wylie although on one occasion they were with another member of their group, Emma Archibald. Women working as prostitutes would certainly not have faced the harassment of the authorities and the difficulties of their trade in isolation. Arrest patterns revealed in the court registers are but a faint shadow of the support networks which would have existed amongst prostitutes (as amongst any group of working class women) at this time.  

As Minnie Dalton put the finishing touches to her face and carefully adjusted her blouse before taking to her usual beat in search of custom she could be certain of at least one thing: she would meet a uniformed police constable if she did not carefully time her departure. The street was also his territory; he also marked a particular beat. Those who policed the city were in turn policed by their superiors; the 'beat' method of policing, employed in Melbourne from the 1850s, was a method of regulating the

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4 Melbourne Court of Petty Sessions Arrest Registers, Series 1665, units 57 - 60, Vic. P.R.O.
activities of the potentially unruly, largely untrained and usually working-class constables. Each constable had a particular route which he had to patrol. He had to walk in the same direction and at a constant speed of approximately two miles per hour so that any person requiring assistance would know that if s/he waited at a particular spot s/he would meet the constable. If this routine were interrupted by some matter requiring the constable's attention he had to remain where needed, reporting the cause of delay immediately once the matter was settled. By the early 1900s the police were experimenting with randomly changing the direction of beats in a vain attempt to thwart the criminals who carefully watched the constables' methods of working the beats. Nevertheless, the point of the beat system was that the superior officers always knew where the constables should have been. Supervision of the constables involved a complicated system of meetings between constables, sub-officers and officers during the period of duty, specifically designed to prevent the constables neglecting their responsibilities. But as one constable explained to the 1906 Royal Commission on the police force, it took on a bureaucratic imperative of itself:

q. According to your statement, the work of the police is not to keep the peace of the city, but to keep the beat?

a. Yes; there is the convenience practically for the men on the beat, for the officer in charge of the section, and also the sub-officer, because the sub-officer will know

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5 The primarily working-class background of rank and file policemen during the period of this study is stressed by Haldane, *The People's Force*, pp. 3, 113 & 152. He also points to the control of police by police: 'Policing was not just a job but a way of life, and the men in blue serge whose duty it was to superintend the lives of others were themselves closely supervised and controlled' (p. 108). He does not, however, make this point in relation to the beat system to which he pays but scant attention: see pp. 44, 48 & 109.

directly where to pick his man up, the man on the beat knows where a sub-officer
will find him, and the officer knows where a man will be at a certain point.\textsuperscript{7}

As the uniformed constable's beat was so predictable, if Minnie Dalton either
lived on the local constable's beat or knew of a place to secret herself on his route, she
could have avoided meeting him by watching for him to pass and then following at a
respectable distance at the same speed, soliciting safely behind his back. Undoubtedly
at times she took such precautions for it was in her interests to prevent her activity
being detected. Constable Crowe advised young constables on the appropriate action to
take when prostitutes were found loitering on their beat, and importuning men for the
purpose of soliciting prostitution. Firstly, the women should be cautioned and only
then if they offended were they to be arrested.\textsuperscript{8} So it was in Minnie Dalton's interests to
avoid initial detection if she wanted to continue working for the rest of the day or
evening without fear of arrest. "The uniform men cannot get near to them; they whip up
their skirts and away like fury up the lanes' explained one policeman.\textsuperscript{9} It seems quite
likely then that women working regularly as prostitutes, and therefore labelled as
prostitutes and liable to arrest for importuning, played a kind of cat and mouse game
with the uniformed constables who knew them.

The activities of the plain-clothes constables were less predictable than those of
the uniformed beat constables and therefore they were more difficult to avoid. During
the 1890s Russell Street Police Station had four divisional plain-clothes constables with
a senior constable especially assigned to supervise their activities. By 1906 the number

\textsuperscript{7} Evidence of Constable Henry Geelan, 'Royal Commission on the Victorian Police Force
1906', p. 265, q. 7694. For details on the beat system see the following pages in the Minutes of
Evidence: 4-5, 22, 32-40, 90-94, 113, 149, 248, 265 & 361. See also the Report of the Commission
p. x. For expressions of concern about the need to control constables see Minutes of Evidence p. 32,
q. 926 & p. 113, qq. 3107-10.

\textsuperscript{8} Crowe, \textit{The Duties of a Constable} and \textit{Crowe's Police Manual} p. 21 (both editions).

\textsuperscript{9} 'Royal Commission on the Victorian Police Force 1906', Evidence of Sergeant Patrick
Byrne, p. 135, q. 3813.
of constables had increased to six. Melbourne overall had eighteen or nineteen plain-clothes police at the time of the 1906 Royal Commission but many stations had recently begun to put on any extra men in plain-clothes, so that numbers fluctuated.\(^{10}\) Four constables—George Appleby, John Stokes, George Scott and Albert Tucker, all plain-clothes constables—were the arrest officers in 72.7% of the 318 importuning cases which came before the bench of the Melbourne Court of Petty Sessions in the six months from January to June 1898. These four constables were allocated to plain-clothes duty for the whole period surveyed while Thomas Wardley began plain-clothes duties in March. He was responsible for only seven arrests for importuning so it is possible that he was being trained in some way during this period rather than taking full responsibility for the policing of prostitution. Constable J.W. Carey who was temporarily allocated to plain-clothes duties during June of 1898 made no arrests for importuning at all, which suggests that the responsibilities of the plain-clothes branch required some experience before police could be effective. Overall, only twenty-one police officers arrested women for importuning during the first half of 1898. Occupiers of brothels were obviously considered the responsibility of experienced constables. Patrick Canty, a senior constable located in the city area and allocated to plain-clothes duties was unusually active in this area (senior constables rarely appeared as arresting officers before the Melbourne Court of Petty Sessions). The only two constables responsible for apprehending occupiers of disorderly houses were John Stokes and Albert Tucker, obviously experienced in dealing with prostitution.\(^{11}\)

The arrest patterns for these prostitution-related offences can usefully be compared with those for the offence of drunk and disorderly; 157 policemen arrested

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\(^{10}\) See the following pages of the Minutes of Evidence in 'Royal Commission on the Victorian Police Force 1906': 94; 96-7, 113, 123, 135, 445, 450-4 & 632-4.

\(^{11}\) Information on police constables responsible for the prosecution of cases of a specific nature during the period January to June 1898 has been collated from the 'Melbourne Court of Petty Sessions Arrest Registers', Units 57-60, Series 1665, Vic. P.R.O. Information on the duties of all members of the police force is collated on a monthly basis in the 'Police Muster Rolls', Series 55, Vic. P.R.O. I have used Unit 27, 1898, for this discussion.
women for this offence during the first half of 1898 and no single policeman appeared as police witness in more than five percent of the 482 cases involving drunk and disorderly behaviour.\textsuperscript{12} Although this discrepancy between arrest patterns for importuning and for other street offences may be partly explained by the wily avoidance of the regular constable by women working as prostitutes, it also suggests that prostitution was regarded by all police as the responsibility of the plain-clothes constables; some regular uniformed constables may have interpreted Crowe's advice to caution a prostitute before arresting her as a licence to avoid policing prostitution altogether. It would not be surprising if constables who enjoyed the sexual services of prostitutes in hours of recreation were loath to arrest such women when on duty.\textsuperscript{13} Many constables who came from a working-class culture where prostitution was both a part of a continuum of sexual activity of young women and a crucial work option in a limited job market may have identified with the needs and interests of the women who could have been their sisters, friends and mothers.\textsuperscript{14} Yet class interests would have been mediated by a number of factors. Police were upholding the interests of the state when they were carrying out their duties, and state interests were often those of the middle class, as shall become evident later in this chapter. They were also participating in the maintenance of a gender system which privileged men.

\textsuperscript{12} Ibid.

\textsuperscript{13} One of the Commissioners inquiring into the police force in 1906 asked: 'Do you think it is wise to put young men for the first twelve months in a city such as Melbourne, with the many temptations from women of the street. We have had many cases that have come before the courts and some that have been settled out of court of young constables mixing with people of that character. Is it not a big temptation?' Chief Commissioner O'Callaghan answered: 'Yes; a policeman's life is full of temptation; it does not matter whether he is young or an old hand.' 'Royal Commission of the Victorian Police Force 1906', Minutes of Evidence, p. 23. Haldane in \textit{The People's Force} mentions occurrences where police constables were found drunk in brothels and were known to associate with prostitutes during the early years of the force from the 1850s to 70s; see pp. 49 & 73.

\textsuperscript{14} For an interesting discussion of the changing meaning of sex in the lives of one group of urban working-class women in the United States see Kathy Peiss, "Charity Girls" and City Pleasures: Historical Notes on Working-Class Sexuality, 1880-1920 in Ann Snitow, Christine Stansell and Sharon Thompson (eds.), \textit{Powers of Desire}.
Policing Prostitution

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The police themselves actually participated in constructing the distinction between the prostitute and all other women. The plain-clothes constables took it upon themselves to carefully watch all women on the streets in the city, on the lookout for those whose behaviour appeared less than virtuous. 'If we have our doubts about a woman' explained Senior Constable James Stapleton, 'we watch her and follow her, and when we get her in a brothel we know who she is.' The police would also follow up anonymous complaints. In March 1893 an anonymous correspondent wrote to 'the Inspector of Police' reporting that 'Mrs. Phillips occupying No. 13 Smiths [sic ] St. Fitzroy is a high class Prostitute. Her 4 daughters aged from 5 to 16 are in the house with her. The Police on the beat know the house, can anything be done for the children.' Constable O'Sullivan from Fitzroy Station approached Mrs. Phillips' neighbours to ascertain her moral status and found that they had noticed nothing 'that would lead them to believe that she was otherwise than a respectable woman.' The Constable made inquiries 'in other ways', with the same result. O'Sullivan and the Constable on night duty had kept the house under observ ation but had noticed 'nothing wrong'. Surveillance on the house was continued and O'Sullivan promised to report 'anything wrong on the part of Mrs. Phillips.' All women, then, were the subject of this kind of surveillance. The police watched all women in order to be able to identify those who worked as prostitutes. As no verification of the identity of people who complained about prostitutes and brothels was required by the police, anybody could

15 'Royal Commission on the Victorian Police Force 1906', evidence of Senior Constable James Stapleton, in charge of plain-clothes police stationed at Russell St., p. 633, q. 17425. See also evidence of Constable Albert Tucker, p. 451, q. 13228.

16 'Report of Constable O'Sullivan 2989 relative to Mrs. Phillips referred to in attached note', 24 April 1893, Box 338, Chief Commissioner of Police, Inward Registered Correspondence, Series 937, Vic. P.R.O.

17 Ibid.
make a complaint about any woman, who would then in all likelihood have been subjected to the same types of inquiries as was Mrs. Phillips.  

Women who did not take their customers back to city brothels apparently had less to fear from the police patrolling the city than did those who frequented the local brothels. The police claimed to be scrupulous in discerning which women were 'common prostitutes' and used this as the main criteria for selecting which women to harass. Having a house in the suburbs to return to with customers was one way in which women working the streets in the city could avoid detection by the police.

Once labelled as a 'common prostitute' by the police, women often found it very difficult to extricate themselves from the vicious cycle of arrest and court appearances. Nellie James, for example, had worked as a prostitute but when found by Constable Hallett and Hannan working in the kitchen of the Mechanics' Arms, she claimed she had decided to pursue other employment; at the time, she was trying to obtain work at the Mechanics' Arms as a barmaid with the help of good references from her previous employers at Miles Wine Café in Bourke Street. The constable claimed that in fact, James had been taking men from the café to brothels. She wrote to the Chief Commissioner explaining that she wanted to lead 'a good and virtuous life' but police had forced her to leave a number of jobs in service because by keeping track of her the police effectively informed her employers of her past life. As she explained to the Chief Commissioner, such harassment gave her little choice but to return to her work as a prostitute.  

18 Further evidence that the plain-clothes police kept a mental note of all 'common prostitutes' can be found. In January 1893 a complaint was received in relation to a shop kept by Ruby Ellis at 28 Bourke St. The complainant stated that Ellis was a prostitute and implied that the shop was run as a brothel. After watching the shop carefully for about a month, Senior Constable Gleeson reported that he could not recognize Ellis as a prostitute. Likewise, the other plain-clothes police could not, so no further action was taken. File G 1706, Box 338, Chief Commissioner of Police, Inward Registered Correspondence, Series 937, Vic. P.R.O.

19 Reports on Nellie James, 10 October and 11 November 1893, Box 340, Chief Commissioner of Police, Inward Registered Correspondence, Series 937, Vic. P.R.O. This story is also told by McConville in 'From "Criminal Class"', p. 80.
resistance to their classification. As the police file enables only a tiny glimpse into the life of Nellie James, it is difficult to tell whether or not her resistance enabled her to pursue other job options. It can be said with certainty that even if she did continue some involvement with prostitution, she never went to prison for a significant period.\(^{20}\)

That there was some reluctance on the part of the police to police prostitution with determination, and that the policing of prostitution was largely spasmodic, is revealed by a series of events and debates in Melbourne which occurred after the long serving Police Magistrate, Mr. Panton, was succeeded by Mr. Cresswell on the City Court Bench at the end of June 1907.\(^{21}\) This scenario also illuminates the class interests behind at least some aspects of the policing of prostitution and the way in which these interests would have impinged upon the daily lives of women working in the trade.

Soon after Cresswell PM took charge of the City Court, he ruled that in order to prove a charge of soliciting or importuning under section 7 of the Police Offences Act, the woman had to have accosted a man at least twice, and the arresting constable had to have heard what was said. Failing the last-mentioned evidence, the man accosted had to be called as a witness.\(^{22}\) The difficulties faced by the police in approaching the men concerned were described by Constable Hickling: 'In some instances they answer with an insulting remark and in others they walk off without answering at all, and when they

\(^{20}\) Her name does not appear in the Attorney-General, Penal and Gaols Branch, 'Alphabetical Index to Central Registers of Female Prisoners 1855-1948', Series 10879, Vic. P.R.O.

\(^{21}\) Report of Senior Constable Stapleton relative to City brothels and street soliciting', 12 January 1908, Box 119, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O. This box contains a file ostensibly on the subject of juvenile delinquency and youthful prostitution. In fact, the major part of the file is comprised of correspondence and reports related to the general topic of the policing of prostitution for the period 1908 to 1913. Material in the file is in great disarray so the order of the documents has been disregarded and an attempt made to construct a narrative from the disorder.

\(^{22}\) It is not quite clear to what extent this was a departure from the practice under Panton PM. According to evidence given at the 1906 Royal Commission on the Victorian Police Force, Panton also required evidence of the words spoken, and usually dismissed cases of importuning if the women pleaded not guilty (James Stapleton, Minutes of Evidence pp. 632-3; Albert Tucker, Minutes of Evidence, pp. 451 & 453-4). That 'importuning' may have always been difficult to prove does not diminish the argument of the following paragraphs.
do condescend to answer you civilly, they say oh she only said "good-night." As another police officer noted, it was often the men who approached the women, after all. If women working the streets for the purposes of prostitution behaved in an orderly fashion, it was virtually impossible for the police to do anything about them. Consequently, there were a great many prostitutes to be found soliciting in the streets, much to the chagrin of 'the respectable middleclass'.

Complaints increased. A letter to The Argus on 9th January 1908 remarking on the way in which 'the law with regard to street solicitation is shamelessly broken' resulted in a small flurry of reports and memos. Chief Commissioner O'Callaghan instructed that immediate action be taken. Little could be done about soliciting, but 'the whole of the brothel keepers in the city were at once warned that the law respecting disorderly houses would for the future be rigorously enforced'. Senior Constable Stapleton believed that this warning would effectively clear all the brothels out of the city 'as the whole of the women living in these houses expressed their intention of at once closing their places, and shifting as soon as they could find other places to go to.' Many of the women moved their brothels to Carlton at this period. While the complaint in The Argus may have been the immediate catalyst for police action, the concerted campaign against the city brothels at this time was also related to the passing of the Police Offences Act 1907 which dramatically strengthened the law against

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23 'Report of Constable Hickling 4670 relative to Mr. Commons instructions, re obtaining evidence for a case of importuning persons against prostitutes', 16 October 1908, in file on policing of prostitution, Box 119, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O.

24 'Report of Constable Porter 4378 relative to attached complaints re prostitute nuisance in Collins Street', March 12 1909, in Ibid.

25 'Report of Senior Constable Stapleton Relative to City Brothels and Street Soliciting', 12 January 1908, in Ibid.

26 Ibid.

27 'Report of E. W. Sharpe Const. 4706 relative to Attached Return and my views as to the cause of same', 11 November 1909, File on juvenile immorality and youthful prostitution, Box 107, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O.
As the result of the ensuing action by the police, 'sly brothels have from time to time sprung up in other parts of the City, where they never existed before.' One such brothel in the guise of a confectionary shop was opened by two women at 195 Exhibition street. The new brothels were run in such a manner as to make it extremely difficult for the police to get evidence to support a charge of keeping a disorderly house. So a mode of employment and sexual activity carried out by primarily working-class women was being forced into a more and more marginal status. Previously, prostitution carried out in brothels had been regarded as a deviant activity, yet tolerated and acted against only when flagrant offence to the public was committed. After the 1908 campaign to clear the city brothels, brothels became more clandestine. It is possible that the women themselves absorbed a greater sense of criminal deviance than had previously been the case. This action against the brothels was part of a broadly based attempt by the middle class in positions of power to define more precisely and deeply the bounds of acceptable behaviour. Yet despite the existence of the more comprehensive legislation passed in 1907, without the increasing complaints from the respectable middle class and the ensuing instruction from the Chief

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28 See Chapter One.

29 'Report of Constable Scott relative to The attached clipping from the Age re. The Rev. Mr. Hoban's address', September 15 1908, in file on policing of prostitution, Box 119, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O.

30 Ibid.

31 It is clear from the police correspondence that policing of brothels was primarily carried out in response to specific complaints prior to 1908: See for example: File A3509 Box 5, File B537 Box 14, File E7205 Box 47 all in Chief Commissioner of Police Inward Correspondence 1837-1895, Series 807, Vic. P.R.O.; File B10827 Box 8, in Chief Commissioner of Police Miscellaneous Correspondence Files, Series 808, Vic. P.R.O.; letter c. 15 February 1893 and file re. complaint about house off Fleet St., last dated report 14 February 1893, both in Box 338, Chief Commissioner of Police, Inward Registered Correspondence, Series 937, Vic. P.R.O. See also Chapter One.
Commissioner of Police, the women in the city brothels would in all likelihood have been left in peace by the constables on the beat.32

This action against the City brothels was bound up with the real issue of the moment - the visible presence of the women 'plying their trade' on the streets. The situation in Collins St. East was of particular concern. Here was the Harley Street of Melbourne. Doctors, 'ladies' and innocent daughters needing protection lived in the stylish quarter. There were cafés frequented by persons of certain standing and august institutions such as the Melbourne Club. Although the response to women soliciting in this locality does not fully explain the more intrusive policing policy, it demonstrates the zone in which it would bear with special force. When complaints from such quarters became remarkably persistent towards the end of 1908 and during 1909, the police determined that something had to be done about the situation. Changes were made to the practices of beat and plain-clothes constables on the orders of the Chief Commissioner himself. The police put even greater effort into convincing the legislature to amend the relevant section of the Police Offences Act in order to give the police more power.33 This upsurge in police activity was clearly an attempt on the part of the police to construct a moral landscape which satisfied the influential property owners in a respectable district. In relation to prostitution, the police were the public face of the law for the property owners as well as for the prostitutes. The role of the police as intermediaries between vice and 'respectable society' was at times thrown into relief. The police were attempting to keep a balance which preserved the existence of

32 Further to the initial suppression of the brothels, The Age of Monday 14 September 1908, p. 5, col. 7, reported an address on the Evils of the City by the Rev. S. J. Hoban, where he claimed shops acted as fronts for brothels and a common lodging house had become notorious for scenes of 'disgusting immorality.' Three days later the same paper carried an article on the state of the law relating to soliciting (The Age, 17 September 1908, p. 7 cols. 8-9. These public statements resulted in some police activity in the way of reports and consideration of necessary amendments to the law, but no immediate action.

33 Haldane claims that Chief Commissioner Sainsbury (who led the police force during World War I) was 'the first Chief Commissioner to make statements about the inadequacy of some criminal laws and to suggest some criminal reforms' (The People's Force, p. 146). In the light of the fact that O'Callaghan was constantly seeking amendments to the laws relating to prostitution, this statement seems misleading.
prostitution yet satisfied the desire of the middle class for a 'moral landscape'. The irony was nicely highlighted by the request of the Reverend Johnson of Ballarat for a police escort on a guided tour of 'the "Grand" houses of ill-fame ... also the lower places and chinese dens etc.' to gather material for a series of lectures on social reform.\textsuperscript{34} In Collins Street, the concern of the residents was for the immediate removal of the rowdy women from their doorsteps so they contacted the police in the hope of immediate satisfaction, whereas in many other cases people of influence would have contacted members of Parliament when dissatisfied. The police acted on their behalf, the Chief Commissioner regularly requesting the Chief Secretary to act to amend the law. In order to satisfy the residents and convince the legislators that change was necessary, the police used various tactics which impinged immediately upon the women working in the streets.

In response to one of the early complaints by Collins St. residents, several women were arrested and charged with vagrancy. Although they were not convicted, Constable Hickling thought this action led to many women being frightened away.\textsuperscript{35} By early February 1909 Chief Commissioner O'Callaghan was so concerned that he ordered a special plain-clothes patrol for Collins and Spring streets every night between 9pm and 2am. He instructed that 'determined efforts should be made to rid the principal streets of the prostitute nuisance. The uniform constable and sub-officers should be instructed also to give close attention to matters of the kind complained of.'\textsuperscript{36} As the result of the subsequent institution of a nightly plain-clothes patrol of two men in Collins St. between Elizabeth and Spring streets and along Spring St. to Bourke St.,

\textsuperscript{34} Letter from Rev. Johnson, 24 October 1890, Box 146, Chief Commissioner of Police, Inward Registered Correspondence, Series 937, Vic. P.R.O.

\textsuperscript{35} Report of Constable Hickling relative to Mr. Lucas' Complaining of Disorderly Women Congregating Near the Vienna Café', 14 December 1908 in file on policing of prostitution, Box 119, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O.

\textsuperscript{36} Memo written by O'Callaghan dated 4 February 1909 on letter to O'Callaghan from Donald Austin re 'disgraceful scenes in Collins St. East' dated 3 February 1909, in Ibid.
the east end of Collins St. between Russell and Spring streets was almost clear of women soliciting by May 1909. Even though the police knew that Cresswell PM would only rarely convict prostitutes on a charge of vagrancy, Constables Porter and Hickling arrested twenty-seven of the prostitutes who frequented Collins St. on this charge in response to complaints by residents. The result of the harassment was that by May, 'the women who used to frequent the East end of Collins street now ply their calling between Russell and William Streets, but are very quiet and orderly'.

However, there was another series of complaints between June and September. The Chief Commissioner again took the unusual step of intervening in the policing of a petty offence. He noted that in his opinion the 'Prostitute nuisance' could be kept in check better than it had been to date. 'Let a strong effort be made to clear all the Streets of the City of these unfortunate creatures. For this purpose a number of uniform men might be held off to assist the Plain clothes Staff.' His concluding remark that 'the effort should not be spasmodic' is one of the clearest indications of the reluctance of the police to police prostitution in a consistently rigorous fashion. Again the police responded by paying attention to the disputed precinct and filing numerous reports. The saga continued for another year. Inspecting Superintendent Sainsbury instructed that prostitutes were to be brought up as idle and disorderly persons, but his interpretation of the law was faulty and police activities continued to constitute harassment without conviction. O'Callaghan continued to pressure the Chief Secretary to commence

37 Report of Constable Porter, 4 May 1909 in Ibid.
38 Report of Constable Porter 4378 relative to attached complaints re prostitute nuisance in Collins Street, March 12 1909, in Ibid.
39 Report of Constable Porter, 4 May 1909, in Ibid.
40 Memo by O'Callaghan dated 19 June 1909 written on the back of a complaint dated 16 June 1909 in Ibid.
41 Memo from Sainsbury dated 23 May 1910; Report of Sergeant Stapleton relative to conviction of Mary Jones (Prostitute) for vagrancy quashed by His Honor Mr. Justice Cussen, 30 May 1910 in Ibid.
proceedings to amend the law to enable the conviction of prostitutes, to no avail.\footnote{On 15 September a bundle of reports from various constables and officers was forwarded by O'Callaghan to the Under Secretary requesting that Crown Law Officers be asked to draft a short Act dealing with the matter. Again, on 7 June 1910 O'Callaghan sent a memo to the Under Secretary requesting an amendment to the Police Offences Act; both in Ibid.} In exasperation, knowing full well that few or no convictions would result, Inspecting Superintendent Sainsbury ordered a 'sweep' of the streets of the City to ensnare as many prostitutes as possible on one night. This tactic was a clear political ploy aimed at convincing the legislature that an extension of police powers was necessary in order to satisfy the interests of the respectable middle class. As Sainsbury explained: '...the magistrates can dispose of them as they think fit and whether they convict or not the police cannot be accused of any neglect of duty. The result of such an extensive raid may assist in getting fresh legislation which in my opinion is badly needed ...'\footnote{Confidential memo dated 28 June 1910 in Ibid.}

Twenty-eight women were arrested and forced to appear at the City Court on charges of vagrancy. All were either discharged or had their cases withdrawn.\footnote{Report of Sergeant Stapleton relative to the arrest of 28 prostitutes charged with vagrancy', 11 July 1910, in Ibid.} As a result, Sainsbury notified the Chief Commissioner that he would no longer interfere with women working as prostitutes and O'Callaghan again requested the Chief Secretary's office to organize for an amendment to the law.\footnote{File notes dated 13 July in Ibid.}

Nevertheless, by March the following year, the police were again clearly harrying the women working the streets. The prostitutes responded to this type of police harassment in a number of ways. Although the women were quite aware of the fact that conviction was unlikely, the police could clearly make their lives difficult and unpleasant if they chose. Some women simply chose to work in localities which were not receiving special attention by the police; in early March 1911 many of the women who had been working Collins St. had moved to Bourke and Swanston streets. Others
more defiantly chose to remain on their established beat, but took great pains to avoid confrontation: "They do not wait to be moved on but scurry like a flock of sheep before the police get near them." Sometimes the women would linger until asked to move on, but would then move quietly. Occasionally a woman would confront a constable, perhaps because of anger at frequent harassment, or for a little sport with the men who also regularly worked the streets at night. In such cases she might be arrested for abusive language or disorderly behaviour; we cannot know how much of such behaviour was tolerated by the police, or the individual variations between the police themselves. Certainly, the defiant women in the following encounter knew exactly where they stood in respect to the law and could not be arrested by the police for this behaviour reported by Constable Spottiswood:

I said what is your name she said find out. I warned her to keep off Collins St Const Grant & I then went over to two women who were standing by the monuments opp the treasury hotel, I said get out of this & don't loiter, or I'll deal with you, one said you cant touch us, I said I will, if I find you abusing anybody.

One wonders what these two constables thought of the women with whom they were dealing during this encounter. It has already been suggested that the police were ambivalent in their attitude to the policing of prostitution both because of the sheer impossibility of effectively suppressing it and because of a certain interest which they had in its continuation. Some of the men would have had a direct interest in the

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46 Report of a Senior Constable, 6 March 1911, in Ibid.

47 For quote see Memo by Constable Spottiswood dated 23 May 1911 on back of 'Report of Senior Constable Overend 3453 Relative to Attached Complaint of Dr. Maudsley re Prostitutes in Collins Street', 16 May 1911. See also Memo by Constable Grant re. the same incident dated 16 May 1911 on back of 'Report of Constable Porter 4378 Relative to attached complaint from Dr. Maudsley re disorderly conduct of prostitutes in front of his residence in Collins Street on 12.5.1911', 15 May 1911. See also the series of fortnightly reports by the Senior Constables in charge of No. 1 Section (which contained Collins St) re. prostitute nuisance in Collins St. dated: 6 March 1911; 20 March 1911; 3 April 1911; 17 April 1911; 1 May 1911; 15 May 1911. See also the series of reports associated with a fresh spate of complaints in the press in early 1913 at which time the law remained unamended and the prostitutes 'most defiant': Memo from Sub Inspector's Office dated 29 January 1913, in Ibid.
continuation of the prostitution industry in Melbourne because they would have been the customers of prostitutes. Some constables would have sympathised with the women because they recognized the women of their own class. All police, as men, whether consciously or unconsciously had an interest in the ideology which segregated prostitutes from all other women because it served to control the sexuality of their wives and daughters.

A glimpse into the attitudes of some individual policemen is possible as the result of an inquiry which was made in 1909. The Premier having raised the question of the desirability of raising the age of consent from sixteen, the Chief Commissioner, Mr. O'Callaghan, requested reports from numerous members of the police force. The information requested touched upon the issue of prostitution, and at the same time many police who sent in reports took the opportunity of expressing their opinions on topics ranging from juvenile immorality, through birth control to incest. Perhaps the most interesting aspect is that the reports, overall, present an ambivalent attitude toward female sexuality. The majority of police believed that the age of consent should be raised. As Detective Hawkins expressed it: 'I think it is the duty of every man of common sense to protect a girl[sic] virtue at all ages but especially up to 18 years. I have daughters and I would protect all girls as I would my own.' 48 Some policemen thought women became the victims of male seduction, a situation which demanded greater legal protection for young women. However, there was also a lurking sense that young women needed to be protected from themselves, from their own strong sexual desires which developed at puberty. The belief in an assertive, and consequently dangerous, female sexuality found full expression in only a few police reports, but, interestingly enough, these were written by policemen who had considerable contact with prostitution, either by way of their special duties or the station at which they were located. The reports of Constable Sharpe and Senior Constable Sims from Carlton

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48 Report of T. Hawkins of the C.I.B., 8 November 1909 in File on juvenile immorality and youthful prostitution, Box 107, Chief Secretary's Supplementary Inward Registered Correspondence, Series 1226, Vic. P.R.O.
Station are particularly interesting. After the crackdown on city brothels in 1908 described earlier, many brothels moved into the Carlton area; in the eighteen months ending November 1909, Constable Sharpe closed over seventy brothels in Carlton, so Sharpe and Sims had had close contact with prostitutes during the period immediately preceding the writing of the reports. Constable Sharpe demonstrated little sympathy for prostitutes and believed the working-class to be naturally depraved. There was no understanding on his part of the environmental factors contributing to prostitution; like most police, he simply stated that prostitutes were recruited from all classes of the community. Prostitution he described as a 'nefarious calling' and he characterized the activities of prostitutes and their clients in the public gardens of Carlton as 'fornication carried on by these women.' The women, then, were the active parties in the act of sexual intercourse. 49 Senior Constable Sims further developed this view of female sexuality as aggressive and powerful, and not susceptible to rational control. 'Strong sexual desires' commence in girls at puberty, he claimed. Until the age of twenty 'the average girl is not sufficiently stable in mind and body' to deal with these desires. Many girls actually seduced youths which resulted in the anomalous situation of the youth being convicted of a crime of which the girl was the cause. Consequently, the law needed to be amended to protect youths from this behaviour. It is not surprising that Senior Constable Sims saw the prime cause of prostitution as being women's lustfulness, the second most important contributary factor being women's desire to walk adorned by finery more gorgeous than that of her sister. This policeman's fear of aggressive female sexuality and belief that youthful female sexuality was purely destructive resulted in him having little sympathy for women working as prostitutes. On the other hand, he believed the age of consent should be raised to twenty years in order to protect girls as much as possible from their own desires so that as few as possible fell into the abyss of immorality. Clearly, then, although all girls experienced these powerful urges, womankind was divided into those who 'fell' before gaining

rational control over their impulses at the magic age of twenty and those who remained virtuous to become good wives.\textsuperscript{50} Obviously, there are problems associated with deducing the behaviour of police from such reports; the language is in many ways conventional, yet this very lack of critical distance suggests that these police were likely to have absorbed a negative image of women working as prostitutes as deviant, as 'damned whores', and would have treated them as such. Women working as prostitutes in Carlton while Sims and Sharpe were stationed there were unlikely to have been treated with much respect or even sympathy by the police who dealt with them on a day to day basis.

Women working as prostitutes, in particular, those soliciting in the streets of Melbourne, had regular contact with the law as the result of their interaction with the police. This interaction was not without its contradictions and ambiguities, but, in the final analysis, contact with the police always carried with it the possibility of arrest. Once arrested by a member of the police force, a woman was propelled into a further phase in the legal process; she was acted upon by another powerful state institution—the court system.

\textsuperscript{50} Report of Senior Constable Sims, 11 November 1909 in Ibid.
CHAPTER THREE
PARTIAL JUSTICE

Once a woman working as a prostitute was arrested, she was brought before a Court of Petty Sessions and in nearly all cases dealt with summarily by a Police Magistrate or a minimum of two Justices of the Peace. The only relevant charge on which she could be committed for trial by a higher court was procuring under the Crimes Act. The following discussion illuminates some aspects of the experiences of women working as prostitutes when they came before the courts in late nineteenth and early twentieth century Melbourne.

Who were the people who dispensed 'justice' to the women working as prostitutes who came before the Courts of Petty Sessions? These courts on the bottom rung of the court hierarchy were presided over by both paid Police Magistrates and honorary Justices of the Peace. First, it almost goes without saying that during the period of this study, justices and magistrates were always men. In the early days of the colony the magistrates had combined both legislative and administrative functions, as the title 'Police Magistrate' suggests, but by 1890 they were appointed like other salaried officers by the Governor-in-Council and were usually taken from the ranks of the civil service. Some Police Magistrates in Victoria were apparently occasionally appointed from the ranks of the legal profession, but this was not common. There were no formal qualifications required for those aspiring to become Justices of the Peace apart from having the necessary leisure. As William Irvine explained:

1 William Hall Irvine, Justices of the Peace: Their Authority and Functions Out of Sessions and in Courts of Petty Sessions, Charles F. Maxwell, Melbourne, 1888, p. 4.

2 W. L. Vardy, The Lower Tribunals, Lee & Ross, 1876, p. 9, quoted in T. Weber, 'History of the Magistracy' in Legal Studies Department, Guilty Your Worship: A Study of Victoria's Magistrates Courts (Occasional Monograph No. 1), Legal Studies Department, La Trobe University, Melbourne, 1980, Chapter Two, p. 11.
No property qualification is here necessary; but, as a matter of fact, only men of independent position, who are assumed to have sufficient means to enable them to devote the requisite time and industry to the performance of their important duties, and to rise above the influence of fear or favour, are usually made justices of the peace. Such at least is the wholesome tradition which, even in a democracy, is supposed to govern the appointment of unpaid magistrates.  

This 'wholesome tradition' ensured that there was never any danger of the working class being judged by their peers; 'justice' continued to be dispensed by the middle and upper classes. One consequence of this was that many of these men would not have given much credence to the evidence of women in the prostitution trade. Nor, in fact, would many of the magistrates. At this time those sitting on the Petty Sessions benches would sometimes take the word of one policeman as against half-a-dozen civilians. There was no question that it was proper to 'take the evidence of one reputable man as against six rogues and vagabonds'. Presumably, 'common prostitutes' would not have had a much better reputation than rogues and vagabonds.

That the honorary nature of the position ensured that the JPs rose above the influence of fear or favour is debatable, however. It was a traditional argument in support of the honorary office that it guaranteed independence from government

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5 Comments in *The Age* in 1895 do not support these observations about class and suggest a rather blind adherence to the egalitarian myth: 'But the question of the fitness of honorary justices for their office does not here hinge upon the English objection that they are members of a class antagonistic to the masses, and that they are therefore likely to send some poor woman to gaol for gathering a few sticks to light her fire with, or deal out heavy punishment to a lad who knocks over a rabbit. Such magistrates as Dr. Bevan has in his English mind's eye do not exist in this colony, and would not be tolerated. Taking the colonial magistracy as a whole, it practically represents all classes and all shades of political opinion.' *The Age*, leader, 29 August 1895, p. 4, cols 5-6.
control, yet justices in Melbourne were frequently criticized for partial administration of the law. The Lormer Board of Inquiry was set up in 1895 to inquire into the administration of justice in the lower courts and found considerable evidence of corruption and partiality. Among other things, it was found that the Richmond justice, George Bird, 'sat and adjudicated in the interests of women of bad fame and character with whom he had at the time immoral relations.' There was another case related to prostitution which highlighted the partiality of at least some of those who exercised power in the lower courts. In about 1900 a number of people who kept brothels in Lonsdale Street were brought before the courts as the police had decided to try to clear the brothels from this street in response to concerted pressure from church groups. All the brothels but one were moved away. Madame Brussells, however, escaped conviction in the City Court. The decision was reviewed by the Supreme Court which held that there was evidence for a conviction and determined that the case should be reviewed by the magistrates. Practically the same bench heard the case. Madame Brussells received the lightest possible sentence of detention - imprisonment until the rising of the court. The court rose immediately, upon which she returned to her house. Apparently, the other brothels also re-opened.

A related criticism was that there was sometimes a gross discrepancy in sentencing between different courts. The Age editorial of 24 April 1899 remarked on the difference between the treatment of one young woman convicted at the Criminal Court before Mr Justice Hood of concealing the birth of her illegitimate child and another convicted before a bench of honorary magistrates at Carlton of abandoning her

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7 See for example, The Age leaders, 29 August 1895, p. 4, cols 5-6; 4 September 1895, p. 4, cols 5-6; 30 March 1896, p. 4, cols 7-9; 1 April 1896, p. 4, cols 5-6.

8 The Age, leader, 30 March 1896, p. 4, col. 8.

illegitimate child. Whilst the Judge passed no sentence upon the 'unfortunate girl', but sent her to the Prison Gate Brigade of the Salvation Army, a course which would 'give her an opportunity of reforming and leading a new life', the magistrates at Carlton sentenced the young women (who, unable to support her child, had left it warmly clad at what she believed to be the door of a relative) to six months' gaol. The injustice, according to The Age, was caused by 'the system which makes it possible for the political supporters of the local member of parliament to be rewarded by magisterial appointment'.

Prostitutes did not catch the imagination of the press in the same way as hapless young women with babes in arms, yet it is quite possible that the same system was resulting in similar injustices being meted out to women who worked as prostitutes. It is likely, for example, that Bird JP was inclined to give lighter sentences to the women with whom he had sex. Other justices may have felt particularly repulsed by assertive female sexuality (in ways similar to the police at the Carlton Station) and consequently dealt harshly with prostitutes. In 1898, the bench at Fitzroy was handing out harsher penalties than the City Court. In the Melbourne court, women were receiving relatively light sentences for importuning ranging from a fine of two shillings sixpence, in default, six hours' imprisonment, to forty shillings or fourteen days. On the other hand, on Tuesday 11 January 1898 four women were brought before the Fitzroy bench for soliciting. They had been arrested by Constables Hogan and O'Brien in Nicholson Street and Victoria Parade. As first offenders, Emily Severs and Mary Smith were 'let off with fines of three pounds or one month each, while Jane Lewis and Elizabeth Harrison were fined five pounds, in default, six weeks' imprisonment.

The particularly partial nature of rural justice was highlighted in the newspaper report of proceeding against Christina O'Donnell in the Rushworth Court of Petty

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10 The Age, leader, 24 April 1899, p. 4, col. 8. See also The Age, leader, 27 April 1899, p. 4, cols 7-8 and The White Ribbon Signal, VII, 8, June 1899, p. 885 for follow up to case of Sarah Robertson, the woman sentenced to six months' imprisonment. For further criticisms re. discrepancies in sentencing see The Age, leader, 7 December 1898, p. 4, cols 6-7; 'Royal Commission on the Victorian Police Force 1906', L. Gleeson, Minutes of Evidence, p. 155.

11 The Observer (Collingwood), 13 January 1898, p. 5, col. 4.
Sessions. This Scottish-born woman in her late fifties was nicknamed "Fairy" and had served a six month sentence for vagrancy in 1898. In July 1900 she was arrested in High St. on a vagrancy charge by Constable Ryan for 'being drunk and kicking up a row.' If this were her crime, she should have been tried for a street offence which would have carried a much lighter sentence. Despite evidence that she lived with her husband and had herself earned two shillings for washing and two shillings for scrubbing in the previous month, she was imprisoned for six months. Molloy put up a spirited defence for herself in the court. She claimed that she had not been doing anything and demanded to be told why she had been brought to the court. When told to be quiet, that she would have her say presently, her reply spoke volubly: 'And a fat lot of good that will do, I expect.' Her cynicism and lack of respect for the legal process were undoubtedly shared by many in her position and help to explain why many women just resigned themselves to the decision of the court without defence. There was a huge gulf between the concept of justice held by people like Molloy and that practised by the courts. When assured by Dr Heily, one of the JPs, that she would 'get justice done', she replied: 'The only justice I want is to go home to my old man. Will you let me go.' She did not receive her type of justice; she was imprisoned for six months, and a month into her sentence transferred to Bendigo Benevolent Asylum.

As well as some criticism of the partiality of justices and discrepancies in sentencing, there was frequent concern expressed that the leisured gentlemen who sat on the lower court benches were 'unqualified intellectually and educationally for the administration of justice'. The standard of Police Magistrates also came in for criticism. The Age reflected: 'Is the new system of appointing Police Magistrates from

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12 Goulburn Advertiser, 3 August 1900, p. 2, col. 7.

13 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 166, Record No. 6581, Vic. P.R.O.

14 The Age, 6 January 1896, p. 4, cols 6-7. See also The Argus, leader, 27 March 1912, p. 12, cols 3-4; The Age, 2 March 1894, p. 4, cols 6-8.
the ranks of the Public Service a success? A great many people think that it is not, chiefly because it excludes the considerations of the presence or absence in the appointee of the judicial mind. Furthermore, the first thorough compilation of the law for the use of justices and magistrates in Victoria was not published until 1910. The quality of the administration of justice to women working as prostitutes is brought into further question by the fact that the thorough index to Harrison's *Victorian Justices' Manual* contains no reference to soliciting, importuning or brothels, the brief reference to disorderly houses covers only one particular technical aspect of the law and there is no specific mention of the application of the vagrancy law to prostitutes. Despite the criticisms of the system, it continued as outlined throughout the period under discussion. The men who sat in judgement of women who were working as prostitutes were consequently often lacking in legal understanding, subject to partiality and always maintained a class interest in maintaining the social order in order to preserve their position in it.

The police were fond of 'passing the buck' to the courts when criticisms were made about the administration of the law associated with prostitution. Albert Tucker testified to the 1906 Royal Commission: 'it lies with the magistrates. We bring these people up before the magistrates, and give all the evidence necessary to prove the charge that it is a disorderly house, and it then lies with the bench to do the rest.'

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15 *The Age,* 26 March 1894, p. 4.


extent of police power in relation to prostitution has already been suggested in Chapter Two, but Tucker's comment does raise the question of the extent to which the Courts of Petty Sessions shaped the law relating to prostitution and contributed toward the style of policing.

The interpretation of the law by the lower courts certainly influenced police actions. During the 1890s the Melbourne Court of Petty Sessions was loath to convict persons for keeping disorderly houses. For example, although there were twenty-five appearances on charges of brothel-keeping before the City Court in the period from January to June 1898, only three convictions resulted. Many of those charged had legal proceedings delayed by adjournment and an extraordinarily high proportion of cases were withdrawn after legal proceedings had been initiated. All those convicted were men. Of the charges against the women which were decided before the end of June 1898, five were withdrawn, three discharged and one dismissed.¹⁸

While it cannot be conclusively stated that the courts protected certain female brothel keepers from police harassment, it is quite probable that such court practices did discourage police from taking action. After complaints had been made to the Chief Commissioner about the conduct of the brothels at 218 and 220 Exhibition Street in March 1894, Constables Fogharty, Holden and Canty reported on the matter. Up to ten prostitutes lived in the two houses which had been kept as brothels for over ten years. Charlotte Kane, the owner, managed both houses for about eight years. About two years prior to the events being discussed, she let No. 220 to Mrs. Connors, continuing to manage No. 218 herself. For several months the women working as prostitutes had taken to coming out on the verandahs of the houses to solicit custom. Both houses had employed women as 'touts' to work at the doors on the verandah so that after dark 'one

¹⁸ See Appendix One.
tout, and house [was] working against the other'. As a result of the lease to Mrs. Connors, the use of the front doors altered. Previously, only one door had been used, whereas after Mrs. Connors took over the management of No. 220, the other front door was used as an entrance as well, much to the chagrin of the draper, Mr. McIntyre, who lived next door. He complained that the bad language of the people at the door only three feet from his own could be heard in his shop by his family. The police had managed to stop the prostitutes soliciting from the verandah by constant warnings and a couple of arrests. Constable Canty reported that Kane had informed him that she had given Mrs. Connors notice to quit by the middle of the next month, so that after that time the door immediately next to Mr. McIntyre's shop would no longer be used as a brothel entrance. Canty believed that Mr. McIntyre would be 'very well satisfied' if this occurred, as this had been the setup when he had moved to the premises. While Sergeant Hayes was of the opinion that a very good case could be made out for Kane and Connors being the keepers of disorderly houses, the final note on the file reveals the extent to which the police could be constrained by the courts in these circumstances. Seven or eight years prior to these events, frequent disturbances in these brothels led to a number of complaints. Consequently, the police brought Charlotte Kane before the City Court on summons for keeping a disorderly house. Despite the police claim that 'some very strong evidence was given ... in support of the charge' the case was dismissed by a majority of the Bench. In relation to the disturbances in 1894, the final word on the file was by the Inspecting Superintendent:

My own opinion is that these brothels are in much too prominent a position, but in view of the way in which the City Magistrates dealt with the case referred to by

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19 'Report of Constable M. Holden 3891 relative to attached complaint re brothel at No 218 Stephen Street', 15 March 1894, File A3509, Box 5, Chief Commissioner of Police Inward Correspondence 1857-1895, Series 807, Vic. P.R.O.

20 'Report of Constable Canty 2908 relative to brothels in Exhibition Street Kept by Charlotte Kane, and Mrs. Connors', 29 March 1894, in Ibid.
Partial Justice 73

Const Canty, when evidence of most outrageously indecent conduct was given, there would be little use in taking proceedings now on the evidence disclosed in this file.21

This may, of course, have simply been a convenient excuse for allowing the brothels to remain, yet court practices clearly did influence the effectiveness of police actions.

Police response to the activities of women working as prostitutes on the streets was also shaped in some important ways by the courts. The effect of the determination of certain City Court magistrates not to convict women for importuning unless the arresting officer had heard the words spoken, or the men approached were brought as witnesses, was discussed earlier.22 In 1910 there was another court decision which effected the way in which prostitutes working the streets were dealt with. On 17 February, 1910, Constables Green and Porter arrested Mary Jones in Collins Street. According to them, she was a 'common prostitute' who had been frequenting Collins Street soliciting prostitution for between six and eight weeks. Consequently, they believed her to be a person with 'no lawful occupation and ... insufficient lawful means of support'.23 The case came up for consideration by the City Court Bench on 21 February 1910. Mary Jones was not represented by Counsel.24 She produced a savings bank book showing a balance of five pounds and gave evidence on oath that she had

21 Memo from Inspecting Superintendent to the Chief Commissioner of Police, 31 March 1894, in Ibid.

22 See Chapter Two.

23 'Brief of case for hearing at The City Police Court on 18th February 1910. Mary Jones Charged on view with having insufficient lawful means of support at Melbourne on 17.2.10', File on the policing of prostitution, Box 119, Chief Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O.

24 It is impossible to find records which confirm that this was the normal course of events, but considering the social status and economic resources of most women working as prostitutes, it is likely that Mary Jones followed the usual path of prostitutes presenting their own defence in court, if in fact they bothered defending themselves at all. Certainly, prior to 1906 at least, most pleaded guilty, often to charges which would have been dismissed had a plea of 'not guilty' been entered: 'Royal Commission on the Victorian Police Force 1906', Albert E. Tucker, Minutes of Evidence, pp. 453-54. There were some signs that during the period 1907-13 discussed in the section on policing, women in the prostitution trade did become more assertive and conscious of their rights. See Chapter Two.
about twenty pounds worth of furniture. She explained that she received regular financial support of twenty-five shillings a week from Mr. Haley, a married man living in Diamond Creek who met her three or four times a week 'for an immoral purpose'. The money and furniture were obtained from Mr. Haley's allowance to her. She also regularly met another man who paid her money in exchange for similar services. The Bench found her guilty of having insufficient lawful means of support and sentenced her to three months' imprisonment. Unlike most women, who would have just accepted their fate, Mary Jones sought legal advice from Mr. Sonenberg, solicitor, of 450 Chancery Lane Melbourne; consequently, an appeal was lodged. It is interesting to speculate what may have been different about Mary Jones; why had not any one of the multitude of women working as prostitutes and charged with vagrancy lodged an appeal before this? Mary Jones had only one prior conviction (for using indecent language) and while Constables Green, Porter and Macpherson claimed she was a 'common prostitute', her evidence in court suggests that she may have identified herself as a kept 'mistress' rather than as a 'common prostitute'. Certainly, she believed it was in her interests to avoid being convicted for vagrancy and imprisoned for three months. Her determination to protect her own interests benefitted hundreds of women in positions similar to hers. On appeal to General Sessions, Judge Box held that the money earned by prostitution was not lawful means of support and honestly come by and dismissed the appeal, but at the same time he stated a case for the decision of the Supreme Court; that is, whether or not money earned by prostitution was lawful means of support or not. On 28 May in the Practice Court, Mr. Justice Cussen determined that, as prostitution was not a crime per se, it could not be said that money obtained through prostitution was dishonestly obtained; Mary Jones' conviction was quashed. As this section of the vagrancy law had effectively been made a dead letter (as Constable Porter explained, even a woman with no money at all could always find another who would lend her the necessary cash to produce in Court), the statutory
avenues for police harassment of women working as prostitutes were actually narrowed
by the court system.25

As well as fulfilling the legitimate function of interpreting the law, the City
Court, if not other Courts of Petty Sessions, was involved in a system of medical
surveillance in co-operation with the police for which neither the police nor the courts
had any legislative authority. Albert Tucker explained to the 1906 Royal Commission
into the Police that when the police received information that a certain woman was
infected with venereal disease, which they often did from men who had caught the
disease, they locked her up and charged her with vagrancy. In the morning, the
magistrates where informed whereafter they sent the woman to the gaol hospital.26 This
was done despite the fact that the Contagious Diseases clauses of the Victorian Health
Act had never been brought into operation27.

A number of the eighty-six cases of women before the Melbourne Court of
Petty Sessions which were remanded during the period from January to June 1898
suggest that this indeed was a common procedure. During this six month period
fourteen women who came before the court on charges of insulting behaviour, having
no visible lawful means of support or being drunk and disorderly, were placed on
remand for the purposes of medical inquiry. Of these, eight were discharged at the
expiration of their remand period; that is, although they had been incarcerated for
periods of up to seventeen weeks, the court decided that they were not guilty of any
offence; clearly, the courts were being used for the purposes of medical surveillance.

25 See 'Report of Sergeant Stapleton relative to conviction of Mary Jones (Prostitute) for
vagrancy quashed by His Honor Mr. Justice Cussen', 30 May 1910 and 'Report of Constable Porter
4378 Relative to attached reports re complaints of prostitutes in Collins Street and Memo from Chief
Commissioner of 26.5.1911', 30 May 1911, both in file on policing of prostitution, Box 119, Chief
Secretary's Supplementary Inward Correspondence, Series 1226, Vic. P.R.O. See also report in The
Argus, 29 May 1910, p. 21, col. 4.

26 'Royal Commission on the Victorian Police Force 1906', Albert E. Tucker, Minutes of
Evidence, p. 453.

27 See Chapter One.
Of the remaining six cases where it was clearly recorded that remand was for medical purposes one was declared insane and two were charged at the expiration of their period of remand. Three of the fourteen remained on remand at the end of June so their fate is not clear from the survey completed. In addition, there were fifteen vagrancy or street offences cases which were remanded and which look suspiciously as though medical considerations may have been operating despite the fact that medical purposes were not recorded. I regard these cases as 'suspicious' because all the women were discharged at the expiration of their remand, or remained in custody at the end of June. In all of these cases the women were remanded in custody and they need to be contrasted with cases where women arrested on similar charges were offered bail. Women whom the courts wanted to restrain from spreading venereal disease would certainly not have been offered bail. It is quite possible that a number of Justices presiding in the Court of Petty Sessions were aware that the practice in which they were participating had no legislative authority and so refrained from noting in the register that women were remanded specifically for medical purposes. However, it is unlikely that all women remanded for medical purposes were treated in this way because they were suffering from VD. One of the reasons why the courts would have slipped easily into such a procedure was that it was common practice for prisons to receive on charges of vagrancy persons actually in need of shelter and medical care.28

The debate about whether or not criminal behaviour increased or decreased during the period under discussion is a thorny one. Chris McConville has suggested that in Melbourne the decline in arrest rates between the late nineteenth century and the 1920s is best explained by a change in the nature of criminal behaviour accompanied by

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28 See Penal Establishment Reports 1890-1914 in the V.P.P. Most reports state the number of prisoners received in this way, always several hundred each year. For comment by the Inspector General of prisons, see Penal Establishments Report, 1914, V.P.P. 1915, 3, p. 221, pp. 4-5.
reduced police efficiency.\textsuperscript{29} On the other hand, as he points out, some historians in England and the United States claim that reduction in crime statistics in these countries during the corresponding period reflect actual decreases in crime.\textsuperscript{30} The latter argument is tenuous; criminal statistics cannot reveal the level of criminality in a community.\textsuperscript{31} In particular, assumption of any direct correlation between official statistics and the extent of prostitution-related activities would be quite erroneous, as the preceding discussion of the policing of prostitution suggests. Crime statistics can, however, tell us something about the activities of the police and the courts. It seems useful to examine the general criminal statistics in order to see if there were any broad trends in the ways in which the courts treated women as compared with men, to see if women regarded as carrying out the trade of 'prostitute' were treated differently from other people coming before the courts and to see if there were any important shifts in the types of charges for which women were arraigned.

From 1890 to 1910 'prostitute' was the most frequently noted occupation of women arrested.\textsuperscript{32} Only in 1911 did 'domestic servant' supersede 'prostitute' as the

\textsuperscript{29} Chris McConville, 'From "criminal class", pp.86-89.


\textsuperscript{31} For discussion of the problems associated with the use of criminal statistics, and of the various factors which need to be taken into account when they are used see David Philips, \textit{Crime and Authority in Victorian England: The Black Country 1835-1860}, Croom Helm, London, 1977, Chapter 2. Judith Fall in 'Crime and Criminal Records in Western Australia 1830-1855', \textit{Studies in Western Australian History}, III, November 1978, pp. 18-29, recognizes that factors such as policing policy and efficiency influence criminal statistics, but she still falls into the trap of assuming that 'the recorded figures bear a reasonably consistent relationship to the number of offences actually committed' (p. 20).

\textsuperscript{32} Statistics have been compiled from the \textit{Statistical Register of the Colony / State of Victoria Compiled from the Official Records of the Office of the Government Statist}, Government Printer, Melbourne, 1890-1914. The series of two tables have been followed through the registers: 'Trades or Occupations of Distinct persons Arrested' and 'Apprehensions, Commitments etc.'. See Appendices Two and Three for tables.
most common occupation of women before the courts. The figures representing the proportion of women before the courts who were classified as prostitutes reveal some interesting trends. For 1890 and 1891 the average proportion of women classified as prostitutes was 27.8 per cent whereas for the years 1892 to 1898 it was 34.11 per cent. Prostitutes had come under increased control as the result of new legislation against soliciting which was passed in 1891. During the three years from 1899 to 1901 the percentage of women before the courts classified as prostitutes dropped to an average of 28.25 per cent although there was no parallel notable difference in the numbers of arrests of prostitutes or for the offence of soliciting. In fact, there was a slight increase in overall arrests in these years which indicates that prostitutes were receiving less attention and other kinds of female criminality more attention during these years. However, from 1902 to 1906, women working as prostitutes again increased as a proportion of all women before the courts. During the years 1902 to 1906, the mean proportion was a remarkable 41.14 per cent. After 1907 women officially labelled as prostitutes would never again be singled out statistically from other women to this extent. From 1907, the proportion of women before the courts classified as prostitutes slowly decreased until 1914 when they represented only 10.1 per cent. During the same period there was no comparable group of men whose occupation was classed as criminal or semi-criminal; gaming-house keepers and professional pick-pockets accounted for only a minute proportion of the men who came before the courts. The treatment by the courts of the women classified as prostitutes reflected and reinforced their criminal status. During the whole period from 1890 to 1914, prostitutes were more likely to be summarily convicted than anyone else appearing before the Courts of Petty Sessions. Women in general, men in general and all other specific occupational groupings had lower rates of conviction.

This is consistent with the finding that in January to June 1898 in the Melbourne City Court women were much more likely to be convicted on a charge of soliciting than on any other charge; in 74.45 per cent of importuning charges actually decided (as
distinct from cases remanded, adjourned or withdrawn) the women were convicted. This compares with 65.25 per cent convictions for drunk and disorderly charges and 61.36 for indecent behaviour which had the next highest conviction rates after importuning. Similarly, when conviction rates across the whole period are averaged out, women were more likely to be convicted for soliciting than for any other offence. This is particularly significant in the light of the discussion elsewhere in this thesis about the difficulties in upholding charges of importuning; it highlights the fact that most women working as prostitutes must have pleaded guilty when charged with soliciting.

Some of these trends revealed from an examination of the statistics related to the occupational classification 'prostitute' are reflected in the arrest statistics for the offence of soliciting. There were only eleven arrests in 1891 for the offence of being a disorderly prostitute under the vagrancy legislation whereas in 1892, after the passing of specific legislation against soliciting, there were 719 arrests made. (It is not made clear in the statistics what proportion of these were under the old vagrancy legislation and how many were made using the new law. Presumably, most were arraigned under the new legislation.) The increase in the proportion of women before the courts who were prostitutes in the years 1902-1906 is again generally reflected in the increase in charges of soliciting which occurred during these years; in the peak year of 1904, 28.4 per cent of charges against women were for soliciting. The plummet in the number of women before the court on charges of soliciting from 1908 was, however, much more dramatic than the drop in the proportion of women before the courts who were prostitutes; the mean percentage of women who were charged with soliciting for the years 1908 to 1914 was only 1.51. After Cresswell PM made it far more difficult for the police to get convictions on the charge of soliciting, the police found other ways of bringing women working as prostitutes before the courts. In the seven years 1908-1914, the average percentage of women before the courts on charges of indecent, riotous and offensive conduct was considerably higher than for the preceding seven
years: 7.24 per cent as compared with 2.76 per cent. Similarly, drunkenness charges increased as a proportion of total charges against women. An average of 70.95 per cent of charges against women during the years 1908-1914 were for being drunk and disorderly whereas for the preceding seven years this charge accounted for only 48.07 per cent of all charges against women. Women brought before the courts on charges of soliciting again increased in 1913, but never approached the levels prior to 1908.

The implication here that women working as prostitutes were simply brought before the courts on different charges after it became more difficult to uphold charges under the soliciting law must be balanced by a comparison with the statistics on the occupation of people arrested. As pointed out above, the number of women classified as prostitutes before the courts declined after 1908. A plausible explanation might be that as a result of the tightening up of the law towards the end of the first decade of the twentieth century prostitutes began to operate in a more clandestine manner, which made their categorization by the police as known prostitutes more difficult. This explanation is consistent with the suggestion made by McConville outlined above, although his argument prioritizes the role of the changing urban environment rather than the law. Judith Allen in her study of prostitution in New South Wales has also outlined the way in which prostitution became more clandestine in the early twentieth century as the result of legislation which was very similar to that passed in Victoria at about the same time. Consequently, a decline in the statistics may not in fact represent a decline in the number of women working as prostitutes who were before the courts.

It is more difficult to discern any important trends in the treatment of those before the courts on the charge of having no visible lawful means of support. Between 1895 and 1914 a higher proportion of women than men were brought before the courts

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33 Allen, 'The Making'.
on this charge.$^{34}$ Of the women before the courts, an average of 5.04 per cent each year were up on the charge of having no visible lawful means of support whereas for men the figure was only 1.37 per cent. It is difficult to find any clear trend in the difference between the treatment of men and women under this law. In some years women were convicted much more frequently than the men and in other years, the men had a higher proportion of convictions than the women. From 1897 to 1904 women experienced higher rates of conviction than the men while from 1907 to 1912 the opposite was the case. In other years the situation fluctuated. During the period after 1905 the efficacy of the vagrancy law was brought into question and the conviction statistics for the offence of having no visible lawful means of support reflect this. Conviction rates fluctuated wildly. For women, they varied between 36.89 per cent (1906) and 55.91 per cent (1913) whilst for men the difference was even more dramatic; in 1906 only 31.37 per cent of men were convicted whereas the very next year 63.16 per cent were found guilty.

There was a steady stream of people appearing before the courts of Victoria on the charge of keeping a common brothel or disorderly house between 1890 and 1902. Such charges dropped off in 1903, only to again slowly increase until 1907. After the passing of the tougher laws against brothels in 1908, charges against brothel keepers actually decreased and remained relatively low until the close of the period examined. The actions of the legislature in 1908 probably went a long way towards allaying the fears of the community, so that rigorous police and court attention to the 'problem' became unnecessary. Another interpretation is that, along with the decrease in the numbers of women classified as prostitutes in the criminal statistics, this finding implies that prostitution was forced to become more clandestine by the new laws; evidence in police files suggests that this is a valid explanation. As for the distribution of the offence of keeping a common brothel or disorderly house between women and

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$^{34}$ Prior to 1895 in the statistics there was no specific category for no visible lawful means of support.
men, it is difficult to discern any trends, partly because the number of offences was always low. (The highest number of offences in any one year was thirty-nine in 1900, the lowest three in 1903.) The only thing which can be said confidently is that from 1893, overall, considerably more women than men were charged with this offence. Only in the years 1890 to 1892, 1900, 1905 and 1914 were more men brought before the courts on this charge. The proceedings in the City Court during the first half of 1898, however, suggest that male brothel keepers were considerably more harshly dealt with than women.\textsuperscript{35}

One offence related to prostitution with which the courts dealt quite harshly was procuring. Seven of the eight women who were committed for trial between 1892 and 1900 on charges of procuring women to have unlawful carnal connection or to become common prostitutes were convicted and sent to prison. Three other women were discharged by courts of petty sessions, and the only man charged during this period was convicted summarily. Use of this legislation became rare after the turn of the century. Between 1901 and 1914 only five people were charged with procuring offences. The one man was discharged by the court of petty sessions where he appeared initially while the four women were committed for trial.\textsuperscript{36} Examination of the details of some of the procuring cases which came before the Supreme Court of Victoria highlights the way in which the court system together with the medical profession, as well as the police, functioned as custodians of the distinction between 'virtuous' women and 'whores'. As procuring was not an offence if the young woman concerned were a prostitute or 'of known immoral character', one of the central issues which the court had to determine was the character of the victim of the act of procuring. Depositions relating to procuring cases always contain long police statements on the characters of the young women procured. Rebecca Delzoppo, who worked as a

\textsuperscript{35} See pp. 66-7.

\textsuperscript{36} Statistical Registers 1890-1914. Results of these trials are not recorded in the statistics.
servant, was the fifteen-year-old daughter of a Fitzroy icecream vendor. As well as being unwillingly procured by Henrietta Haig, she had to endure a medical examination. When pronouncing her not a virgin, the doctor considered it his responsibility to judge the morality of the young woman: 'She does not present the appearance of a common prostitute. I don't think it is probably that she has had connexion more than once or twice'.

Observations from the aggregated statistics can be complemented by a detailed examination of the proceedings of the Melbourne Court of Petty Sessions during the first half of 1898. The first issue worth considering is the nature of the offences with which women were charged. Just over one quarter (26.16 per cent) of the 1,292 appearances of women before this court during this time were on prostitution-related charges - that is, either for being a common prostitute importuning (24.61 per cent) or the occupier of a disorderly house (1.55 per cent). Almost one half (47.21 per cent) of the women were before the court for offences against good order - such as being drunk and disorderly (37.23 per cent of all women before the court) using insulting, indecent or threatening language, and offensive, indecent or riotous behaviour. Having no or insufficient lawful means of support under the vagrancy law was the charge for 16.02 per cent of women before the bench. It was more common for women to appear in the City Court on charges of soliciting, brothel keeping and having no visible lawful means of support than in Victoria as a whole: in Victoria in 1898 only 13.38 per cent of charges against women were for soliciting, 0.33 per cent for brothel keeping and 10.08 per cent for having no visible lawful means of support. It appears that the provision

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37 Sworn evidence of Charles Alfred Stewart, The Queen v. Henrietta Haig, Case no. 694, Box 1034, Supreme Court Depositions, Series 30, Vic. P.R.O. The victims of procuring attempts were subjected to other types of inequitable treatment to which the victims of no other crime were subjected. For example, in the Haig case, although it was the older woman who was committing the crime, it was Delzoppo who was taken by the police to the lockup. The man with whom Delzoppo was found conveniently 'escaped in the darkness'. Haig was arrested later on warrant and then taken to the lock up. See also The Queen v. Amy Cramer, Case No. 548, Box 1021; The Queen v. Bessie Keating, Case No. 304, Box 1167; The Queen v. Jane Jones, Case No. 421, Box 1438; The Queen v. Elizabeth Anne Miller, Case No. 298, Box 1312, all in Supreme Court Depositions, Series 30, Vic. P.R.O.
providing for the punishment of prostitutes behaving in a riotous manner under the vagrancy law was not used at all during this period. A miniscule 1.55 per cent of appearances were for charges for offences against the person, and even this figure is inflated by the fact that six of the twenty relevant appearances were by the same woman for the same tragic case of infanticide, and five of the appearances classified as 'offences against the person' were actually for attempted suicide. The 5.03 per cent of appearances for offences against property (3.79 per cent specifically for theft) were also quite insignificant. The remainder of appearances were on charges of being a neglected child (2.09 per cent), abortion-related offences (.62 per cent), offences against the police during the execution of their duties (.39 per cent), perjury (.23 per cent), being a lunatic (.15 per cent) and bigamy (.08 per cent). Nearly all women (89.47 per cent), then, came before the court on charges related to the society's construction of the type of behaviour expected of the 'good woman'; she was expected to be chaste, decorous and solvent.

While the courts appear to have dealt more harshly with male brothel keepers, in cases of indecent behaviour, women seem to have sometimes been punished more severely. Although Emma and Bengil Singh received the same sentence of a fine of twenty shillings or seven days' imprisonment when found guilty of insulting behaviour in April 1898, the result of the appearances of Margaret Ellman and William Enright earlier in January had been less equitable. They were arrested together on the same charge of insulting behaviour, yet Ellman received punishment of ten shillings or seven days while Enright was only fined two and six, or six hours' imprisonment in default. Similarly, Dorothy Tucker and Hopkin Jenkins were arrested together for indecent behaviour; quite possibly, they were having intercourse in a public place, as this was often the reason for women and men being arrested together on this charge. The court took a severer attitude to Tucker's behaviour than to Jenkins'; the woman received a fine of five pounds or one month in gaol while the man was fined forty shillings, in
default fourteen days.\textsuperscript{38} In these cases the double standard of the time in relation to both
general behaviour in public and to sexual behaviour can clearly be seen. The exception
of the Singh couple is interesting. The name is not anglo-saxon, and while no
conclusions can be made from a single case, it suggests that racist considerations may
at times have over-ridden sexist ones in the Courts of Petty Sessions.

Racist considerations intervened in the administration of justice in other ways.
Women in prostitution and the Chinese who lived in close proximity in the backslums
of Melbourne in the late nineteenth century were written about in equally disparaging
terms. Caucasian women who lived with, or sold their sexual services to, Chinese
men, were regarded as indulging in the very worst kind of immorality. At the same
time, the Chinese men were portrayed as opium drenched and uncivilized. These
attitudes were still strong in the years immediately preceding World War I even though
a considerable number of the previous inhabitants of the backslums had moved out of
the area. In July\textsuperscript{1911}, there were numerous articles headed 'White Girls and Chinese'
in the \textit{Argus} about a number of cases involving a group of young single women aged
between fourteen and sixteen, a young married woman who had procured the young
women, and the Chinese men who had paid for the sexual services of the young
women. In the carnal knowledge cases against the Chinese men, the weight of legal
opinion came down against the girls who, according to Mr. Justice Hood of the
Criminal Court, 'had sunk as low as girls could sink'.\textsuperscript{39} This comment was made in his
summing up to the jury who, not surprisingly, found the man not guilty. In another
similar case, Mr. Justice Hood claimed 'that the girls were worse than the Chinese, as
they went about tempting the Chinese because no white man would have dealings with
them'.\textsuperscript{40} In this case, each of the men were sentenced to only fourteen days'

\textsuperscript{38} Melbourne Court of Petty Sessions Arrest Registers, Series 1665, Unit 57, p. 114; Unit
58, pp. 51 and 199. Vic. P.R.O.

\textsuperscript{39} 'Criminal Court', The \textit{Argus}, 26 August 1911, p. 20, col. 2.

\textsuperscript{40} 'Chinese and White Girls', The \textit{Argus}, 29 August 1911, p. 10, col. 4.
imprisonment. However, only six days after the first of these reports, the same newspaper began a series of articles about the 'filthy conditions' of Chinese quarters in the city. The presence of the two series of articles in the paper at the same time was not a simple coincidence. The juxtaposition of two items in the Argus of 27 July 1911 makes the connection between sexual activity between the races and racism quite clear. There is an article headed 'White Girls and Chinese' about a father making a complaint to the police because his nineteen year old daughter, Elsie Myrtle Slack, had been associating with Chinese. She was charged with being an idle and disorderly person having insufficient lawful means of support after being found with four other women, two of whom were married to Chinese men. Slack herself expressed the intention of marrying a Chinese man named Ah Hing, who had given her money. Wanting to marry a Chinese man apparently amounted to 'going astray' in her father's eyes and was sufficient cause for arresting the young woman on a charge of vagrancy! However, Justice Stead was of the opinion 'that there is yet a chance for the girl'. The case was adjourned for three months on the understanding that Slack returned home with her father and remained on good behaviour. The police instituted further inquiries to determine how Slack was introduced to the Chinese, with a view, if necessary, to other proceedings. Any relationship between Caucasian women and Chinese men was, apparently, suspicious. The racist attitudes inherent in this article and the legal proceedings were intensified by the appearance of an article immediately above the one described. The heading was 'Filthy Chinese Den', the article about condemnation orders on properties occupied by the Chinese in the city. Such properties were subject, the article explained, to systematic inspection 'but, with the kind of occupants, the places get quickly into a bad state'.


42 'Filthy Chinese Den', The Argus, 27 July 1911, p. 9, col. 7. Three other articles appearing at this time contained lurid descriptions of the alleged insanitary Chinese living conditions, including mention of the offence to Caucasian visitors caused by opium smoking: The Argus, 25 July 1911, p. 6, col. 7; 29 July 1911, p. 20, col. 5; 10 August 1911, p. 7, col. 3. Other articles about 'White Girls and Chinese' are: The Argus, 19 July 1911, p. 11, col. 1; 20 July 1911, p. 9, col. 2; 21 July 1911, p. 4, col. 9; 26 July 1911, p. 11, col. 4; 1 August 1911, p. 8, col. 4; 2 August 1911, p. 11, col. 3; 3 August 1911, p. 4, col. 7; 25 August 1911, p. 5, col. 8.
The statistics discussed earlier tell us something useful about the ways in which prostitution and prostitutes were dealt with by the courts in a general sense, enabling reconstruction of what some court experiences of women working as prostitutes may have been like. It is more difficult to find out about the legal biographies of individual women in order to come to some understanding of the ways in which the legal system, and the courts in particular, treated individual women over time. Albert Tucker, plain-clothes constable, suggested to the 1906 Royal Commission that the courts dealt more leniently with women who were established in the business than with first offenders:

Perhaps a woman is convicted 100 times for soliciting prostitution. She is brought up the 101st time, and she is fined 5s. or discharged. Perhaps she has been fined 20s. or 40s. months or years before that, but when she comes up for the 101st time, she is fined 2s. 6d. or 5s.43

In his opinion, such a state of affairs was 'very unsatisfactory'.44 If this indeed were the case, it would appear that the courts attempted to act as a deterrent to women entering the trade, yet, like the police, instead of pursuing a policy of maximum deterrence, they accepted the existence of prostitution and enabled those established in the business to continue by inflicting manageable fines on a regular basis; the state coffers were supplemented while men, including justices, policemen and parliamentarians continued to benefit from the services provided by prostitutes.

If Constable Tucker's impression were correct, it was not a trend which became obvious over a period of six months in the Melbourne Court of Petty Sessions in 1898. The overall impression of the sentences imposed upon women brought up for

44 Ibid.
importuning is that they were rather arbitrary. Of the 181 women who came before the City Court on importuning charges in the first half of 1898, only nine received consistently lighter sentences later in the period. Of these, seven made only two appearances before the court, receiving a lighter sentence the second time - hardly the basis for suggesting a 'trend'. Rose Miller, who appeared four times, received a sentence of ten shillings or three days on her first appearance, two shillings sixpence or six hours on her second conviction and five shillings or twelve hours for her final two convictions. Margaret Reilly's three sentences for importuning were progressively less: twenty shillings or seven days for her first offence in 1898, ten shillings or twelve hours for her second and two shillings sixpence or six hours for her third. Later on in the six month period she was arrested twice for being drunk and disorderly; upon conviction she received sentences of five shillings or twelve hours and ten shillings or three days with one shilling sixpence costs, so although her sentences became progressively lighter for importuning, the penalties she received for drunkenness were increasing at the close of our survey period.

In contrast with these cases, the records of twenty-three women reveal their sentences becoming progressively heavier during the six month period. For example, Alice Teague, who appeared five times for importuning, received sentences of five shillings or twelve hours twice, ten shillings or three days once followed by two sentences of twenty shillings or seven days. Seven other women, such as Polly Ellis, received the same penalty each time they appeared; Ellis was fined five shillings, in default to spend twelve hours in the lock-up for each of two counts of importuning and one of being drunk and disorderly. Most common of all were the twenty-nine women whose records reveal arbitrary sentencing practices. Minnie Dalton was typical of these. In January 1898 she was arrested with Lizzie Wilson for importuning and received a penalty of five shillings or twelve hours' imprisonment. Towards the end of February she was arrested again, this time receiving a much harsher penalty of twenty shillings or fourteen days. Only a week later she was again brought before the court for
importuning, again being fined twenty shillings or seven days' imprisonment in default. Two weeks later she was penalized ten shillings or seven days, and a week later was before the court again but received the lighter penalty she had received in January: five shillings or twelve hours. Perhaps this represented a concerted effort over a short period by the police and courts to deter this particular woman from her occupation, with failure recognized by the return to light sentencing. Other records reveal no pattern whatsoever. Nellie Marsden was discharged on a drunk and disorderly charge in January; fined ten shilling or three days and twenty shillings or fourteen days on two consecutive importuning charges; discharged from her next importuning charge and finally fined five shilling, in default twelve hours' imprisonment on a drunk and disorderly charge.

It seems that on a day-to-day basis, most women would not have been able to predict how harshly they would be dealt with by the courts. The small number of tentative patterns outlined here do not point to any sentencing trends discernible in the short term. A longer view of the experience of some women in the prostitution trade with the court system has been gained from prison records; we follow these women into prison in the following chapter.
Encounters with the police and the court system were part of the common experiences of many women who continued to work as prostitutes for any length of time in turn of the century Melbourne. Although these encounters played a part in shaping the daily lives of women who were classified as 'common prostitutes', such encounters did not entirely constitute those lives. While women were living in Melbourne spending some time working in the trade and dealing with the police and courts, they also had networks of friends, families, in many cases children, links with local communities and many other interests, associations and responsibilities which constituted their lives. However, once they were removed from these networks and actually incarcerated in institutions such as prisons, reformatories and refuges, individual women came closer to having their lives subjected to overbearing and all-pervasive control. Nevertheless, they continued to defy authority, to escape from such establishments and to make their own choices despite the deep intrusions into their lives made by institutions of incarceration. In the late nineteenth and early twentieth centuries the state retained a close relationship with benevolent and philanthropic organizations. While the following discussion focuses on the prison system, the operations of this system cannot be understood without reference to religious and philanthropic networks which intersected in important ways with state institutions: in particular, for the purposes of this discussion, the courts and prisons. This study of the forces which impinged upon the lives of women in the prostitution trade concludes with a discussion of the nature of some of the institutions with which women working as prostitutes came into contact, attempts to suggest what their experiences may have been like and provides sketches of some women who did end up in prison.
The first element needed in this pastiche of the experiences of women working as prostitutes who came in contact with the prison system is a basic understanding of women's prisons in Victoria around the turn of the century. Between 1890 and the First World War, prisons in Victoria underwent substantial change. There was an important shift during this period from an ad hoc retributive philosophy of punishment to a much more intrusive penology which focussed on the reform of the individual offender. Immediately before World War I W. A. Callaway, Deputy Inspector-General of Penal Establishments, could observe that: 'Amongst the recognised authorities, the primitive idea of the punishment fitting the crime has given place to the reform of the individual in the interests of the community as well as of himself [sic]. Faith in 'rationality', in the process of scientific inquiry into the nature of social phenomena, was extended to the criminal; a prison administrator wrote in 1915:

...it has been my endeavouer to nullify the effect of such of the rules laid down by my predecessors as did not seem to me to be in harmony with reason or progress, and, being an advocate for love as a dominating impulse as against fear, to adopt the general principle that it is better to induce in an erring mortal a rational resoloution of amendment than to develop a desperate antagonism against society by enforcing an

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1 Reference for this outline is the reports of the Inspector-General for Penal Establishments and Gaols to the Chief Secretary for the Years 1889-1914 published in the Victorian Parliamentary Papers. The exact titles of the reports vary slightly over the years, but all begin 'Penal Establishments...'. It has not been possible to trace the full social dynamic of prison reform. However, this discussion of aspects of state prison policy enables some understanding of the interaction between state institutions of incarceration and the lives of women working as prostitutes. There is almost nothing written on the history of Australian prisons, and the little which is available is specifically about N.S.W. Stephen Garnon has contributed a valuable essay specifically on state incarceration: 'Bad or Mad? Developments in Incarceration in N.S.W. 1880-1920', Sydney Labour History Group, What Rough Beast: The State and Social Order in Australian History, George Allen & Unwin & The Australian Society for the Study of Labour History, Sydney, 1982, pp. 89-110. Most of the trends noted in this chapter also occurred in N.S.W. General historiography on prisons is slightly better. In particular, Michel Foucault has illuminated broad shifts in the nature of incarceration in Discipline and Punish: The Birth of the Prison, tr. Alan Sheridan, Penguin, Harmondsworth, 1979. Although his discussion is based on the French context, this chapter isolates a particular moment in Victoria in the broad processes he has written about. See also M. Ignatieff, A Just Measure of Pain: The Peniteniary in the Industrial Revolution, 1750-1850, Columbia University Press, New York, 1978.

otherwise fruitless course of retribution. ... confinement in prison can effect no good result unless thought, which is the key to the man, is rightly directed. 3

As the idea of reform took shape in the late nineteenth century it began to be reflected in institutional practices. An early concern was to reduce as much as possible the opportunities for prisoners to associate with each other in order to prevent them influencing each other. The abolition of the mess system in 1891 eliminated the most important moment of social intercourse: shared meals. The only large prison where the mess system was retained at this time was Melbourne Gaol because of inadequate accommodation. 4

It was recognized that individual prisoners varied in their potential for reform, so the prison system began to focus on the classification of prisoners into categories. In 1890 women were mainly imprisoned in the Melbourne Gaol in overcrowded conditions which precluded the segregation of prisoners into separate cells. A few women were incarcerated in other prisons at Ballarat, Beechworth, Castlemaine, Geelong, Maryborough, Portland, Sale and Sandhurst, but it was the conditions at the Melbourne Gaol which concerned prison administrators. Association of prisoners prevented influences for good having any effect on individuals and insufficient accommodation precluded the institution of a meaningful system of classification. Work on a new Female Prison was commenced in 1889 and the new institution was opened in May 1894. The most important aspect of this new development was the potential for classification which it offered. It was located on part of the Pentridge Reserve and consisted of three buildings. The new main section of the prison comprised 198 cells. The 'Jika' division, originally erected as a prison for men and subsequently converted into a reformatory for boys was used for the accommodation, during both the day and

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4 Penal Establishments Report 1889, V.P.P. 1892-3, 2, No. 8, p. 253, p. 3.
night, of the 'decrepit and infirm', that is, criminals of the vagrant class unable to work and ineligible for charitable institutions because of uncontrollable behaviour. The 'Coburg Division', originally erected as a reformatory for girls, was used for hospital accommodation, quarters for resident officers (Governor, Sub-Matron and hospital nurse) and work rooms for first convicted and 'special cases'.\textsuperscript{5} Presumably at this stage the first convicted and 'special cases' were accommodated in the ordinary cells as this early description of the Coburg Division mentions only work rooms for these prisoners, not accommodation.

Over the period being examined there was increasing emphasis upon the spatial segregation of women of different classifications. In 1897 an additional hospital ward was built to enable the continuance of the classification system in the event of sickness.\textsuperscript{6} In 1899 the formal classification of 'special division' was instituted at both Pentridge and the Female Prison. Those considered most amenable to reformation were regarded as candidates for the 'special class'. After the institution of this system 'special' prisoners were kept entirely separate from all others. At the Female Prison the Coburg division was kept entirely apart during work and off hours.

In 1902 the Inspector-General of prisons proposed that separate accommodation be provided for prisoners who were on the border line between the special and ordinary classes, that is, he wanted the introduction of an additional classification.\textsuperscript{7} By 1910 the 'restraint division' for 'offenders of not so promising a type as those classed specials, but for whom intercourse with the general class of prisoners is considered undesirable' had been formally established.\textsuperscript{8} Such prisoners were regularly reviewed to determine

\textsuperscript{5} Penal Establishments Report 1894, V.P.P. 1895-6, 3, No. 46, p. 401, p. 3. 
\textsuperscript{6} Penal Establishments Report 1897, V.P.P. 1898, 3, No. 32, p. 853, p. 3. 
\textsuperscript{7} Penal Establishments Report 1901, V.P.P. 1902, 2, No. 21, p. 331, p. 3. 
\textsuperscript{8} Penal Establishments Report 1910, V.P.P. 1911, 2, No. 29, p. 427, p 4.
whether any were suitable for the special division and those who had proved unfitness for the special division could be accommodated in the restraint division.

If an individual were to be 'reformed' by the prison system it was essential that that system know the details of the prisoner's character and life prior to imprisonment. After the new Female Penitentiary opened it became possible to confine women separately without contact with other prisoners. Upon admission all prisoners spent some time in separate confinement. This involved working, eating and sleeping in their individual cells. The total length of time spent in 'separate' was graded according to the length of the sentence. For those sentenced to between six months' and two years' imprisonment, the first eighteen and last ten days were spent separately confined, while those with shorter sentences spent their entire imprisonment in separate confinement. During the initial period of separate confinement, inquiries were made by the prison authorities into the details of the prisoner's life in order to classify her. After 1899, women regarded as potential for the 'special class' were seen personally by the Inspector-General or the Deputy Inspector-General and further questioned, their classification being determined before the expiration of the initial period of separate confinement.

Soon, distinctions were made between the standard of accommodation offered to special division prisoners and that suffered by the ordinary prisoner. In 1903 the Chief Secretary gave permission for the prisons to supply each 'special' prisoner with a bedstead, a strip of matting, a chair and a looking-glass to furnish their cells. The fact that the construction of a special division marked off the women imprisoned in the ordinary class as incorrigible was symbolized by the fact that only 'special' prisoners were supplied with the basic amenities of existence outside the prison.

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An important change in prison practices occurred only a few years after the introduction of the special division. The 'indeterminate sentence' was the quintessential expression of the new penology. Following a trend throughout the West, in 1907 the Victorian Parliament passed the Indeterminate Sentences Act. In reporting to the Chief Secretary in 1911 the Inspector-General of Victorian prisons quoted an American prison official of wide experience with approval:

The fundamental principle is not that punishment should be made to fit the crime, but that it should be made to fit the criminal. He is imprisoned, primarily, not for doing what he did, but for being what he was. ... The definite sentence says to him - 'You have broken a law. You must be imprisoned five years. You will be released at the end of that time, regardless of your character.' The indeterminate sentence says to him - 'You are imprisoned because your violation of the law has shown that you are unfit to be free. You must remain in prison until your character changes. When it has changed, and has been tested (when you have become fit for liberty), you will be released, and not before.' ... The sentence for reformation compels the severest effort, but the compulsion is from within the prisoner, not from without. ... Prison discipline thus ceases to be a restraining force, and becomes an impelling one. The co-operation of the prisoner, without which nothing can be accomplished, is secured in most cases sooner or later, and the desired end is accomplished.10

For a prison administrator in 1912, one feature of Utopia would exist 'if the prison were conducted on the same lines as a hospital and every sentence were indeterminate, discharge being a guarantee of cure...'.11 In order to execute the intentions of the Act in regard to women prisoners, a section of the Female Prison was set aside as 'Jika Reformatory Prison'. Here, women classified as 'habitual criminals' under the Act

were imprisoned until the Indeterminate Sentences Board, who visited the prisoners regularly, determined that they were ready to be released on probation. This was also the first system of adult probation in Victoria.

Was the shift in penology equally applicable to women and men? As the idea that some prisoners were amenable to reform became entrenchedin institutional practices what were the differential effects upon women and men? Did the fact that many women prisoners worked as prostitutes have any bearing upon the issue?

The Inspector-General of prisons noted that 'to deal reasonably with what may be termed hopeful cases, work which will give interesting and stimulating employment of mind and body is needed'. Yet these elements were given little attention in the case of female prisoners during the period being examined. While from 1905 the men regarded as most amenable to reformation received intellectual stimulation from lectures on subjects ranging from Dickens to Australian history, women sat alone in their cells with 'lady visitors' being exorted to follow the correct spiritual path. The emphasis upon religious influence was integral with the prison authorities' intrusion into the lives of prisoners in an attempt to forge more worthy, conforming citizens. Each religious denomination nominated prison chaplains who administered spiritual guidance to prisoners. That this aspect of prison work was considered especially important in relation to women prisoners at the same time as penal theory was stressing the development of the rational capacity of prisoners, of 'independence and self-reliance ... and forethought and foresight' as the means to reformation, indicates that the construction of gender difference in this society prohibited penal authorities from conceiving that the new penology could be practised in the same way with both women and men.

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12 Penal Establishments Report 1900, V.P.P. 1901, 2, No. 25, p. 1159, p. 3.

13 Penal Establishments Report 1900, V.P.P., 1911, 2, No. 29, p. 427, p. 5. While Garton's essay 'Bad or Mad' is excellent in many respects, he fails to establish a critique of the different application of the policies of reform to women and men.
Men were also more likely to do interesting work. While men in Pentridge were employed at tasks such as tailoring, matmaking, broom and brush manufacture, printing, bootmaking, farming, manufacture of woollen goods, bakery, carpentering and blacksmithing, women did the arduous work of the laundry for the prison system, routine work relieved only by some time spent on needlework. The prison system reflected the dominant conception of women as the servants of men. During the construction of the Female Penitentiary it appeared quite logical to prison administrators to convert the workshops originally used by the reformatory boys into a laundry to enable women prisoners to fulfil one of the domestic needs of male prisoners.¹⁴

Such considerations probably go some way towards explaining why the prison authorities had some success with the special division in male prisons, yet failed to apply the new philosophy of reform to female prisoners. In the initial period after the institution of the special division there were enthusiastic reports of success with both women and men. In his report for 1900 the Inspector-General of prisons, J. Evans, adamantly defended the prison system for women. Replying to statements in the press reporting comments made by members of the Bench about the corrupting influence of prisons, he produced information which he claimed belied the condemnatory remarks. From the opening of the Female Prison until the end of December 1900, 151 prisoners passed through the special division. Of forty-one for whom the immediate destination after release from prison was known, four were known to have 'relapsed'. Of the remaining 110 women, five had returned to prison under a second conviction. 'Of those lost sight of', he wrote, 'there is no reason to think that they are leading other than respectable lives.'¹⁵


¹⁵ Penal Establishments Report 1900, V.P.P. 1901, 2, No. 25, p. 1159, p. 5.
The tone of the report for 1904 was not as optimistic. For the three year period 1900-1902, seventy-five women and 132 men had been imprisoned in the special division and discharged prior to the end of 1904. Of these people, seventeen women and seventeen men were known to have been reconvicted, a rate of 22.66 per cent for women and only 12.87 per cent for men. In explaining the variation the Inspector-General suggested that women had a harder task to regain a position of respectability in society than had men. A deeper analysis was lacking, however. The practice of imposing on women sentences so short as to preclude any possibility of reformation was the other primary cause singled out by E. C. Connor. 16 Although results were better for the three year period ending in December 1904 (eleven of the sixty-eight women classified as 'special' had been reconvicted by the end of 1906) the optimism of the first report was replaced by a more realistic attitude: 'It is improbable that all who have retained their liberty have been reformed; some, so doubt, have returned to their former life, yet manage to escape the clutches of the law...' 17

As the years passed, however, less about special division women was mentioned in the reports to the Chief Secretary until there was complete silence in relation to this matter. At the same time as this silencing process was occurring, the reports contained increasingly detailed discourses on penal theory. Clearly, the experiences of the prison authorities with women prisoners did not conform to the high hopes held for the new rational, scientific approach to dealing with crime in society, so they were conveniently ignored. Had the authorities looked more closely at their own policies and the wider circumstances of the lives of women prisoners, instead of blaming the courts for continually sentencing women to periods of imprisonment considered to be too short to institute any reform, they may have seen that the prison


system was entrenched in a gender system so pervasive as to make the whole concept of reform meaningless for women prisoners.

Furthermore, despite the rational rhetoric and the statements about fitting the punishment to the individual, an important element of imprisonment continued to be an arbitrary exercise of state power over the lives of individuals, masked by the concept of the necessity of the rule of law. This was especially the case with people who were involved in 'victimless crime', such as women in the prostitution trade. The arbitrary nature of incarceration was highlighted in 1911, when all prisoners, except those who had had death sentences commuted to imprisonment for life, were granted partial remission of the remainder of their sentences upon the coronation of King George V.\textsuperscript{18}

Despite the changes in penal thinking it is doubtful whether women's experiences with the prison system improved for the better over this period. In fact, the increased intrusions into the lives of women by the penal authorities which accompanied the new penology would have made the experience worse. Although there were fewer women in prison immediately prior to World War I than there were in 1890, many women continued to be incarcerated for short periods on a regular basis. The percentage of women admitted more than once during the year was always higher than that for men. As the years passed, the discrepancy increased. The proportion of frequent offenders in the female gaol population increased over the period under discussion which, far from indicating success of the new scientific penology, suggests that the broad approach to female crime, and prostitution in particular, hardened the divisions between female 'criminals', including prostitutes, and 'respectable society'.

\textsuperscript{18} Penal Establishments Report 1911, V.P.P. 1912, 3, Part I, No. 48, p. 231, p.5.
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Creating a more permanently ostracized and 'deviant' class than had been the case in 1890.19

Over this period the female prison population also aged markedly, which suggests either one or a combination of the following factors: that the recruitment of young full-time prostitutes had declined; that young prostitutes were becoming more clandestine; that the police were segregating the less desirable women working as prostitutes and attempting to force them out of the business, as Judith Allen has suggested was the case in New South Wales over this period.

Despite the introduction of the indeterminate sentence in 1907, and the establishment of the Jika Reformatory Prison for women, very few women were imprisoned on this principle.20 As the intention of the indeterminate sentence was the reform of frequent offenders, this seems to indicate lack of faith in the potential of women to change their lives, once convicted a number of times. Many of them were, after all, 'damned whores', servicing men at the same time as being condemned to the periphery of society, so it is not surprising that few were incarcerated in a 'reformatory prison'.

Upon entry to one of the penal establishments women entered a world where surveillance penetrated every aspect of their daily lives; the harassment of the police paled in comparison. Prisoners' bodies were no longer their own to care for and adorn as they chose: regulation government clothing which could not be altered had to be worn; the neckerchief had to be worn on the neck and the jacket tied down by the apron

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19 There was also a trend towards greater recidivism amongst the male gaol population. This had never been as great as for women, and the increase for women was also more marked. Information about prison population including overall numbers, prisoners admitted more than once during the year and numbers of previous convictions of those admitted is included in each of the annual reports.

20 In the five year period 1910-1914 an average of only one woman in every 435 who went to prison was incarcerated in the Jika Reformatory Prison. On the other hand, one man in every 102 went to either the Pentridge Reformatory Prison or the Castlemaine Reformatory Prison. Figures calculated from general statistical returns in Penal Establishment Reports for the years 1910 to 1914.
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strings; hair had to be parted down the centre and fastened up; the feet were to be washed twice a week in summer, once in winter, always on the night before clean clothes were to be worn; prisoners had to bathe once a week; the allotted food ration had to be eaten at the appointed time, at the appointed place in the appointed manner. Prisoners were also required to use their bodies in a deferential manner: upon hearing their cell door opening, prisoners, if not in bed, had to at once stand up in the centre of the cell, facing the door, with their hands by their sides; at musters, prisoners were required to be in their allotted place in the ranks promptly, and to stand with their hands down by their sides and their feet close together. Any personal property was confiscated upon entry to prison and subsequently prisoners were not permitted to possess anything which was not issued to them; they could be searched at any time. Prisoners had no control over the personal space which they occupied, that is, their cells. In the morning, immediately upon rising, prisoners had to make up their bedding 'neatly and uniformly', and place it in the appointed position. The cells then had to be swept and the cells and furniture scoured. Cell furniture and utensils had to be always 'neatly arranged as directed'. After cleaning their cells in the morning, prisoners were not permitted to 'interfere with their bedding' until after evening muster. Social relations were strictly controlled: strict silence had to be observed at all musters, at meals, in the dormitories and cells at night, while undergoing solitary confinement and while marching to and from work places; prisoners could not attempt to communicate with each other by letter, word, sign or sound except as necessitated by work; prisoners were prohibited from 'talking, singing, laughing, or making any unnecessary noise' and while in their cells were prohibited from talking or looking out the windows; all conversation with prison officers 'not strictly necessary' had to be avoided. As well as having their speech silenced, prisoners were prohibited from inscribing upon any part or fitting of the gaol.21

While attesting to the level of surveillance, the prison regulations also speak eloquently of the constant resistance of the prisoners. The very prohibition of specific acts suggests that they occurred. Prisoners scratched and wrote on the posts, rails, walls, fittings and furniture of the gaol; they communicated with each other in direct and clandestine ways; gambling instruments were smuggled into gaol; prisoners swore and lied; they sharpened spoons for use as knives, scratched on the mess-room tables at the Melbourne Gaol, and left refuse food on the tables and the floor instead of on the empty plate or dish provided for the purpose.\textsuperscript{22} Prison life for some women at least would have entailed a sharpened battle between surveillance and resistance. However, it is interesting to note that over the period from 1890 to 1914, statistics recording offences against prison discipling suggest that prisoners overall became more docile. As the prison system exercised more surveillance over the lives of the prisoners through a system of greater inquiry, segregation and classification, it must have succeeded to a certain extent in masking the potential antagonism between the imprisoned and the prison authorities. Female prisons would have been relatively quiet places in 1914 with only one offence against prison discipline being committed in any fifty day period, compared with at least one every three days in the early years of the 1890s.\textsuperscript{23}

Even though the conflict between the prisoner and the prison may have been apparently reduced by a system which seemed more caring, it is nevertheless understandable that women who were aware of the nature of the prison experience, either directly or from knowledge passed on by people who had had contact with the prison system, would avoid it as far as possible. It seems that women who worked as prostitutes were more likely than other women who fell foul of the law to avoid incarceration. This is suggested by an examination of the actions of women when they

\textsuperscript{22} Ibid.

\textsuperscript{23} See tables on offences and punishments of prisoners in the statistical returns contained in the Penal Establishments Reports for 1889, 1890 and 1900-1914.
received a penalty of a fine with a prison sentence if they defaulted in payment. In 1898, offences for which women were frequently before the courts and which carried penalties of fines with prison in default were drunk and disorderly, being a common prostitute found importuning persons in a public place, insulting behaviour and offensive language. The response to this type of penalty by women charged with being drunk was markedly different from the response of those charged with the other offences. Whilst 62.01 per cent of women charged with drunkenness defaulted in payment of their fines, and consequently went to prison, only 27.97 per cent of women charged with importuning were imprisoned for non-payment of fines. The figures for insulting behaviour and offensive language were 25.93 per cent and 22.73 per cent respectively. The most useful comparisons can be drawn between the offences of drunk and disorderly and importuning because they were the most common offences (481 charges for drunkenness and 318 for importuning). Significantly fewer charges were laid for insulting behaviour and offensive language (sixty-four and forty-eight respectively). While some women working as prostitutes were certainly charged with drunkenness, it was a street offence used to control the behaviour of the 'unruly' in general whereas most women brought up on charges of importuning would have been working prostitutes (if police claims that they only arrested known prostitutes are true).

It appears, then, that women in the prostitution trade were more determined than other women to stay out of gaol. Quite probably, they were in a better position than many women to pay the fines imposed by the courts. For some prostitutes, payment of regular fines would have been part of their expected expenditure. Furthermore, as many women working in prostitution had friends in the same trade who were also accustomed to the various pressures of the life, they could often rely upon these friends to help them pay their fines if they did not have enough money to do so themselves.24

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24 Evidence that women assisted each other in this way during an earlier period can be found in 'Report re. Contagious Diseases 1878', pp. 10 & 12. Police comments in 1911 that women in the prostitution trade without means would always be able to borrow money to produce in court if charged with vagrancy also suggest a degree of mutual financial support: 'Report of Constable Porter 4378 Relative to attached report re complaints of prostitutes in Collins Street and Memo from Chief Commissioner of 26.5.1911', 30 May 1911 in file re. policing of prostitution, Box 119, Chief Secretary's Supplementary Correspondence, series 1226, Vic. P.R.O.
Women new to the trade, especially young women, were in a more vulnerable position. Furthermore, those who received compulsory sentences of detention had little choice but to do as they were told. Prisons were not the only destinations of women in this position. Young women often found themselves in reformatory schools or refuges. By 1890 Victoria, in particular Melbourne, had a network of refuges for women run by numerous church and philanthropic organizations. In 1891 there were refuges at Abbotsford, Carlton, South Yarra, Collingwood, Ballarat and Geelong as well as one run by the Salvation Army, the Elizabeth Fry Retreat and the Church of England Deaconesses' Home.25 People working in the slums of Melbourne visited the homes and work places of women in the prostitution trade, exhorting them to leave their calling to lead virtuous lives. Sometimes women were convinced in this manner to go to live in a refuge. Other refuges had more direct links with the state system. Privately run reformatory schools segregated by sex and religious denomination functioned as prisons for juvenile offenders. During the first few years of the 1890s some young women were transferred to these institutions from gaol but by the twentieth century this practice had all but ceased; magistrates and justices were committing girls directly from the courts to the reformatory schools rather than having them pass through the prison system, with its attendant dangers of moral contamination from older, more experienced criminals.26

A brief examination of the nature of the institution for Catholic girls will give some idea of what incarceration in a reformatory may have meant in the lives of women who worked as prostitutes in their youth and gives some indication of the nature of the links between philanthropic organizations and the state. As well as providing a refuge


26 See reports of the Department for Neglected Children and Reformatory Schools and Charities Commission Reports for the years 1890 - 1914, all contained in the Victorian Parliamentary Papers.
for 'fallen women', the Good Shepherd Sisters had been responsible for a number of reformatory state wards since the inception of the system in 1864. In 1883 this part of their work was taken up in a new convent built in spacious country surrounding at Oakleigh.\textsuperscript{27} Representatives of institutions such as the Convents of the Good Shepherd Sisters often attended the courts on a regular basis. Sister Mary Monica, who died in 1938, was a familiar figure in the City Court for over twenty-five years. She went there almost every day to talk with the young women before they came before the bench, to listen to the evidence and to give advice to the magistrates. She worked as a probation officer, regularly seeing young women who had been released on bonds. Others were committed straight from the courts to the care of the convent.\textsuperscript{28} For many years the Abbotsford convent had occupied the inmates with a thriving laundry business. When a new Magdalen Asylum was opened in South Melbourne during the 1890s depression to help deal with the pressure placed upon the services of the Good Shepherd Sisters by the economic situation, it also was fitted out with a laundry 'with all the most modern appliances for carrying on that business'.\textsuperscript{29} At the Oakleigh Reformatory School laundry was also a part of the activities of the young women. Inmates of Good Shepherd Sister institutions in Melbourne had also for many years spent many hours doing beautiful detailed fancy-work. The aim of the Oakleigh institution, like that of the Protestant Reformatory and many of the refuges in Victoria, was to 'reform' the inmates by training them to be servants. This straitened vision which confined the development of women's skills to domestic duties was that same class and gender bound vision which had women prisoners doing the very same tasks: laundry and needlework.

\textsuperscript{27} Sr. M. Concepita Barry, 'In Pastures Green. History of the Good Shepherd Sisters in Australasia, 1863-1980', typescript, Convent of the Good Shepherd Archives, Abbotsford, Victoria. This typescript is not consistently paginated so cannot be accurately referred to. The Argus, December 18th, 1883, p. 11, col. 3.

\textsuperscript{28} Unidentified press clipping in Barry, 'In Pastures Green.'

\textsuperscript{29} Press clipping noted 'Rosary Place, South Melbourne. Official Opening 22. 1. 1893' in Clipping Book, Convent of the Good Shepherd Archives, Abbotsford, Victoria.
Other conditions were similar to prison life. Almost a century before the changes in penal attitudes discussed earlier, St. Euphrasia Pelletier, who was central in the reformation of the Order after the massive disruption in religious life caused by the French Revolution, formulated methods for 'reforming' wayward girls based upon the twin principles of caring and surveillance. After her death in April 1868, her writings and directives were compiled into two books: the *Practical Rules for the Direction of the Classes* and the *Conferences and Instructions of Saint Mary Euphrasia Pelletier*. While there may have been a discrepancy between the ideals contained in this prescriptive literature and what actually happened at the Oakleigh Reformatory between 1890 and 1914, some awareness of the philosophy behind the work of the Good Shepherd Sisters can help us understand what some aspects of reformatory life may have been like. One outstanding conclusion is that the degree of surveillance to which the inmates of both reformatory and gaol were subjected was probably remarkably similar. The re-education of the young women was designed to develop the total personality and the total being of each individual. This required segregation from the world, from the bad influences of the past, and constant surveillance to ensure that the correct path was maintained. Clothes and personal belongings such as photographs had to be surrendered upon entry to the reformatory. Those in the care of the convent and those imprisoned in government institutions were only allowed visitors at three-monthly intervals. All activities were strictly organized and silence had to be maintained at most times including meals, in the dormitories, during work and going from one employment to another. Individual conversation between inmates was discouraged at all times, including during recreation; prison administrators and Good Shepherd Sisters alike

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31 Details are taken from Dorothy J. Thompson, "The Psychology of the Good Shepherd Nuns in the Re-education of the Emotionally Disturbed," M.A. Thesis, St Mary's University, 1961, in particular pp. 13-50, unless otherwise stated.

believed that association between inmates held many inherent dangers, such as insubordination and general mutual bad influence. Perhaps one of the few consolations offered by reformatory life when compared with the prison was that despite the prohibition on intimacy, attempts were made to entertain the girls and young women. 'Happiness' was not a consideration for penal administrators at all.33

Although the reform of young women was a particular focus of philanthropic organizations, youth was not the only time in the life of a woman in the prostitution trade when she might find the combined power of the state and middle-class philanthropy intervening in particular ways in her life. The role of the prison chaplains and 'lady visitors' has already been mentioned. Members of the Victorian Discharged Prisoners' Aid Society also visited prisoners in gaol with the full consent of prison authorities. Help provided by this society to prisoners by way of assistance after release, and assistance with payment of fines to prevent imprisonment, was favourably reported by the Inspector-General of prisons.34 An interesting example of co-operation between a philanthropic organization and the state, which would have effected some women working as prostitutes who came before the courts, was instituted in 1907 at the suggestion of the Melbourne Total Abstinence Society. After consultation with the Police Magistrate, Mr Cresswell, the Inspecting Superintendent of Police, Mr Mahoney, and other officials, people arrested for drunkenness who were to appear before the City Court were given the opportunity to sign a pledge promising that they would not drink alcohol. The court then imposed a suspended sentence which was applied only if the person broke the pledge. Facilities were provided for the Rev. J. A. Nicol and Mr E. F. J. King, Secretary of the Melbourne Total Abstinence Society, to obtain pledges from those under arrest. In the first seven months of the operation of the system from October 1907 to the end of April 1908, 1419 men and 249 women took

33 Barry, 'In Pastures Green.'; Reports of the Department for Neglected Children and Reformatory Schools 1890-1914, V.P.P.

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the pledge. During the same period 218 men and ninety-two women broke their pledges, a failure rate of 15.36 for men and 36.95 for women.\(^\text{35}\) The discrepancy is probably accounted for by greater police surveillance of drunken women than by a greater degree of incorrigible alcoholism amongst women drunkards. That some women were kept out of gaols by this system and by other activities of philanthropic organizations is clear. It is far more difficult to illuminate specificities in the lives of such women than it is to ask about the circumstances which resulted in some women being imprisoned.

Who, then, were the women in the prostitution trade who did end up in prison? As indicated in Chapter Three, if a woman were charged with the more serious crime of procuring, there was a very strong chance of her being incarcerated. In relation to the women working as prostitutes, some undoubtedly spent only short periods in the trade. Even if they became classified as ‘common prostitutes’ and suffered the police surveillance and harassment which this entailed, they did not necessarily end up with prison records. Some women would have appeared before the courts a number of times, dutifully paid the fines imposed and consequently avoided imprisonment. However, an impression of the nature of the encounters some women had with the prison system has been gained from examining the records of the seventy-seven women who received substantial sentences (usually six months or more) for the first time in 1898.\(^\text{36}\) Some of these women had been in prison previously for shorter periods which had not warranted entry in the Central Register of Female Prisoners. Upon inscription in this register, however, a woman’s previous convictions together with all subsequent convictions, both major and minor, were carefully recorded against her

\(^{35}\) Ibid.

\(^{36}\) This was the criteria for entry in the Attorney-General, Penal and Gaols Branch, Central Register of Female Prisoners c. 1855–c1948, Series 516, Vic. P.R.O.
name and personal description. Those women who were only imprisoned for short periods in the Melbourne Gaol had each individual entry into the gaol inscribed in a register of prisoners received, yet even if a woman were a constant offender, until she received a long sentence her record was not centralized. This, together with the facts that the Melbourne Gaol registers have no index, and the records are only available for short, broken periods make the majority of prostitutes' legal biographies impossible to reconstitute. However, in order to gain some sense of the criminal life cycles of some women, the women who were inscribed in the Central Register in 1898 can be divided into those with no prior or subsequent convictions, those with prior convictions but no subsequent convictions, those with no prior convictions, but who were subsequently convicted and finally, those who had convictions both prior to and subsequent to their 1898 period of imprisonment.

It has not been possible to determine definitively whether all of the women worked as prostitutes. Clearly, some women were criminalized for their choice of this employment option while other women never entered the prison system on prostitution related charges, although at some stage in their lives they may have worked as prostitutes. Some women who were in the prostitution trade may, by chance, never have been arrested for soliciting or brothel-keeping, but been harassed for vagrancy and street offences. So this discussion does not seek to divide the women being discussed into those who 'were prostitutes' and those who were not, although it has been assumed that women who had no vagrancy, street offences or prostitution-related charges in their records were not being criminalized for prostitution-related activities.

The occupations of the women recorded in the registers indicate that they were primarily from the working class. Over half of the women (51.95 percent) who received substantial sentences for the first time in 1898 were servants. Those remaining

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37 Attorney-General, Penal and Gaols Branch, Reception Registers, Series 524, Vic. P.R.O. This series only has three volumes which include women. They cover only parts of 1897, 1905, 1906 and 1908.
stated their occupations as barmaid, boot machinist, charwoman, dressmaker, laundress, machinist, milliner, nurse, stewardess and tailoress, with only eight women (10.39 percent) having no occupation recorded against their names. Nine women (11.69 percent) were completely illiterate while four (5.19 percent) could read only. These literacy rates indicate that female prisoners were far more likely than the general population to have had an inadequate education; in 1898, only .62 percent of women marrying signed the marriage register with their marks rather than their names.\textsuperscript{38} The religion of the prisoners, too, is an indicator of their working-class backgrounds; 42.86 percent of the women were Roman Catholics, 35.06 percent Church of England, 16.88 percent Presbyterian, with the remainder Wesleyan and Congregational. In Victoria, most Roman Catholics were working class, and only 22.78 percent of the Victorian female population as a whole professed Roman Catholic faith.\textsuperscript{39} While over half of the women (53.25 percent) were born in Victoria, this is significantly less than the 74.68 percent of the female population of Victoria who were born in their home state.\textsuperscript{40} Consequently, migrants were more likely to be imprisoned than the native-born.

One group of women who are easily distinguished from the others is those who were incarcerated only once. These women were convicted on a greater variety of charges than the others: larceny, neglecting children, assault, murder, conspiracy, abortion-related charges, sly-grog selling, procuring and being the occupiers of disorderly houses, as well as a number of vagrancy charges. However, vagrancy accounted for only 42.86 percent of imprisonments in this group. On the other hand, vagrancy, together with street offences, were a noticeable part of the records of 83.33 percent of women with prior convictions only, 86.67 percent of women with subsequent convictions only and were significant in the records of all women with both


\textsuperscript{39} Ibid., p. 71.

\textsuperscript{40} Ibid., p. 69.
prior and subsequent convictions. Women recidivists had records dominated by the types of offences for which prostitutes were arrested, while women committing more serious offences were more likely to enter prison only once. There was very little overlap between the two groups.41

The age of the women charged with vagrancy who went to prison only once is also noticeable; six of the eight women under twenty incarcerated for vagrancy did not enter the Victorian prison system again and one of the remaining two had a record with only two convictions. An outline of the circumstances of some of the young women who were imprisoned under the age of twenty actually belies the contemporary belief that women invariably followed a downward path. Perhaps the rigour of gaol or reformatory discipline was an effective deterrent to the future 'deviant' activities of these young people. It has been possible to discover something more of the lives of seven of the eight young women who were incarcerated for vagrancy.42

Catherine Quirk and Annie Cahill had been living quite desperate lives. Although they were recorded in the prison registers as servants, the proceedings in Oakleigh Court of Petty Sessions before Justices Bolingbroke and Nicoll revealed that the young women lived together with Quirk's brother Joseph, aged twenty-three, in a stolen tent in the ti-tree scrub off Warragul Road, sleeping together with only a few old bags for warmth. Cahill, aged eighteen, had born a child to Joseph Quirk seven months previously. Joseph Quirk had no work and lived on the proceeds of begging, threatening people and the prostitution of his sister and friend, who solicited milk-carters and others in the vicinity. All three received sentences of six months' imprisonment, with Joseph Quirk receiving an additional fourteen days' imprisonment.

41 No attempt has been made to follow up the thirteen women who entered prison only the once in 1898 for offences against the person, offences against property, abortion related offences, conspiracy, neglecting children or sly-grog selling.

42 The young woman who cannot be followed up was one of those with only the one conviction.
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for stealing the tent. Seventeen-year-old Catherine Quirk was transferred to the Oakleigh Reformatory after about six weeks in prison but her older friend served her sentence in the female prison.\textsuperscript{43}

Ethel Searby, whose occupation was recorded by the prison authorities as 'servant', was another young woman who was probably working as a prostitute when she initially encountered the prison system, yet whose life was only briefly textualized. She was brought before the Geelong bench during a police campaign against 'undesirable characters' in that city. She was 'certified to be a menace to public health', charged under the Vagrancy Act, given a bad character by the police and sentenced to six months' gaol in Coburg. At the time she was only nineteen years of age.\textsuperscript{44} The parents of Maud Ricketts, aged nineteen, and Jennie Hooke, aged seventeen, were complicit in the incarceration of their daughters on vagrancy charges. The young women were claimed to be 'uncontrollable'. While the press report suggested Ricketts and Hooke were engaged in some kind of sexual activity with two named youths, there was no direct reference to prostitution. While the charges of vagrancy against the young men were dismissed on the evidence that they obtained a livelihood as jockeys, the young women were each sentenced to six months' imprisonment. They were both imprisoned at the female prison in Coburg, although Hooke, the younger of the two, was transferred to Pakenham Reformatory after four months in gaol. Although this was Ricketts' only imprisonment, Hooke was convicted again in 1900 on a charge of larceny. This, however, was her last appearance in the criminal records.\textsuperscript{45}

\textsuperscript{43} Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 154, Record No. 6569 (Quirk); p. 155, Record No. 6570, Vic. P.R.O.; The Oakleigh and Ferntree Gully Times, 5 February 1898, p. 1, col. 7.

\textsuperscript{44} Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 153, Record No. 6568, Vic. P.R.O.; The Geelong Advertiser, 1 February 1898, p. 2, col. 6.

\textsuperscript{45} Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 164, Record No. 6579 (Hooke); p. 165, Record No. 6580 (Ricketts), Vic. P.R.O.; The Richmond Guardian, 26 March 1898, p. 2, col. 4.
Quirk, Cahill, Searby, Ricketts and Hooke all appear to have only briefly encountered the prison system in their youth. It is possible that a change of name may have passed the notice of the authorities, although the registers indicate careful attention to the use of aliases. The women may also have continued 'criminal' lives interstate. However, despite their disadvantaged and stigmatized youth, these women probably managed to live unremarkable adult lives unburdened by any stigma which their early prison experiences may have cast upon them. The sixth young woman about whom something can be discovered had no choice as to whether or not she encountered the prison system again. It is not clear whether Alice Wickham was working as a prostitute when she was arrested in March 1898 when she was nineteen years old. Wickham served only four weeks of her twelve month sentence for vagrancy before she died in prison.46

Only Eleanor Müller, a tailoress from Germany who first went to prison when eighteen years of age, had a record which extended over a number of years. On 27 January 1898 she appeared before Panton PM and Mr C. J. Cook at the City Court, charged with vagrancy. Plain-clothes constable Stokes described her and the two women with whom she was arrested, Lily Wakeman and Rose Ross, as 'well-known denizens of the streets ... Their career was, in point of degradation, ... worse than the most notorious outcast. The girl Muller especially was hopeless.'47 After long deliberation the court sent Müller to gaol for a month, 'reminding her that she was going to the dogs as fast as she could'. Wakeman, aged seventeen, was committed to the care of a benevolent representative of the Wesleyan Central Mission and Ross, the youngest, was sent to a reformatory. Again, in April, Müller was imprisoned for a month for vagrancy, to be followed not long after by a three month sentence on the same charge. On her fourth appearance in court that year on 20 December she was

46 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 167, Record No. 6582, Vic. P.R.O; The Brunswick Medium, 2 April 1898, p. 3, col. 1.

47 The Argus, 28 January 1898, p. 10, col. 2.
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charged with both vagrancy, and for wilful damage. On the first charge she was imprisoned for six months, and, on the second, fined fourteen shillings or three days in default. It was this sentence which gave her sufficient criminal status to be inscribed in the Central Register. Two years later, on 23 December 1902, she was before the court for riotous behaviour, which earned her another six months in gaol. Finally, she committed what the courts regarded as a serious crime of violence, although the circumstances of this offence cannot be discovered. She was imprisoned for three years with hard labour for wounding with intent to do grievous bodily harm. She was released on remission at the end of September 1906. She would have been about twenty-seven years old and at this stage of her life managed to end her association with the Victorian prison system.48

Curiously enough, the three women who were incarcerated for more serious prostitution related offences—that is, for keeping disorderly houses and procuring—had neither previous nor subsequent convictions.49 Lizzie King and Mary Ellen Dunlop were both convicted of keeping disorderly houses in places outside of Melbourne, King in Warrnambool and Dunlop in Geelong. They may have been different from Melbourne brothel keepers in a number of ways; in terms of vulnerability they possibly had more in common with the woman starting out on the Melbourne streets than with the Melbourne brothel madame. Their activities were probably more conspicuous in country towns than they would have been in the city. Mary Ellen Dunlop of Bellerine Street in Geelong, whose occupation was recorded as 'laundress' had been widowed several months before she was charged with keeping a disorderly house. Soon after her husband was killed upon the railway she began working as a prostitute from her home. This 'gross' conduct offended both her relatives and her neighbours, but it is quite likely that the death of her husband put her in dire financial

48 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 217, Record No. 6631, Vic. P.R.O.

49 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 187, Record No. 6601, Vic. P.R.O.
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straits. Her work as a laundress probably involved taking laundry into her own home to supplement the inadequate income which her husband earned labouring on the railroad; it is unlikely that the couple would have had savings. The step from accepting the support of one man in exchange for sexual and domestic services to accepting the support of the 'men and youths who were in the habit of trooping to Dunlop's house' may have been a smaller one in Dunlop's mind than in those of her relatives and neighbours. Certainly, it may have been an essential financial strategy at this point in Dunlop's life. Although Dunlop was only about twenty-six years of age, she had a girl named Annie Dunlop who was fourteen years old living with her. This girl was either Dunlop's daughter, born when she was only twelve or thirteen years old, or possibly the younger sister of her deceased husband. Whichever the case, she was committed to the care of the industrial school authorities. After being released from prison at the end of her twelve month sentence, she either found an alternative source of income or continued her activities in a more discreet fashion, because she did not enter prison again.\textsuperscript{50} The press also managed to pass judgement on Dunlop in both overt and less obvious ways. Apart from the use of language such as 'gross', she was judged because of their failure to care for the young person in her care: Annie Dunlop was a 'little girl ... who pouted her face and tossed her head a good deal', suggesting that she was already learning her mother's habits.\textsuperscript{51}

Elizabeth Anne Miller was tried in the Supreme Court in July 1898 for attempting to procure Maria Humphries to have unlawful carnal connection with an unknown person. Humphries was a fifteen-year-old young woman from Clydesdale near Castlemaine. She had only been in Melbourne about nine weeks when the events

\textsuperscript{50} Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 152, Record No. 6567, Vic. P.R.O.; The Geelong Advertiser, 31 January 1898, p. 2, col. 6.

\textsuperscript{51} There were many similarities in the case of Lizzie King. She was an Aboriginal woman, yet it is difficult to discern whether the element of race introduced a significantly different dynamic into her case. Certainly, the 'miserable spectacle' presented to the Warrnambool Standard journalist by her five children in court was contributed to by the fact that they were black. The Warrnambool Standard, 22 November 1898, p. 2, col. 5. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 208, Record No. 6622, Vic. P.R.O.
associated with the trial occurred. She originally came to the city to live with her sister who ran the Army and Navy Hotel in Port Melbourne. She worked as a servant for two shillings sixpence per week but only stayed four weeks, leaving to go to her other sister's place. After a week, she found work as a servant at Mrs Miller's, a boarding-house frequented by fishermen and sailors. Part of her responsibilities also involved boarding ships in port in search of washing. The financial arrangements associated with this job were not clear. Maria Humphries claimed she was 'to help Mrs Miller with the housework and washing, Mrs Miller's daughter was to help me'. However, in Miller's statement, she complained that Humphries never paid any board. Perhaps it was a casual arrangement which had not been clarified when Humphries moved in to the boarding-house. Humphries claimed that Miller tried several times to persuade her to go with the steward of the Stillwater who was prepared to pay her six or seven shillings. The boarding-house, apparently, was not bringing in sufficient income. Consequently, Elizabeth Anne Miller made an attempt to supplement that income from the prostitution of a young woman who was in a vulnerable position, without an established home in Melbourne and, apparently, without secure, reliable employment. Despite the attempt by Miller to bring evidence that Humphries engaged in 'immoral' behaviour, and the opinion of the police that the evidence was sufficient to prove 'known immoral character' on the part of Humphries, the court found Miller guilty; she was imprisoned for twelve months with light labour. If she continued to attempt to supplement the income from her boarding-house from the occasional prostitution of young women on the water-front, her activities did not result in any further contact with the Victorian prison system.52

Some women who worked as prostitutes on the established beats in Melbourne had only one entry in their record in the Central Register. Cecelia Black, a servant born in Victoria, was brought up together with two other women before the Collingwood

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52 The Queen v. Elizabeth Anne Miller, Case No. 298, Box 1312, Supreme Court Depositions, Series, 30, Vic. P.R.O. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 187, Record No. 6601, Vic. P.R.O.
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Court of Petty Sessions as a vagrant and a 'parader', as the press was fond of calling women working as prostitutes. Constables McDonald and Creagh had made a raid the previous night and captured the three out of a crowd of prostitutes who had had their 'bullies' on the lookout for police. Black was represented in court by Mr. Vale who asserted that Black was a married woman kept by a man named Church who had been blinded in an explosion while working in the Government service. He received a pension of twelve shillings a week supplemented by benevolent assistance. Cross-examination revealed that Church lost his sight in an explosion in the quarries where he was working while a prisoner at Pentridge. Although he 'lived' with Black he knew of her work as a prostitute; the police also did not give him a good character. Black served her only prison sentence, six months long, as a result of this episode.53

Less can be said about the twelve women who had convictions prior to their imprisonment in 1898, yet whose criminal records ceased at this time. Death and classification as a lunatic were dramatic ways to have one's contact with the prison system terminated.54 It is more difficult to determine the reasons why other women who had worked as prostitutes and had previous contact with the law saw their last of the prison system in 1898. Irish-born Hannah Richards and Kate Joyce, a charwoman from Victoria, appeared before the Prahran Court of Petty Sessions in December 1898 on related charges. Forty-five years old in 1898, Richards had had one prior period of imprisonment for larceny. She was charged with being the occupier of a disorderly

53 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 185, Record No. 6599, Vic. P.R.O.; The Observer, (Collingwood), 21 July 1898, p. 5. Five other women ranging in age from sixteen to fifty had records containing a single charge of vagrancy. These women either could not be followed up or had only very brief press reports from which nothing of substance could be gleaned.

54 Mary Ansell, a woman without gainful employment from the Wimmera town of St. Arnaud, was first incarcerated at the age of twelve. After serving only one month of her six month sentence for vagrancy in 1898, at the age of twenty-eight, she was transferred to Yarra Bend Lunatic Asylum. It is not clear whether or not she was involved in prostitution. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 181, Record No. 6595, Vic. P.R.O. Death at the age of fifty-one prevented Annie Simmons entering prison again. A servant born in Ireland, she had been forty-five when she had first come in contact with the court system, but once again, it cannot be discovered whether her vagrancy charges were related to working as a prostitute. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 142, Record No. 6557, Vic. P.R.O.
house in St. David Street Windsor along with her husband John, a hod carrier working at Sandringham. Neighbours had seen disorderly women entering and leaving the house, and been disturbed by the rows which occasionally took place. The decision of the Bench to imprison Richards for twelve months but her husband for only six months is another example of the tendency of the courts to give harsher sentences to women when women and men are charged with similar offences against the moral order. Kate Joyce was younger than Richards. At thirty-three she had four previous charges for drunkenness and vagrancy, accumulated since she was twenty-nine years old. She received six months for vagrancy in 1898 because she had been going to the brothel in St. David Street and 'adding to its general disreputableness'. Like a number of other women in this sample, Richards and Joyce were women who had been working in the prostitution trade prior to conviction for the offence which sent them to gaol in 1898 yet who, despite their records and their imprisonment, managed to avoid further contact with the prison system in Victoria. Their imprisonment may have impressed upon them the need for greater discretion in the way they worked; some women may have continued in the trade yet successfully avoided surveillance. Considering the pervasiveness of the activities of the plain-clothes police at this time, women would have found it necessary to move to a locality in which they were not known in order to succeed in this endeavour. Most women would not have had the resources to do this, and many would have had strong ties with the neighbourhoods in which they lived. Another possibility is that these women were successful in finding other means of support. The brevity of the records of women such as Richards and Joyce suggests that involvement in prostitution was only a temporary moment in their lives. It did not result

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in their permanent criminalization, if this is defined as regular contact with the prison system.56

Fourteen women were imprisoned subsequent to their initial period of imprisonment in 1898 although they had no previous convictions. The most outstanding fact about these women is that many of them were imprisoned for vagrancy two or three times over a relatively short period, subsequently disappearing from the records. The only women with these short vagrancy records about whom any details can be discovered were three middle-aged women living in country towns. The country press must have found these women more newsworthy than the city press found their suburban sisters.57 Emily Provis was a mother of five children who had a difficult marriage. She was separated from her husband and living in Ballarat when she first came before the Ballarat City Court on a charge of vagrancy because of her habit of

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56 The following women also had short records including prostitution related offences which ended in 1898: Georgina Norris, servant born in Glasgow, thirty years of age before arrested for any prostitution-related offence, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 191, Record No. 6605, Vic. P.R.O.; The Observer, (Collingwood), 20 January 1898, p. 5, col. 4; Thursday July 21, 1898, p. 5; Bessie Allison, a Victorian-born servant in her twenties, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 192, Record No. 6606, Vic. P.R.O.; Ethel Walker, also a Victorian-born servant in her twenties, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 168, Record No. 6583, Vic. P.R.O. Another woman who may have been working as a prostitute but who had no clear sign that this was the case—her record included charges of vagrancy, drunkenness and obscene language—was Augustina Mooree. Her criminal career ended in 1898 when she received six months' hard labour for vagrancy. This French woman was described as an 'impostor' and a 'lazy loafer'. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 150, Record No. 6565, Vic. P.R.O.; The North Melbourne Gazette, 21 January 1898, p. 2, col. 5. Victorian Servant Sarah Urquhart was described by the police as a 'very undesirable character' when she came up on a charge of vagrancy after being found living in an empty house without authority. She had been imprisoned once before, but once again, saw the last of the prison system in 1898; Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 171, Record No. 6585, Vic. P.R.O.; The Independent (Footscray), 30 April 1898, p. 2, col. 3. Mary Rickman, who was imprisoned for six months on a vagrancy charge in 1898 after numerous previous convictions for drunkenness, obscene language and insulting behaviour could not be followed up; Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 201, Record No. 6615, Vic. P.R.O.). Two women who had histories of 'offences against good order' ended their criminal careers with property offences which resulted in their longer sentences. Whether these women worked as prostitutes cannot be discovered: Mary Ann Allen, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 202, Record No. 6616, Vic. P.R.O.; The Bendigo Advertiser, 14 October 1898, p. 3, col. 3. Ann Quayle, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 207, Record No. 6621, Vic. P.R.O.

57 Five women in this category appeared variously at Carlton, Collingwood, Coburg, Footscray, Hawthorn, Melbourne and Richmond courts but could not be traced in the press. These women ranged in age from their late twenties to their forties. If some of them were temporarily involved in prostitution, it was not as noteworthy as either youthful or rural prostitution.
continually parading Wills St. At this stage, one child was in an industrial school and four others were looked after by her husband at Beaufort. She received six months' imprisonment on this charge. Later, in May 1899, she again came before the Ballarat Court. Her story was a sad one. She had been living with her husband again in Beaufort, but claimed that she had come to Ballarat about three weeks previously at the insistence of her husband. She was told to take a two-roomed house and to endeavour to make a living by making paper flowers. If she were successful, her husband would follow her. If this indeed were the case, it was as good as sending her out on to the streets. The police claimed that they knew her as a prostitute and gave evidence that when they visited her house they found a number of men there and eight bottles of beer on the table. The house, according to the police, was in a 'dirty condition' and forty-two empty beer bottles were found in a back room. Neighbours gave evidence as to 'the character of the house.' This, apparently, was sufficient evidence to charge her with vagrancy together with two of her daughters living with her at the time. The fate of the daughter Emily, aged twenty-one, is not clear. She was remanded to prove the genuineness of a letter produced in court from her previous employer offering to take her back. Eliza Gorey, aged twenty-six, Provis's other daughter, was a mother of three. She was placed in benevolent care with her youngest child while the others were committed to the Department for Neglected Children, the father being ordered to pay two shillings sixpence each per week for their support. There was no suggestion that he could provide a home for them on his own, the assumption being that the woman's domestic and child-care labour was necessary. Emily Provis herself was imprisoned for
twelve months. After this period of crisis, the mother, at least, managed to survive without further encounters with the law.58

Only one woman who had no convictions prior to 1898 continued to have considerable contact with the prison system after this time as the result of offences which could indicate prostitution related activities. She was Clara Fordham, a servant born in Victoria twenty-two years of age in 1898. She was in and out of prison until the mid nineteen-twenties, on charges of vagrancy, drunkenness, obscene language, insulting behaviour and larceny. She was always tried in the Melbourne, Carlton or North Melbourne courts, apart from 1905 when she appeared a number of times before the Bendigo City Court. As with the five city women with shorter vagrancy records, little about her life can be gleaned from press reports.59

Finally, twenty-three women had convictions both prior and subsequent to the 1898 conviction which resulted in their being inscribed in the Central Register.60 All these women had records which indicated the possibility of involvement in

58 Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 156, Record No. 6571, Vic. P.R.O. The Ballarat Courier, 9 February 1898, p. 2, col. 6; 19 May 1899, p. 2, cols 6-7. The other two country women charged with vagrancy more than once in their middle age were Mary Molloy and Christina O'Donnell. Molloy, an Irish-born servant in her fifties, was described as 'behaving in a disgraceful manner' and as 'a well known public nuisance'. She was imprisoned for having no visible lawful means of support by the Rutherglen Court of Petty Sessions for twelve months on each of three occasions: January 1898, March 1900 and March 1901. On her final appearance she also received a severe sentence for obscene language—a ten pound fine or three months' gaol. (The Rutherglen and Wahgunyah News, 5 March 1900, p. 2, col. 3; 21 March 1901, p. 5, col. 5. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 151, Record No. 6566, Vic. P.R.O.) See Chapter Three for details re. O'Donnell (The Goulburn Advertiser, 3 August 1900, p. 2, col. 7. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 166, Record No. 6581, Vic. P.R.O.). Mary Macalister was another country woman first encountering prison in her middle-age in 1898. She was imprisoned twice in relatively close succession, once for being the occupier of a disorderly house and once for vagrancy (Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 146, Record No. 6561, Vic. P.R.O.; The Bairnsdale Courier, 12 January 1898, p. 2, col. 7; 12 October 1898, p. 2, col. 7.)

59 Fordham, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 182, Record No. 6596, Vic. P.R.O. Stewart, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 170, Record No. 6584, Vic. P.R.O. The remaining two prisoners with records commencing in 1898 were criminalized for activities unrelated to prostitution: offences against the person and property offences.

60 One has already been discussed: Eleanor Müller in the section on youthful offenders.
prostitution—that is, records with at least one charge for vagrancy, a street offence or a prostitution related offence. Some, however, would have been aged vagrants, incarcerated simply because they lacked support in their old age. Only two women with both prior and subsequent convictions had all their offences tried in country courts, while two others appeared on occasion before country courts, the remainder of their offences being committed in Melbourne. Nearly all the women with records which extended for over ten years were in this group. Not all their stories can be told; from the little that can be gleaned from press sources, many of them seem remarkably similar. Many of these women must have made up the ranks of 'known prostitutes' in the city and inner suburbs of Melbourne. Their activities would have been so ordinary, common-place and expected that they attracted little attention. Jessie Laylor, for example, was found in a disorderly house in Harp of Erin Lane, off Madeline Street in Carlton. The case, tried in the Carlton Court, was one of the few of its kind reported in the Argus. The event was quite banal: 'The accused ... had a list of previous convictions [and was] sentenced to 12 months' imprisonment.'

One report in a local paper enables a glimpse into the life of one of the women whose criminal record stretched for thirty-two years, from 1896 to 1928. Alice Lynch was born in Tasmania in 1871 and brought up a Roman Catholic. She received only a rudimentary education because as an adult she could read, but not write. When she was employed, she worked as a servant. She probably worked in this capacity for many years before becoming known to the police, for she was twenty-five when she received

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61 Aged vagrants included Hetty Collins, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 210, Record No. 6624; Elizabeth Cumming, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 218, Record No. 6632; Mary Dillon, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 175, Record No. 6589; Fanny Maidman, Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 144, Record No. 6559; Mary Ann Koshur had five minor convictions when she was in her fifties which could, conceivably, have been prostitution related. She did not enter the Central Register until she was eighty-three. She was imprisoned three times for vagrancy while in her eighties. She was released from prison at the end of a twelve month sentence at the age of eighty-eight and was not incarcerated again. Probably, she died before the police arrested her again. Many aged vagrants, such as Elizabeth Cumming, died in prison.

62 The Argus, 14 January 1904, p. 6, col. 2. Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 174, Record No. 6588.
her first conviction carrying a penalty of a fine or one month's imprisonment. At the age of twenty-two she bore a daughter whom she named Frances. This child was quite possibly born outside of marriage. In any case, in 1898, she was living with a labourer by the name of McCarthy and, although known to her landlord as 'Mrs. McCarthy', was referred to by McCarthy during the court case as 'Mother Lynch' and recorded in the prison registers under the name of Lynch. It is quite possible that the birth of an illegitimate child had forced her out of service and into prostitution. By 1898, she was associating with 'pretty rough characters' such as her landlord, butcher George Watkins, 'would not like to meet alone, either in the day or night'.

Her associations were making living arrangements for her and her five-year-old daughter insecure. She rented a house at No. 11 Tichborne Place from Watkins but was allowed to stay only three months. Shortly after she moved in, he gave her notice to leave and eventually removed her by threatening to put her household goods in the street. Her relationship with her de facto was far from idyllic. After 'a bit of a row' one weekend he left her, but later returned and recommenced supporting her. In the early hours of the morning on one occasion, Constable O'Sullivan found McCarthy lying between some logs in a vacant allotment. He claimed that 'Buffer' Gould (apparently a convicted thief) and 'Mother' Lynch had kicked him out.

Police evidence was given that her house was frequented by 'the lowest blackguards and scoundrels in South Melbourne ... also women of the lowest type in the country'. Despite some evidence as to the good character of her house, and her own statement that she was not leading an immoral life and was leaving the neighbourhood in order to escape from unwanted attention from 'bad characters', she was sentenced to twelve months' imprisonment. Her child was committed to the care of the Department of Neglected Children. On hearing the sentence, Lynch was completely distraught because of the impending separation from Frances. She clung to her child screaming.

63 The Record (South Melbourne), 15 January 1898, p. 3, col. 3. Lynch's prison record is Central Register of Female Prisoners, Series 516, Unit 12, 1896-1904, p. 147, Record No. 6562, Vic. P.R.O. This short biography is reconstructed from these two sources.
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and defying the efforts of several policemen to remove her. Eventually, she was carried bodily from the court and was not consoled until her child was put in the cell with her temporarily. The consolation would only have been momentary for in all likelihood, Lynch never regained custody of her child. She spent five and a half of the next seven years in gaol on vagrancy charges. After her release from the Female Prison in March 1905, she must have realized that she would quickly return to gaol if she did not make a radical change in her life. She moved to Ballarat where the authorities took a less draconian view of her activities. From 1905 to 1928 she appeared regularly before the Ballarat Court of Petty Sessions for drunkenness, obscene language, insulting behaviour and importuning. She paid her fines most of the time, and only from 1918 did she serve several short sentences in default. At the age of fifty-seven, Alice Lynch disappeared from the records. In all likelihood she died a relatively early death after a difficult life haunted by poverty and the surveillance of the state.

Alice Lynch was one of the most victimized of women working in prostitution at the turn of the century. Few women who entered prostitution stayed as long as she did in the business or suffered so much at the hands of the criminal justice system. In 1898, Clara Fordham was the only woman who entered the prison system for the first time and continued in a long 'criminal' career which probably included prostitution. Women came in contact with the authorities and went to prison as the result of prostitution related activities at all stages in their life cycles. Most of these encounters were brief. Thirty-six women had prison records which spanned only one year and fifty-three of the seventy-seven women were in contact with the Victorian prison system for a period of five years or less. Despite the increasing state surveillance and the continued harassment of women like Alice Lynch, it would therefore seem that in turn of the century Victoria, prostitution continued to be a mode of employment which women could enter in times of economic hardship yet successfully leave without being condemned to a lifetime working in the trade. That this is suggested even by prison records makes one wonder about the thousands of women forever silent because they
successfully escaped state surveillance altogether. Their lives have maintained the integrity with which they were lived, as women, mothers, wives, community members first, and prostitute workers when determined by economic need.
EPILOGUE & CONCLUSION

This thesis has sought to illuminate some aspects of the relationship between prostitution, the state and society during a crucial period of transition. Although there have been numerous changes in the law relating to prostitution in Victoria since 1914, by that date the basic pattern of state intervention had been set. However, there have been two areas related to prostitution where significant change has occurred since 1914: the legislative control of venereal disease and the attention which the law has paid to homosexual prostitution. The latter is mentioned as an aside, for the historical relationship between homosexuality and prostitution is the fitting subject for an entirely separate study, focussing on later decades in the twentieth century than those covered by this thesis. It is important to note, however, that prostitution law has been one area where the increasing definition of homosexuality, in particular, male homosexuality, has occurred during the twentieth century. The meaning of the words 'prostitution' and 'prostitute' were entirely bound with heterosexual relationships during the late nineteenth and early twentieth centuries. It was not until 1961 that laws specifically designed to control the public soliciting of all homosexual men were enacted, and only in 1980 that the legal definitions of the words 'prostitute' and 'brothel' were extended to include homosexual prostitutes and premises where homosexual prostitution occurred.1 The absorption of some homosexual men into the meaning of the word 'prostitute' has certainly been an important historical shift. Undoubtedly, the powerful institutions, state agencies and professions discussed in this study of prostitution in

1 Prostitution Act 1961, s. 2; Crimes (Sexual Offences) Act 1980, ss. 11 & 12. Another example of the integration of homosexual services carried out in exchange for payment into the concept of prostitution is the recent sociological study of Sydney prostitution: Roberta Perkins & Garry Bennett, Being a Prostitute: Prostitute Women and Prostitute Men, George Allen & Unwin, Sydney, 1985.
turn of the century Victoria continued to be important in determining the nature of the relationship between homosexuality and prostitution.²

In Chapter One various aspects of the debate about Contagious Diseases legislation in Victoria were discussed. Venereal disease remained an important social concern in Victoria but the debate became markedly more medicalized in the years immediately preceding World War I, as already suggested. However, the quintessential social effect of this change in attitude—the passing of the Venereal Diseases Acts—did not occur until 1916 and 1918. These Acts established a duty for all citizens to seek treatment from a qualified medical practitioner if venereal infection were suspected, and provided for the compulsory notification and detention of those suffering from venereal disease who refused to attend for medical treatment on a voluntary basis. The most notable aspect of this was, of course, that women working as prostitutes were no longer singled out for discriminatory treatment.

Although ideas were changing before the war, it was during the war that the quite draconian system of medical surveillance and the monopoly of the medical profession in the treatment of venereal diseases was established by the new Acts. These features were the products of very specific historical circumstances. Australia was at war; legislation which in peace-time would have been condemned as threatening to the 'liberty of the subject' could easily be justified. Frequently, grave concern at the number of child-deaths caused by venereal disease was expressed. Such concern was not only humanitarian; eugenic fears and the desire to build a strong nation were

² It is interesting that this process has occurred parallel to the apparent replacement of the prostitute by the lesbian 'as the symbol of woman's pollution of the body politic; her status mirrors social attitudes toward women's sexuality and power'. (Vicinus, 'Sexuality and Power', p. 51). This is another tantalizing suggestion about broad changes in the construction of sexuality over the twentieth century which a study of the relationship between homosexuality and prostitution would illuminate.
common. On the latter, Parliamentarian J. P. Jones was eloquent. Just after the end of the war, he stated:

We want population now. Never in the history of Australia did we want it more than we want it now, and will want it in the next five or ten years. We want our own people because we want to build up industries. ... We are criminally losing lives that could be saved to the community ...\(^3\)

Another feature of the war years in Australia was the health panic engendered by the return of soldiers from Egypt, supposedly infected with a particularly virulent form of syphilis. These men were supposed to be spreading contagion throughout Australia; the disturbance to accepted established modes of sexual relationship caused by war was hinted at by one parliamentarian:

By-and-by, when all the soldiers have returned once more to civilian life, the disease will not spread amongst so many people. No one who walked about our streets could help seeing what was taking place when we had a large number of soldiers on leave from the camps.\(^4\)

Furthermore, the increase in the peculiar fear engendered by a disease profoundly linked to the society’s moral categories came at the same time as medical science offered the possibility of cure already discussed. The debate about and subsequent passing of the new Venereal Diseases legislation marked the victory of medical over moral considerations.

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\(^3\) V.P.D. (Council) 151: 2439, 28 November 1918, The Hon. J. P. Jones.

\(^4\) V.P.D. (Assembly) 151: 3453, 20 December 1918, Mr McLeod.
Nevertheless, during the war, as in the period immediately preceding the war, moral considerations remained, albeit less dramatically focused on prostitute women. During the war years venereal disease was blamed on drink, the evil influences of picture shows and even mixed bathing. As the debate about morality came to be fused with eugenic considerations, it was the future of the nation and the race which was seen to be placed in peril by venereal disease. While earlier debates had lamented the fate of children born with syphilis, this recognition had not extended into the collective vision of doom which characterized the eugenic view of syphilis. This was also a factor which contributed to the instigation of a system of universal medical surveillance to control the disease.

Despite the important changes which had occurred in the parameters of the debate, as suggested in Chapter One, old attitudes equating prostitutes with the spread of V.D. did not disappear overnight. These ideas continued into the war years. Arguments in favour of extending the application of venereal diseases legislation to everybody often remained couched in male-centered terms; the image of the 'unclean woman' spreading contagion amongst men remained:

venereal disease is spread amongst young men by the so-called "square" girl much more rapidly, and to a much greater extent, than it would be if the only means whereby a man could satisfy his carnal appetite was in going to a recognised house of prostitution.\(^5\)

There was further evidence that old attitudes died hard. The retention of the offence of permitting premises to be used for prostitution by a woman suffering from venereal

disease was justified by the fact that prostitutes had 'contaminated a large number of soldiers'.

Undoubtedly men were medically treated as the result of this Act; this certainly represented an improvement on the clandestine system of treating prostitute women with syphilis outlined in Chapter Three. However, it is worthwhile asking whether there were any disparities in the administration of the Act which continued to discriminate against women in the prostitution trade. This is difficult to ascertain in relation to the provisions affecting the general population. Yet the Act contained a special provision relating to prisoners which would clearly have affected prostitutes, and which may indeed have been passed with their treatment in mind. Any prisoner certified by a medical practitioner to be suffering from V.D. could be detained in legal custody until 'cured or ... free from venereal disease or ... no longer liable to convey infection'. This period could exceed the term of imprisonment to which the prisoner had been sentenced. Those incarcerated in reformatory prisons and reformatory schools were included within this provision. During the first ten months of the operation of this provision from March to December 1917, thirty-nine of the seventy-four prisoners indefinitely confined under this law were women. This was 52.70 percent of those treated whereas women were only 15.86 percent of the prison population in 1917.

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6 V.P.D. (Assembly) 145: 3457, 15 December 1916, Mr McLeod.

7 Venereal Diseases Act 1916, 7 Geo. V., No. 2858, s. 14.

8 Series 252, Unit 59, 1917, Victorian Public Record Office. get name of series.

9 Calculated from Table No. 2, Penal Establishments, Gaols and Reformatory Prisons. Report and Statistical Tables for the year 1917, V.P.P., 1918, 2, p. 467, p. 7.
This hints at the fact that during the war control of diseased prostitutes was certainly one of the intentions of the Act.¹⁰

While change has occurred in the medical area and in the treatment of homosexual prostitution by the law, there have been numerous important continuities during the twentieth century. Prostitution has continued to be an issue which has illuminated many aspects of Victorian society’s cultural values and social structure. Gender, class and race inequalities are brought into sharp focus as this thesis has revealed.

¹⁰ During World War II there was also a coincidence between military considerations and venereal disease which in fact draws a line of continuity from the passing of Contagious Diseases legislation in Australia during the later part of the nineteenth century to the 1940s. As fear of syphilis reducing the efficiency of the Royal Navy encouraged the passing of the Tasmanian Contagious Diseases Act, so there was a great deal of fear during the Pacific phase of the war that venereal disease would reduce the efficiency of the allied armed forces stationed in Australia. Under the National Security Regulations (Venereal Diseases and Contraceptives) which were proclaimed in September 1942 women found to be infecting troops with venereal diseases could be incarcerated for medical treatment. The Act was administered in a particularly punitive way in Queensland because of the enormous number of troops stationed in that State, and the proximity of Queensland to the theatre of war. Military and civilian authorities cooperated to enable women—both professional prostitutes and 'good time girls'—to be subjected to medical surveillance by the state. In Victoria, too, women working as prostitutes would have found medical surveillance during the war even more oppressive, even though the relevant National Security Regulations had a lot in common with Victoria’s existing legislation. As the Acting Commissioner of Police in Victoria wrote to Gavin Long in 1948, 'The National Security Regulations which have since been repealed, enabled many women to be put out of the way at a time when their activities would have increased the spread of disease.' (Quoted in Kay Saunders and Helen Taylor, "'To Combat the Plague': The Construction of Moral Alarm and the Role of State Intervention in Queensland during World War II', *Fourth Women and Labour Conference Papers*, Brisbane, 1984, pp. 491-533, p. 526.) The discovery of the penicillin cure for syphilis towards the end of World War II reduced some of the potency of the issue, although the new sexually transmitted disease AIDS has again fused some of the old element of fear of disease into discussion about prostitution in contemporary Victoria. However, collective abhorrence has been directed toward the homosexual rather than the prostitute in the recent panic about AIDS. As disease was the metaphor for the social position of the whore in the nineteenth century, so it has become for the homosexual in the present.
Prostitution and, more generally, sexual promiscuity, have always been areas where racism has operated in acute ways within Victoria. The relationship between racism against Chinese people and prostitution was discussed in Chapter Three. By 1914 racism had been fuelled by eugenics which increased fears of miscegenation. This element would have contributed to the near hysteria which occurred in 1928 when a number of negro entertainers were found to have been entertained by several young white Australian women. The women, suspected of being prostitutes, were brought up before the court and the men were deported. Hundreds of people crowded outside the court when the cases were heard. As a direct result of this incident, the Federal Government revoked the right of negro entertainers to be granted permits to enter Australia. The blatant racism behind this action was unselfconsciously expressed in the editorial of the *Truth* entitled 'Good Riddance to the Nigger Jazzers'. It deplored 'the abhorrent association of niggers with Australian womanhood':

> If the colored degenerates who were found with white girls at Rowena Mansions are not quaking in their shoes, they are minus the yellow streak which is part of the make-up of most of their breed.

> Probably they regard Mr. Hughes' remark that if they had been found consorting with white girls in America they would not have lived much longer, as an incentive to lynching, and no doubt they will not breathe freely till the boat on which they are returning to U.S.A. is well out on the Pacific Ocean.

> ...The unpleasant conditions which the raid disclosed constitute another vindication of the White Australia policy, and they have served a good purpose in being the means of extending the principles of this policy.  

11 The *Argus*, 28 March 1928, p. 21; 29 March 1928, p. 15.

In a later period, the Prostitution Act 1961 was passed in a sordid context. Animosity toward migrants from southern Europe had taken various forms during the 1950s and was focussed in 1961 by the issue of prostitution. Strong racist attitudes emerged in the debate surrounding the Prostitution Act 1961. Scapegoats were made of the migrants of southern European 'racial' background who procured young girls to satisfy the sexual appetites of 'large groups of sex-starved bachelors', also migrants. During the period 1890-1914 and beyond, therefore, prostitution has continued to be a phenomenon which has contributed toward the institutionalization of racism.

Some of the clearest continuities which emerge from this study of prostitution from 1890 in Victoria involve the nature of state intervention. These, in turn, throw into relief certain aspects of the gender and class structure of Victorian society. As the power of the police was consolidated by the professionalization of the force which began early this century, the type of police surveillance of prostitution which was evolving during the decades prior to World War I became accepted practice. Yet total repression has never been the real aim of the state. Certainly, law-makers have paid lip-service to the concept of repression. In 1940, for example, when amendments to brothel legislation were being debated, the Chief Secretary, Mr Bailey, expressed his opinion that the new legislation would 'give effect to the intention of Parliament that houses of ill-fame should not be permitted to exist'. In reality, a certain amount of prostitution has always been tolerated by state institutions. Prostitution has been the subject of a compromise between total repression and formal state regulation. It has been in the interests of men to allow prostitution to continue because it has given them sexual access to a number of women if desired. Yet it has also been in the interests of men in power for all deviant forms of sexuality to be classified as 'other' because of the importance of the family in the maintenance of the system of power distribution in

13 V.P.D. (Assembly) 263: 2197, 14 March 1961, Mr Rylah.

14 V.P.D. (Assembly) 210: 1308, 29 October 1940, Mr Bailey.
society which benefitted them. Formal regulation risked sanctioning sex outside of marriage while really concerted attempts to repress prostitution would have made sexual access to prostitutes much more troublesome. At the same time, public 'unruly' behaviour of women in the trade had to be increasingly confined in the effort to make the streets conform more readily to the image of middle-class respectability. The conflict between the desire to control and the desire to retain access to prostitutes explains the peculiar ambivalence of the state in Victoria to prostitution. Yet the lack of cohesive action against prostitution was not as programmatic as this description may lead one to believe. The relatively autonomous functioning of state agencies enabled them, and indeed the individuals who constituted the various institutions, to act independently, and to some extent, in their own interests. In the face of increasing attempts at encroachment upon their way of life, women in the trade, too, were not simply passive recipients of state control. Their resistance contributed to the fact that the relationship between the state and prostitution became the area of conflict which it has continued to be until the present.

There has been another related way in which the gender system has been interlocked with state control of prostitution: the continued double standard. Most of this thesis has been about the intervention of the state into the lives of the women working as prostitutes. The clients were left entirely alone, except for the occasion when embarrassed police attempted to stop men who had been approached in Collins Street in an effort to gather evidence to support charges of importuning. Only in 1967 was it made an offence for a man to invite or solicit a female to prostitute herself.¹⁵ This was introduced in order to curb the nuisance created by men in cars 'gutter crawling' in search of prostitutes, rather than as the result of a policy to bring about the equal treatment of the women and their clients before the law. The double standard prevailed in the penalty structure: while all inviting prostitution offences carried a maximum

¹⁵ *Summary Offences Act* 1967, s. 3.
penalty of fifty dollars or imprisonment for one month, the penalties for soliciting were fifty dollars or one month for a first offence, 250 dollars or three months for a second offence within a period of twelve months and 500 dollars or six months for a third or subsequent offence. Only in 1978 were the penalties for inviting prostitution and soliciting brought into line.

Laws and institutional practices continued to institutionalize the categories of 'good' and 'bad' women. The police in Victoria carried out continual surveillance in order to maintain the distinction. The law has also continued to reflect the idea that men have sexual rights over a group of women in the community. A blatant example of this in the Victorian law was the exclusion of any woman or girl, no matter of what age, who was 'a common prostitute or of known immoral character' or who was a resident of a brothel, from 'protection' under the legislation against procuring passed in 1891. The new legislation was a protection against sexual exploitation for 'good' women but it remained lawful to procure women already involved in the prostitution trade, or, in fact, any woman or girl of 'known immoral character.' A small step towards recognizing the inequity of this situation was made in 1961 when substantial amendments were made to the procuration laws as the result of a panic about young women being involved in a prostitution racket operating from cafés. The Chief Secretary, Mr Rylah, was of the opinion that:

\[
\text{[i]f the evil is to be suppressed there must be no implication, as there is in section 56 of the Crimes Act at the moment, that the law allows trading in prostitutes and doubtful characters. This is traffic in human bodies for gain which, I think, all honourable members will agree is particularly vile.}^{18}
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\[^{16}\text{Summary Offences Act 1966, s. 18.}\]

\[^{17}\text{Summary Offences (Amendment) Act 1978, s. 3.}\]

\[^{18}\text{V.P.D. (Assembly) 263: 2198, 14 March 1961, Mr Rylah.}\]
Yet honourable members did not seem particularly concerned about the traffic in bodies of women over the age of twenty-one. After the 1961 amendments women in the prostitution trade and 'women of known immoral character' were no longer excluded from the provisions which created the offences of procuring women under twenty-one to have carnal connexions and of procuring by false pretence or false representation or other fraudulent means. As adult women working as prostitutes were not mentioned in these amendments, they must have continued to be regarded as legitimate objects of trade.

The introduction of the offence of living on the earnings of prostitution in the early years of the twentieth century, impinged radically upon a prostitute's personal life in a way which would have been regarded as quite unacceptable for other women. This offence made it impossible for women working as prostitutes to support husbands, lovers, ageing fathers, brothers or friends without fear that these men would be charged with an offence. More recently women have been brought within the ambit of the offence of living on the earnings, further limiting the personal choices of women working as prostitutes. The conceptualization of women working as prostitutes as a distinct category has operated within areas of the law apart from the criminal law. From the middle of the nineteenth century various provisions have limited the public space which prostitutes may occupy. Primarily, they have been prevented from socializing in bars and restaurants. There have also been problems for women working as prostitutes claiming child maintenance. A crucial way in which the law has reflected the idea that men have a right to sexual access to a particular group of women has been the leniency which has been shown to men who have raped alleged prostitutes. Only recently has the practice of cross-questioning rape victims on their past sexual history been

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19 Allen, 'The Making' and Daniels, 'Prostitution in Tasmania' in Daniels (ed.), *So Much Hard Work*. Preliminary work on Victorian Supreme Court rape case depositions suggests the Victorian sources would support these findings.
questioned. While there has clearly been a diminution of the distinction between women working as prostitutes and other women in the law, the law will continue to privilege 'god's police' over 'damned whores' until all women, regardless of their occupation and sexuality, are treated exactly the same before the law.

While there have been continuities in the relationship between the state and prostitution, there have also been economically linked determinants of prostitution which have remained constant, indeed for centuries. The continuation of prostitution in Australia is fundamentally related to the gender division of labour and women's consequent inferior economic position. While the work women do continues to be defined by our sex and our sexuality (marriage, child care, service occupations and the male expectation of sexual favours on the job are all aspects of women's work defined by the construction of female sexuality in our society), some women will continue to choose to work as prostitutes. Despite the hazards it appears as a lucrative option in a limited job market.

In relation to class, it can be said that at all times, how far women were able to avoid police harassment depended on their position in the trade and the class of their clients. Although the view of prostitutes as 'damned whores' suggested that all were alike, this was never the case. Prostitution took different forms in specific situations, and the industry had its own class structure, mirroring that of wider society. Always the working-class prostitute was most visible and most vulnerable to police harassment. The state campaign against prostitution was part of attempts by the state to control working-class life in the interests of the middle class. The street had been a place of working-class recreation and the public soliciting activities of women working as prostitutes were part of this public culture. This activity, in particular, became a target as the middle class pushed for the establishment of a moral urban streetscape. The present horror expressed by 'respectable' citizens across Melbourne in response to the decentralization of brothels is evidence of the persistence of this kind of distaste. The
first impression given by the decentralization policy may be that the government is now not heeding these concerns. However, the failure of the government to consider reducing the harassment of women soliciting in the streets suggests how entrenched is the practice of harassing the most visible, and poorest, section of the trade in order to create the appearance of respectability.

The state has effectively turned a blind eye to high-class prostitution. Most of the women whose lives have provided the focus of this study of the importance of state institutions in constructing prostitution and the lives of prostitutes were working-class. Women working in better brothels were generally left alone by the police during the period which was the main focus of this study. Most recently, the state has made no attempt to target the activities of the mushrooming escort agencies that provide well-dressed, well-spoken young women for businessmen and government officials visiting Melbourne.

Police harassment of primarily working-class prostitute women has reinforced the differences within the trade, yet has not been concerted enough to eliminate this part of the prostitution trade. Women offering sexual services in parks, brothels, and later massage parlors and escort agencies have all throughout Victorian history provided men with access to prostitutes whose attributes and prices fit their own station in life. In Victoria, the main casualties of increased state intervention in the trade have been the women themselves.
APPENDIX ONE
MELBOURNE COURT OF PETTY SESSIONS JANUARY TO JUNE 1898: ALL APPEARANCES BY WOMEN AND APPEARANCES BY MEN FOR BEING KEEPERs OF DISORDERLY HOUSEs
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**TOTAL APPEARANCES OF WOMEN BEFORE THE MELBOURNE COURT OF PETTY**

**SESSIONS, JANUARY-JUNE 1948**

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- Supplementary Inward Correspondence. Series 1226, Box 107, file on juvenile immorality and youthful prostitution.

- Supplementary Inward Correspondence. Series 1226, Box 119. This box contains a file ostensibly on the subject of juvenile delinquency and youthful prostitution. In fact, the major part of the file is comprised of correspondence and reports related to the general topic of the policing of prostitution for the period 1908 to 1913.

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Arnot, Margaret

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