

SHAPESHIFTING: PROSTITUTION AND THE PROBLEM OF HARM

A DISCOURSE ANALYSIS OF MEDIA REPORTAGE OF  
PROSTITUTION LAW REFORM IN  
NEW ZEALAND IN 2003

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## ATTESTATION OF AUTHORSHIP

I hereby declare that this is my own work and that to the best of my knowledge and belief, it contains no material previously published or written by another person or material which to a substantial extent has been accepted for the qualification of any other degree or diploma of a university or other institution of higher learning, except where due acknowledgement is made in the acknowledgements.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

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## **ABSTRACT**

Interpersonal violence and abuse in New Zealand is so widespread it is considered a normative experience. Mental health nurses witnessing the inscribed effects of abuse on service users are lead to consider whether we are dealing with a breakdown of the mind or a breakdown in social or cultural connection (Stuhlmiller, 2003). The purpose of this research is to examine the cultural context which makes violence and abuse against women and children possible. In 2003, the public debate on prostitution law reform promised to open a space in which discourses on sexuality and violence, practices usually private or hidden, would publicly emerge. Everyday discourses relating to prostitution law reform reported in the New Zealand Herald newspaper in the year 2003 were analysed using Foucauldian and feminist post-structural methodological approaches. Foucauldian discourse analysis emphasises the ways in which power is enmeshed in discourse, enabling power relations and hegemonic practices to be made visible. The research aims were to develop a complex, comprehensive analysis of the media discourses, to examine the construction of harm in the media debate, to examine the ways in which the cultural hegemony of dominant groups was secured and contested and to consider the role of mental health nurses as agents of emancipatory political change. Mental health promotion is mainly a socio-political practice and the findings suggest that mental health nurses could reconsider their professional role, to participate politically as social activists, challenging the social order thereby reducing the human suffering which interpersonal violence and abuse carries in its wake.



## CHAPTER 1: Introduction

On June 25<sup>th</sup> 2003, the New Zealand Prostitution Reform Bill (PRB) 2000 decriminalising prostitution was passed in Parliament, becoming the Prostitution Reform Act (PRA) 2003. In 2000, the Labour Member of Parliament (MP), Tim Barnett, sponsored the PRB believing that prostitution was, in essence, a consensual activity between individuals which was operating in an unnecessarily high risk environment. A Private Members' Bill, intended as an instrument of harm reduction to protect the health and safety of prostitutes, the stated aims of the PRB were:

- Safeguarding the human rights of sex workers
- Protecting sex workers from exploitation
- Promoting the welfare and occupational safety and health of sex workers
- Creating an environment that is conducive to public health
- Protecting children from exploitation in relation to prostitution

At the final reading of the PRB in Parliament, the political requirement of a binary “for or against” vote produced 60 votes for the Bill and 59 votes against and so “the PRB passed by a razor’s edge majority” (Hutchinson, 2003). The law was passed because New Zealand’s only Muslim MP Dr. Ashraf Choudhary, abstained from voting. Dr Choudhary, a Labour Party MP, cited loyalties to both his Muslim faith and the reform agenda of his political party, as the reason he could not position himself on either side of the debate and actively vote on the Bill. “In the end the wafer thin vote of parliament to decriminalise prostitution was probably an accurate reflection of society” (Editorial, 2003). Following the passage of the PRA, political analyst and writer Colin James voted Tim Barnett “Politician of the Year” citing his skill in “piloting a ferociously contested Bill through the eruptive emotions of a Parliament at boiling point, bespeaking coalition building of the highest order... Tim Barnett, the first openly gay MP and a man of style, did that with dignity” (James, 2003).

Throughout 2003, prostitution law reform was debated in the media. I followed the debate, curious about the way in which the harms of prostitution were being constructed and put to political purposes. As a mental health nurse, I hoped that the prostitution law reform debate would open a space for a wider public debate on the problem of violence and abuse in New Zealand society. Violence, abuse and coercive practices are a common thread in the life experiences of the majority of mental health service users (Herman, 1997; Read, Goodman, Morrison, Ross, & Aderhold, 2004) and are a cause of profound suffering. There are no medical interventions to erase or transform terrible memories or the emotional and psychological pain of abuse; “there is no pill in the world which can take away the voice of the abuser” (Coleman, personal communication, 2004). Effective transformative psychological therapies are available, but are time and labour intensive, and usually considered to be a cost beyond the resources of the mental health service purse. Willits (2003) suggested, however, that therapy merely privatises an inherently political problem.

Safe, socially supportive environments are the single most powerful influence on psychological wellbeing and lack of distress (Stephens, 1998). A reduction in mental ill health and suffering requires attention to the social determinants of mental health (Ministry of Health, 2002) and in particular the abusive use of power in interpersonal relationships. Mental health promotion can therefore be understood as a socio-political practice. Politics and power are discursive phenomena which can be studied in texts by the use of discourse analysis. For this research I have chosen to analyse media texts on prostitution law reform in the New Zealand Herald newspaper using Feminist post-structuralism and Foucauldian discourse analysis as the philosophical frameworks and analytical approach. Discourse analysis enables texts and social practices to be opened up to different readings which focus on both the message of the text and the historical and social context from which it emerges. It enables us to see the assumptions underlying the messages of the texts and to develop a deeper understanding of the social problems and issues. I believed that political debate and discourse on prostitution law reform was most likely to emerge in the months prior to, and following, the passing of the PRA. Hence, the research question is: “What are the discourses on prostitution law reform published in the

New Zealand Herald over a twelve month period from January 1<sup>st</sup> 2003 to December 31<sup>st</sup> 2003?”

### **Problematizing Prostitution Law Reform in New Zealand**

Michel Foucault, a 20<sup>th</sup> century French philosopher and historian, developed a body of work focusing on the relationships of power, knowledge and discourse. Foucault (1982) suggests that one way in which “normality” is constructed, is by a process of problematisation. Research and debate on prostitution in contemporary Western society exists largely because prostitution is considered a “problem” (Plumridge, 2005). Prostitution is problematised in different ways by different speakers. In the following section, the problematisation of the outdated and inequitable law which precipitated a reform of prostitution laws in New Zealand is presented.

For almost three decades prior to the PRA, the New Zealand Massage Parlours Act 1978 constructed prostitution as payment for common lewdness. Under the Massage Parlours Act, prostitution itself was not illegal but, because of a range of illegal acts committed in association with acts of prostitution, for example soliciting or living off the earnings of prostitution, the law would most likely be broken at some stage. Soliciting for business was illegal while consuming sexual services was not, leading to charges of hypocrisy and inequity within a social practice in which the prostitute is usually female and the consumer male. When Tim Barnett arrived in Christchurch from the United Kingdom, he began voluntary work with the AIDS Foundation leading to a meeting with Catherine Healy, the national co-ordinator of the New Zealand Prostitute’s Collective with whom he worked closely on the PRB. Healy observed the hypocrisy and deceit implicit in the status of prostitution prior to law reform, asking why society tolerated men paying for sex while denying rights to sex workers (Tunnah, 2003a).

Barnett (2003a) problematised the legal construction of prostitution in New Zealand suggesting that what was at stake was the role of law in a modern, diverse, fragmented, essentially secular society. He argued that the current law and policing practice governing

prostitution was a combination of three things: plain bias against (mainly women) prostitutes, a series of laws which do not criminalise prostitution but make it impossible to work as a prostitute without breaking the law, and variable enforcement of the confusion of laws (Barnett, 2003b). Barnett described how prostitution under the old law was governed by an odd mixture of criminal law, a fantastical concept of a “massage parlour” which was, in effect, a state-endorsed front for prostitution, and a generous helping of police discretion. Furthermore, Barnett revealed that the Inland Revenue Department ran a special collections unit for sex workers, “showing an impressive disregard for the criminality which generated the money”, and to complete the surreal picture, the Ministry of Health supplied the Prostitutes’ Collective with condoms, the presence of which was used over the years by the police to prove that people were working in prostitution.

The New Zealand Prostitutes’ Collective argued that under existing law, prostitutes were discriminated against by being liable to prosecution when their clients were not, perpetuating social hypocrisy and a double standard. Prostitutes were not privileged with employment law protection or with legal recourse if they were coerced or raped at work (Tunnah, 2003a). Lowman (2000) described how in Canada, similar to New Zealand prior to the PRA, the sale of sex was left to a combination of market forces, selective enforcement of the criminal code, prostitution statutes, and a crude system of municipal regulation of escort services, body rubs and massage parlours. He observed that one of the main features of this “schizoid” system of regulation is that it denies what prostitution is really all about.

### **Problematizing Prostitution**

In this section, prostitution and its sequelae are problematised in terms of the concerns of diverse groups of people for whom prostitution, or its effects, represent a deviation from what is considered “normal”. Monto (2000) described the problems of prostitution as those of AIDS, with prostitutes as the vectors of disease, prostitutes as the victims of frequent crime, the negative effects of prostitution on residential neighbourhoods and the

harm it does to local businesses. Half of the 354 people arrested for soliciting in New Zealand in the five years prior to the PRA were men. Police figures showed that half of those arrested were Maori or Pacific Island people. Barnett suggested “that meant that law change was not just a women’s issue but a gay issue and a problem of human rights” (Tunnah, 2003b p. 5). Consumers of prostitution constitute the largest and least visible part of the prostitution industry. Mansson and Hedlin (1998) suggested that most of the factors behind the sex trade lie in masculinity and thus prostitution can be considered a “male problem.” However, acknowledging that rape and sexual abuse are gendered practices or talking about sexual violence as a gendered issue is increasingly unacceptable in New Zealand where a shift away from gendered analysis, to approaching the problem of sexual violence as a gender neutral issue, has occurred (Newman & Thompson, 2006).

Brooks-Gordon and Glesthorpe (2003) noted an increasing awareness of the problem of the feminisation of poverty as a causal factor in women engaging in prostitution. Furthermore, there is growing awareness of the victimisation of vulnerable children involved in survival prostitution. In New Zealand, workers in services for youth at risk are aware of significant and increasing numbers of young people selling sex, commonly for survival, with significant numbers of adult sex workers having commenced prostitution as children. The problem of child prostitution received little attention in New Zealand or elsewhere in the world until the past decade because of significant barriers to systematic research including the invisibility of underage prostitutes and a lack of services internationally for the children affected by this kind of abuse (Saphira & Oliver, 2002).

One aim of the PRB was to protect prostitutes and children from exploitation and harm in prostitution. Prostitution is associated with the problem of harm to women’s health. These problems include physical injury, rape, sexually transmitted disease, eating disorders, pregnancy, miscarriage, infertility, post-traumatic stress disorder, psychosis, dissociative disorders, depression, anxiety, deliberate self mutilation, self medication with alcohol and drugs, homicide and suicide (Raymond, 1999). As a mental health nurse, my particular professional concern has been the nursing care of women whose

mental health has been affected by the experience of trauma, often childhood sexual abuse, which carries in its wake a quiet destruction of the body, mind and spirit.

Increasingly, the dominant biomedical paradigm, which constructs mental illness as largely a biological effect, is being contested (Crowe, 2000; O'Brien, 2007; Thomas & Bracken, 2004). At the beginning of the 21<sup>st</sup> century, there is a body of evidence which demonstrates much mental illness to be the traumatic sequelae of childhood abuse and the social neglect which frequently provides the conditions of existence for abuse (Herman, 1997). There is a wide variation in the findings of the prevalence of abuse in people with mental health problems. Much of the variation is accounted for by the use of different definitions of abuse by researchers (Read, 2004); however, Herman (1997) stated that it is beyond contention that many or even most mental health service users have experienced childhood abuse.

In a meta-analysis of international studies focussing on the prevalence of abuse, Read et al. (2004) found that two thirds of women mental health service users and about 60% of male service users had suffered either child sexual or physical abuse and were expected to have suffered child abuse at least twice that of the general population. These findings may be considered to be conservative because people tend to underreport their abusive experiences. Read et al. (2004) concluded from their analyses that mental health service users subjected to child abuse have earlier first admissions to hospital, longer and more frequent hospitalisations, spend longer in seclusion, receive more medication, are more likely to self-mutilate and have higher global symptom severity. They also found that abused people try to kill themselves more often than non-abused service users. Read, Van Os, Morrison and Ross (2005) found that symptoms considered indicative of psychosis and schizophrenia are strongly related to childhood abuse with large scale population studies indicating the relationship is a causal one with a dose-effect. Deegan (1996), a mental health advocate, tells us quite simply that service users' spirits have been broken by the things people have done to them.

The abuse of children in New Zealand has been called a "national scandal" (Gay, 2007). New Zealand has a high ranking internationally as a violent society. A 2007 Unicef

report on child wellbeing in the Organisation for Economic Co-operation and Development (OECD) countries placed New Zealand in the bottom half of developed countries (Collins, 2007) with New Zealand ranked last out of 24 OECD countries for the number of children under 19 killed in accidents and injuries, including violence, murder and suicide. “Sobering this may be, but it should come as little surprise after the stream of tragic child-abuse headlines over the past few years” (Editorial, 2007a).

Fanslow (2007) found that one in four New Zealand women reported child sexual abuse and that there is an urgent need for programmes for the primary prevention of child abuse and for the provision of support and treatment for women who have experienced child sexual abuse. Children’s Commissioner, Dr. Cindy Kiro, has called for action to be taken to help prevent child abuse and neglect, stating there have been enough enquiries into child abuse in New Zealand and we now need to be bold and innovative and address the underlying problems of violence (Gay, 2007). Child, Youth and Family Minister Ruth Dyson said the sexual abuse of women and children cannot be tolerated in a civilised society and that we need to act collectively to end it (Collins, 2007). Despite the rhetoric and outrage, Hassall (2007) New Zealand’s first Commissioner for Children suggested that the abuse of children in Aotearoa remains a problem without solution. He observes that there is a serious lack of coherent analysis or debate about the origins and escalation of the harming of children and that the media has largely failed to move beyond the finger pointing and blaming of social agencies which inevitably accompanies the most appalling cases of child abuse. Consequently, the complexity of the problem remains obscure. Like the problem of child abuse, prostitution can be understood as a complex problem which is largely hidden from view.

### **Reasons for the Research**

Interpersonal violence is so widespread it has been described as an epidemic and a normative part of the female experience (Salasin & Rich, 1993). The extent and nature of abuse that takes place within families, institutions, and communities is coming to be realised in all its complexity and horror (Home Office, 2000). In New Zealand, District

Health Board policies require nurses to screen the women and children they care for to identify histories of sexual and “family” violence, directing the gaze of mental health nurses to the psychological effects of abuse and harm (Stuhlmiller, 2003). Mental health nurses have started practicing trauma-informed nursing care which supports a person’s recovery from the traumatic effects of their abuse and seeks to prevent the re-traumatisation of this vulnerable person by the use of least coercive practice (Huntingdon, Moses, & Veysey, 2005). As a mental health nurse who, for many years, listened to service users’ narratives of their experiences of abuse, the discourse of prostitution as a harmful practice, a form of sexual abuse, held a strong resonance for me. From this position, the introduction and eventual passing of the PRA seemed paradoxical; a counterintuitive response to the problems of sexual health and the exploitation of vulnerable women and children in our communities. In the following section I describe the questions which were raised for me as “wonderings.” Given that this research has a feminist philosophical base, the questions are gendered rather than gender neutral and assume that prostitutes and victims of sexual violence and abuse are predominantly female.

I wondered how the PRA could legitimize and normalise the commodification and sexual use of the bodies of women in prostitution at a time when the media frequently reported on the high incidence of social violence and the sexual and physical abuse of women and children’s bodies. In a society in which women remain economically marginalised (Jordan, 2003) I wondered about the construction of the “willingness” of women to take up prostitution and about the construction of the “agency” of prostitutes. I wondered how the discourse of decriminalization and “permission” for prostitution might be associated with discourses which maintain inequalities of gender, privilege and benefit men and form the conditions of existence for “permission” for child abuse practices and violence against women.

I wondered why the collateral damage, the embodied physical and psychological effects of abuse experienced by the women and children who arrive at the doors of mental health and other health services and social agencies, was an absent discourse in the debate on



prostitution law reform. James and Saville Smith (1994) believed that the costs of the gendered culture to our society are enormous, falling most heavily on women but also falling on all of us, to a greater or lesser extent, simply because its worst manifestations require intervention by the state or by other agencies. “Prostitution, pornography and other forms of sex... enrich a small minority of predators while the larger community is left to pay for the damage” (Monto, 2000, p. 52).

In a youth orientated culture, youth is a sought after commodity. Dworkin (1997) has described child sexual abuse as “boot camp for prostitution” (p. 25). I wondered about the belief that setting the legal age for prostitution at 18 would, in practice, protect the young in New Zealand. In a society in which many children are abused, leading them to become alienated from the families within which the abuse occurred, survival is a daily struggle. The need to escape from abusive homes and to survive alone in the world arises for many children before the age of 18 (Cusick, 2002).

I also wondered what mental health nurses might do to participate in resisting child sexual abuse and violence against women. Ruth Dyson (2007) Minister of Social Development and Employment said the New Zealand government was committed to working with non-government organisations to address abuse; however, Scambler and Scambler (1995) suggested that orthodox operational approaches to health promotion and the delivery of treatment and care constitute little more than exercises in damage limitation. “Current solutions do not target the root of the problem and consequently there is an atmosphere of continued ‘fire fighting’ with little attention and resources being focused on effective prevention” (Craven, Brown, & Gilchrist, 2007, p. 68). Davies and Burdett (2004) believed that merely attempting to prevent things going wrong is too passive, too disengaged and that we need to challenge the factors underlying the trauma that is endemic in our present society.

### *The First Aim of the Research*

The first aim of this research project is to develop a complex and comprehensive analysis of prostitution in New Zealand by analysing discourses on prostitution law reform published in the New Zealand Herald throughout the year of 2003. According to Foucault, power and politics are fundamentally discursive phenomena to be studied through the language of activists on the streets, doctors and patients in the clinic, in newspaper headlines and in the classroom (Pritchard, 2005). Green (2001) described Foucault's view of history as a series of fictions and suggests that what is interesting is not what happened, so much as how people were brought to think about what happened. In a globalised world, culture and ideologies are spread by a multiplicity of media. What we think comes from a construction of our minds, collectively through our immersion in social and cultural attitudes. This discourse analysis attempts to highlight the multiple and contradictory meanings of prostitution which appeared in the New Zealand Herald in 2003, to show how different constructions of prostitution are used to both endorse and resist the cultural place and practice of prostitution.

### *The Second Aim of the Research*

A second research aim is to examine the harms which the PRA sought to reduce. In promoting the PRB, Barnett (2003a) particularly emphasised the reduction of exploitation and harm to prostitutes, promoting their health and safety; however, prostitution has been described by some speakers as paid rape and assault that is controlled by being paid for (Farley, 2003; Jeffreys, 1997). Violence and the abuse of women and children is a serious global health problem. When Braunias (2006) was asked while in England "does anything happen in New Zealand?" he replied "no, nothing much... although we excel at contact sports, friendliness, child abuse, violence against women and seafood." Retiring Governor-General Dame Silvia Cartwright said in her final address that she had

hoped the dark secrets of the terrible rate of family and other violence in New Zealand will never become known internationally and that the efforts New Zealand made overseas in peace keeping and peace building might be reflected at home in better health and human rights, especially for women and children. (Young, 2006, p. 3)

Much of the violence of contemporary society serves to preserve asymmetrical gendered systems of power. Violence, and the internalised constant threat of violence, is an instrument of control of women's autonomy and freedom (Copeland & Wolfe, 1991). The goal of minimising harm to a vulnerable group, prostitutes, offered an opportunity for New Zealand's problem of interpersonal violence and abuse to emerge from secrecy and for robust debate and political analysis to take place. The way a problem is discursively constructed also structures the identities of those who are participants and influences the decisions made about intervention. Thus, an analysis of the discursive construction of harm can illuminate hegemonic and ideological practices.

### *The Third Aim of the Research*

The third aim is to examine the way in which the cultural hegemony of dominant groups in society is secured and contested (Fraser & Bartky, 1992). Power relations structure all areas of life. They determine who does what and for whom, who we are and what we might become (Weedon, 1987). People's social identities are constructed and altered over time and under conditions of inequality and social groups in the sense of collective agents are formed and unformed. For example, prostitution has been constructed as a "male problem" and Keeler and Jyrkinen (1999) suggested that what is required is an analysis of the structuring of the identities of men, such as how masculinities are created and maintained in the prostitution discourse.

Both Foucault and post-structural feminists, privilege discourse and its capacity to produce and sustain hegemonic power. Hegemony involves persuasion of the greater part of the population, particularly through the media and the organisation of social institutions, in ways that appear "natural", "ordinary" and "normal". This persuasion leads those who are dominated by others to take on board the values and ideologies of those in power, to accept them as their own and to accept their position within the hierarchy as natural or for their own good (Mills, 2003).

Foucauldian discourse analysis emphasises the reproduction of ideology and hegemony, unveiling the politics and power enmeshed within discourse and the way that reality has been ordered to serve political ends. In this way discourse analysis lends itself to political resistance. Lupton (1992) suggested that the identification and revealing of the taken-for-granted forms by which cultural hegemony is established and maintained, many of which are effectively buried within discourse, is a means by which discourse analysts may challenge the status quo.

#### *The Fourth Aim of the Research*

The fourth aim of this research is to consider mental health nurses as agents of emancipatory political change. Mental health promotion is mainly a socio-political practice which critiques the effects of social and cultural practices. As violence, abuse and the psychological consequences of the trauma of abuse become a mainstream concern Stuhlmiller (2003) has suggested that it might be worth considering whether we are really dealing with a breakdown of the mind or a breakdown in social and cultural connection. Reflecting on the year 2006 in New Zealand, Black (2006) wrote:

As the year closes with a run of murder-suicides in which men have been the killers and women the victims, it is clear that the urgent need to change people's behaviour and expectations cannot be left to social policy alone. It is a rallying cry for anyone willing to hear it. (p. 94)

Mental health nurses, the largest group in the mental health system, are not taking and using their political power (Barker, 2006). Buresh and Bush (2000) invited nurses to imagine a world in which nurses have a political voice to match the size of the nursing workforce. They called on nurses to apply their courage and develop their skills to speak out forcefully and effectively to the public and in the media about what they know.

#### **The Scope of the Study**

This research project positions and articulates political analysis and activism and the promotion of mental health as practices which properly lie within the scope of mental health nursing. The understandings which emerge from discourse analysis lend

themselves to the social and political commitments of mental health nursing. Mental health nurses have had an historical interest in the construction of “identity” and “self”, and the social conditions in which the self is formed. In contemporary times, the prevalence and effects of violence and abuse on mental health service users’ experiences of self, identity and psychological distress have emerged as a concern for mental health nurses. Health promotion is a term frequently used to describe the prevention of illness and disease or therapeutic changes in lifestyle. Mental health, however, does not fit neatly into health promotion policy in general. It lacks the definitions, determinants, indicators and measurable targets which characterize the policy objectives of physical health (Solin, 2008).

Mental health policy is a neglected area of the health care agenda, in part because of the stigma of mental illness but also because the determinants of mental health are complex and circular, requiring us to pay attention to cultural and social life (Solin, 2008). There are no short-term interventions or clear cut solutions which can demonstrate clear results of positive mental health outcomes. New Zealand mental health policy documents have almost nothing to say about abuse. Wells (2004), a service user advocate, suggests that mental health policy makers have not taken the issue of abuse seriously and do not formally recognise it as an issue that affects the lives of a significant number of mental health service users.

Prostitution can be constructed as a complex physical and mental health problem embedded in our cultural and social life. Raymond (2004a) cautioned that its complexity should not be allowed to serve as an academic excuse for inaction. “We must not simplify the complexity...we must confront complexity. Complexity should be conducive to clarity, not confound it” (Raymond, 2004a, p. 1159). To further an understanding of the complexity of prostitution and the social, political and economic cultural context in which it occurs, Raphael (2002) believed that it is imperative that first and foremost a multi-faceted and comprehensive analysis of prostitution, in all its complexity, is developed if any social or political intervention into the lives of prostitute women is to be successful. An adequate analysis must be capable of containing and reflecting the

contradictory experiences of prostitution and the paradoxical ways in which they make sense of their involvement in prostitution (Phoenix, 1999).

Foucauldian discourse analysis emphasises the ways in which power is enmeshed in discourse and enables power relations and hegemonic practices to be made visible. Foucault's work can be understood as practical theorising which can be put to use for activist purposes. It aims at creating a space in which the formerly voiceless can begin to articulate their desires and counter the authority of prevailing discourses (Moussa & Scapp, 1996). One therapeutic role of mental health nurses is to bear witness to narratives of trauma and abuse in the lives of mental health consumers. Davies and Burdett (2004) have suggested that,

paradoxically, those societally ordained witnesses, nurses, seem paralysed into silence about the source of pain flowing over them. To ask a human being to sit day after day with often frightening survivors of the worst that life can throw at people *and* to find the energy and hope to simultaneously try to plug the source seems unfair. (p. 279)

Davies and Burdett (2004) also point out that giving up on the creation of more just social structures ensures the perpetuation of our currently high levels of human distress and despair and suggest that we need to challenge the factors underlying the trauma that is endemic in our present society.

Nurses have historically worked with disenfranchised people who feel devalued, isolated and powerless to effect changes in the social and political environments that directly impact on their health. Falk Rafael (1997) argued for the reinstatement of social activism as a central feature of nursing practice marking a return to the vision of nursing's leaders, beginning with Florence Nightingale. Falk Rafael (1999) suggested reconceptualising mental health promotion to include political activism which addresses the social, environmental, political and economic determinants of health. In the 21<sup>st</sup> century, emancipatory social change and political practice in mental health nursing requires the analysis of complex social problems in order to provide compelling arguments for mental health promotion practices which involve changes in patterns of social and cultural life.

Davies (2005) suggested that we need to seek long term sustainable solutions which embed non-violence in all aspects of society.

### **Terms used this Thesis**

Key terms used in this thesis are discussed in this section. Post-structuralism is underpinned with the understanding that language and discourse constitute subjectivity. Discursive objects arise in different ways and are transformed or erased over time. Meaning is actively constituted through language and therefore is neither fixed nor essential. Here I define my use of the terms “prostitute,” “consumer” and “service user” and I introduce my use of these terms by discussing the gendered nature of prostitution.

#### *The Gendered Nature of Prostitution*

In New Zealand, as elsewhere in the world, the sellers of sex are overwhelmingly female and buyers of sex are overwhelmingly male. Men are under-represented as prostitutes but over-represented as consumers. This demographic profile of prostitutes relative to clients has been taken as evidence of the secondary and marginalised social status of women (Weatherall & Priestley, 2001). Weatherall and Priestley (2001) suggested that a construction of female sexuality as being a desire for intimacy and commitment, functions as a practical ideology to justify why there is no demand for servicing women’s desires. In this thesis, gender is privileged, with the prostitute constructed as female and the consumer constructed as male. The marginalisation of male and trans-gendered sellers of sex and female or transgendered buyers of sex in this research is both a political and pragmatic methodological decision acknowledging the political commitments of feminism and the aims of the research.

#### *Prostitute*

The discursive formation of “prostitution” is political and contestable. In the literature, “prostitute” is subject to multiple subjectivities and constructions and there are numerous names for women who offer sex in exchange for money. Following the passage of the

PRA, prostitution has legally ceased to be constructed as “payment for common lewdness” as it was defined in the Massage Parlours Act 1978. According to Farley and Kelly (2000) women who have survived prostitution and got out, have asked that they not be transformed into the object/noun “prostitute” because the word prostitute eliminates the human being in prostitution. We are invited to use prostituting, prostituted or person in prostitution. Jeffreys (1997) suggested using the term “prostituted woman” to symbolise the lack of choice women have in being used in prostitution (p. 330), however this construction of a prostitute identity forecloses a liberatory, activist positioning of prostitution in which individual and collective agency are privileged.

Prostitution has been redefined in the PRA as “lawful commercial sexual services and/or business” and prostitutes are now officially “sex workers” in the “sex industry”. The construction of prostitution as “work” is a contested idea. It is argued that the term “sex work” is less stigmatic than “prostitution”; however, I have chosen to decline the term “sex worker” and use the terms “prostitute” and “prostitution.” This is because I am mindful of the cultural, economic and other structural factors which drive prostitution and the abuse which may occur in the practice of prostitution. The construction of prostitution as “sex work” potentially legitimates harmful practices and limits the potential for the discursive formation of “prostitution.” The term “prostitute” is used in this document to refer to adult women and young people including children under the age of 18 years. The definition of prostitution I have adopted for the purposes of this work is that prostitution is the exchange of something of value for sexual access to a woman’s body (Monto, 2000).

### *Consumer*

The PRA does not specify an “official” name for the users of prostitutes and the users themselves have expressed no opinion in the text or literature. Noting the invisibility of the users, Keeler and Jyrkinen (1999) observe that there exist only three English terms for the “clients of prostitutes” or “the buyers of sex”: “trick,” “john” and “punter”. “Punter” is mostly unknown in America. In the United Kingdom there is an expression “kerb



crawler” which refers to men driving around in their cars seeking women for sexual services. The use of the term client has been criticised for being too normalising in referring to the buyers of sex and this criticism resonated with my own view. I have therefore used the term “consumer” to refer to the users of prostitutes and their sexual services. Consumer, as a noun, has been defined as a person who buys a product or service for personal use, and as a verb, to consume, eat or drink, devour, use up, absorb all the energy and attention of, or to completely destroy (Merriam-Webster, 2008). Because of the multiplicity and range of subjectivities this term offers, I believe “consumer” best fits the purposes of this research. Where other names have been used for the prostitute or the consumer in the text or literature by other authors, they will remain as they were in the original document.

### *Service Users*

The people who use mental health services have been constructed discursively over time, reflecting the changes in the relative power of their social position. Historically known as “patients”, they were expected to assume the passivity which the title implies. Reflecting the dominance of neo-liberal economic discourse in the 1990’s, the terms “client” and “consumer” were adopted to emphasise the economic exchange implied in their consumption of services. In the 21<sup>st</sup> century, the users of mental health services prefer to be known as “service users”, reflecting their ability to actively choose to employ mental health services and psychiatric technologies alongside a range of social, lifestyle and alternative healing strategies and supports. The users of mental health services are referred to in this document as “service users”

### **The Organisation of the Thesis**

In this chapter I have problematised prostitution and prostitution law reform in New Zealand. I have also outlined the reasons for the research, described the aims and scope of the study and defined key terms used. In Chapter 2 I present the methodology and methods used in this research. The methodologies of Foucauldian discourse analysis and Feminist post-structuralism are described and the rationale for their use explained. The

method is outlined and measures to ensure rigour are described and discussed. In Chapter 3, academic literature relevant to prostitution law reform and the context of the PRA is reviewed. Seven discourses emerged from the literature review; laws, human rights, feminisms, sexualities, moralities, economics and health. The discourses are summarised and the key debates within them identified. In Chapter 4, fragments of media text are analysed and the findings emerge. In Chapter 5 the findings are discussed and the implications for mental health nursing are identified.

## **CHAPTER 2: Methodology**

### **Introduction**

This chapter describes the methodology and methods employed in the research project. In accordance with Crotty's (1998) model of research practice, I start with outlining the philosophical and methodological research foundations, followed by a description of the research methods. An intense professional and personal interest in a problem which leads to it being chosen as a research topic can potentially expose the research process to researcher bias. The chapter ends with a description of the measures taken to ensure methodological rigour.

### **Philosophical Underpinnings**

In this project I have utilized Foucauldian discourse analysis and feminist post-structuralism; methodological approaches aligned with the project's identified aims. The combination of these two approaches acknowledges the limitations in Foucault's work in relation to the politics of gender and allows for a discourse analysis research approach that is compatible with feminist post-structural theory. Discourse analysis is the main technique used by post-structural researchers. Foucauldian discourse analysis emphasises the ways in which power is enmeshed in discourse and enables power relations and hegemonic practices to be revealed and contested. Foucault's notions of power, discourse and the subject, and the political commitments of feminism and feminist post-structuralism will be outlined to establish the philosophical underpinnings of the methodology

#### *Post-structuralism*

Post-structuralism, a form of 20<sup>th</sup> century post-modern philosophy, is a theory of knowledge and language which focuses on analyses of literary and cultural texts, whereby text refers to a representation of any aspect of reality (Agger, 1991). Mills (2003) suggested that in some ways post-structuralism can be seen as the move to

theorise without the notion of a centre, core or foundation. Post-structural theory rejects the possibility of absolute truth or objectivity; knowledge and meaning are regarded as transient and unstable. Knowledge is not considered neutral, rather, it is closely associated with power and is considered to be constructed within the social and material world. Post-structuralism generally rejects the modernistic structures of language, social institutions, and human science and examines power relations among them (Falk Rafael, 1997). Individuals, groups or institutions who have the power to regulate what counts as “truth” are able to maintain their access to material advantage and power.

Post-structural theorists, notably Derrida, Kristeva, Lacan and Foucault reacted against structuralism and the whole notion of inherent structures and it is the rejection of structure that unites them rather than any common theme or beliefs (Mills, 2003). Foucault is known as the “philosopher of discontinuity.” He viewed scientific change as discontinuous, rather than being guided by an underlying principle which remains fixed and essential. Foucault believed that knowledge does not simply emerge from scholarly study but is produced and maintained in circulation through the work of a number of different institutions and practices (Mills, 2003). A post-structural discourse analysis of media texts on prostitution law reform does not attempt to seek the “truth” about prostitution and the ways in which it is regulated in New Zealand. Rather, it attempts to illuminate the ways in which discourses were used in the media texts by those with political interests in prostitution for the purpose of securing material advantages and power.

### *Discourse*

Discourse has been described as language used in every day text and talk. It is a group of ideas or patterned ways of thinking and speaking and knowing that can be identified in textual and verbal communications (Powers, 1996). Everything which we are conscious of, and everything we think and say, is constructed through language and discourse. A discourse provides a frame of reference, a way of interpreting the world and giving it meaning that allows some objects “to take shape.” Any interpretation or understanding of

an object or event is made available through a particular discourse concerning or relating to that object or event. Discourses are a product of social factors, power and practices, rather than an individual person's ideas. We "take up" available discourses and at any point in time there are a number of possible discursive frames available for thinking, writing and speaking about aspects of reality (Cheek, 2000).

Discourses create discursive frameworks which order reality in a certain way; they both enable and constrain the production of knowledge in that they allow for certain ways of thinking about reality while excluding others. In this way they determine who can speak, when and with what authority, and conversely, who cannot (Ball 1990). Discourses constitute meanings which are specific to particular groups, cultures and historical periods and are always changing (Burr, 1995). What we regard as "truth" is not a product of objective observation of the world but of social processes and interactions in which people are consistently engaged with each other (Burr, 1995). These interactions are seen as practices during which our shared versions of knowledge are constructed. In this thesis I will be analysing the media texts to identify how prostitution is discursively constructed by diverse and politically interested groups at a particular time in New Zealand's history.

### *Power*

Discourses vary in their power and authority. Dominant discourses appear "natural" denying their partiality and gaining their authority by appealing to "common sense". These discourses support and perpetuate existing power relations and tend to constitute the subjectivity of most people most of the time (Cheek, 2000). Foucault saw power not as something which is imposed or possessed by another, but as a network or web of relations which circulates through society (Mills, 2003). Foucault attempted to privilege neither side of the power relation; rather, he was concerned with describing the interaction of institutions and the individual without assuming that one of them is primary in the relation (Mills, 2003). Foucauldian discourse analysis focuses on the way that mundane power relations at a local level feed into the constitution of institutional power relations and offers the possibility of identifying the ways in which everyday hegemonic

social practices inform and influence the way that social institutions and laws are formed and structured. It is not limited by the assumption that power is exercised from the top down. Foucault's analysis of power offers alternative ways of thinking about how power operates and is transferred in discourses on prostitution and how we might offer resistance. Gerrie (2003) suggests that it is only by becoming consciously aware of the structures within which power is transferred that we can consider the possibility of complete withdrawal from certain points of participation in them, so as to achieve an ethically necessary "reversal of power" rather than simply an augmentation of power.

### *The Subject*

What connects discourses and their analyses with politics is the field of power and the power positions the discourses generate for subjects. Power relations do not simply confront the individual as a set of external orders and prohibitions; his or her very individuality, formed within institutions such as education, industry, and the state, is already the product of those relations. Language and discourse constitute subjectivity. Subjectivity refers to the "conscious and unconscious thoughts and emotions of the individual, her sense of self and her ways of understanding her relation to the world" (Weedon, 1987, p. 32.) The self is not coherent but is acquired during everyday experience by taking up practices and discourses. Willig (1999) suggested that a person either chooses to take up a subject position or becomes positioned by a prevailing discourse. However, Hardin (2001) cited in Payne (2002) suggested that subject positioning cannot necessarily be intentional or deliberate, because the subject positions which are available to individuals, also fold back to construct them.

### **Discourse Analysis**

Every text inscribes itself within a given discourse. Discourse analysts study spoken and written texts within which discursive constructions can be identified. Texts and social practices can then be opened up to reveal rules of discourse which permit statements to be considered "true" or "false". Discourse analysis does not argue for or against the

validity and “truth” of a statement or values; rather, it focuses on the existence and message of the texts and locates them within an historical and social context (Steele, 2003). Discourse analysis assists us to recognise the essence of a problem and the assumptions which enable the existence of the problem. By enabling us to make these assumptions explicit, discourse analysis aims at allowing us to view the problem from a higher stance, to gain a comprehensive view of the problem and ourselves in relation to that problem (Steele, 2003).

Foucauldian discourse analysis conceives of text in its widest sense as containing networks of meaning which construct social and psychological realities. Foucault’s approach seeks to emphasise how enmeshed power is within discourse. Discourses represent political interests which are constantly vying for status or power (Weedon, 1987). The contribution of discourse analysis is the application of critical thought to social situations and the unveiling of hidden or not so hidden, politics within socially dominant and other discourses (Allen & Hardin, 2001). Discourse analysis opens an awareness of the qualities and shortcomings of each discourse, the inception of an informed debate and the inclusion of minority voices within the discourse (Steele, 2003).

Lupton (1992) suggested that the two main concerns of discourse analysis are the use of language and the reproduction of dominant ideologies in discourse. Discourse is composed of two dimensions; textual and contextual discourse. Textual dimensions account for the structures of discourses, for example, grammar and the use of rhetorical devices such as metaphor; while the contextual dimensions relate the structural descriptions to the social, political or cultural context in which they take place (Lupton, 1992). The discursive emphasis in this research project is the contextual dimension of discourse which places its emphasis on the reproduction of ideology and hegemony. The identification and “revealing of the taken-for-granted forms by which cultural hegemony is established and maintained, many of which are effectively buried within discourse, both official and popular, is a means by which discourse analysts may challenge the status quo” (Lupton, 1992, p. 149).

A feminist discourse analysis can be called a form of emancipatory discourse analysis because it acknowledges the ability of people to recognise power relations and how these relations limit their options. The possibility of being co-opted by a dominant discourse is recognised and systematic limitations are brought to light (Powers, 1996). Discourse analysis, whatever its particular commitments, for example feminism, creates particular advantages for researchers committed to social justice. By examining social structures and language, their causal influence on the production and reproduction of injustice and unearned privileges, can be made visible (Allen & Hardin, 2001). Fraser (1992) as cited in Fraser & Bartky, 1992) suggested that a theory of discourse can help us understand four things, all of which are interrelated:

- How people's social identities are fashioned and altered over time.
- How under conditions of inequality, social groups in the sense of collective agents are formed and unformed.
- Illuminate how the cultural hegemony of dominant groups in society is secured and contested.
- Shed light on the prospects for emancipatory social change and political practice.

Foucauldian discourse analysis can illuminate the practices of cultural hegemony. Foucault's investigation of power and discourse led to a particular understanding of the body as a site where power is contested and the ways in which the body and sexual practices are governed to promote desired forms of conduct. Foucault was interested in the regulation of the physical body as a biological organism and of the population as a living species-body. He described the regulation of both the individual and the population as a form of governmentality, achieved by means of metaphorical disciplinary technologies of social control which subtly coerce people into subjecting themselves to normalising practices. These Foucauldian ideas are described in the following section.

#### *The Body: The terrain of power*

Rather than a top-down model of power relations which examines the way the state or institutions oppress people, Foucault is concerned with a bottom up model where the



body is one of the sites where power is enacted and resisted. Foucault is interested in examining the way that power relations produce particular kinds of identities, contesting the notion of sex as a “natural” bodily activity and viewing it as a “transfer point for power” (Foucault, 1976, p. 103). The individual is considered to be an effect of power rather than an essence. Foucault suggests that the body should be seen as an inscribed surface of events; that political events and decisions have material effects on the body, experienced differently depending on the social context and the historical period, which can be analysed (Mills, 2003). Discourse analysis lends itself to an investigation of the way in which the prostitute body was produced and inscribed in the texts of the New Zealand Herald during the year 2003.

#### *Governmentality and Biopower*

In modernity, government has a dual role: the welfare of the population, and its surveillance (Foucault, 1991). Foucault was interested in how order is maintained under liberalism when power must be exercised “at a distance”. In liberal societies, people cannot be forced to think and act in particular ways, but must be persuaded to do so. The notions of governmentality and technologies of the self provided the vehicle by which Foucault approached the problem of political authority under liberalism. When using the term governmentality, Foucault was concerned with what he referred to as the “conduct of conduct”, that is ways of speaking about and promoting desired forms of conduct in ourselves and others (Clinton & Hazelton, 2002).

Governmentality directs attention to the subtle procedures of power which operate in everyday settings (Scott, 2003). Foucault argued that the government of biological needs, both individually and collectively, constitutes the defining feature of our society. “Methods of power in their modern forms have assumed responsibility for life processes: births, deaths, sexual relations, sickness, disease, bodily hygiene and so on” (McHoul & Grace, 1997, p. 61). There has been a “medicalisation” of health and its control by the state and the development of “population health” which counts and tracks populations.

Furthermore, public health offers a proliferation of techniques to keep populations alive and healthy, as well as sexualised.

Sex and sexual practices have assumed importance as a political issue in society, concerned with the management and direction of life processes. Foucault suggested that sex linked the two centres of the regulation of life; the physical body as a biological organism and the population as a living species-body. The disciplines of the body and the regulation of the population constituted the two poles around which the organisation of power over life was deployed and both are encompassed by an idea Foucault termed “biopower” (Mills, 2003, p. 77). Sex and sexuality have become discursively constituted in science and public policy as an integral part of the administration and management of the body, its welfare and productivity. Cultures produce explanatory stories about the human body in order to contain human beings safely within recognised social norms, to hold their anarchic potential in check and to underwrite sanctioned cultural expectations particularly about sexual practices. Foucault argued that the illusion of the reality of these transmitted meanings successfully created control of the population (Epstein, 1995) in order that they contribute to the strength and success of the state. The PRA can be understood as law which constructs a form of prostitution considered to lie within social norms. It seeks to administer and manage the bodies and sexualities of prostitutes and consumers and protect the bodies of the vulnerable.

### **Foucault’s Technologies**

Foucault conceived the notion of “technologies,” patterns of practices by which power is installed, which he traced back to ancient Greece, showing how in different cultures, people have understood and acted upon the self. “One could say we live in a world of multiple interconnectedness and competing technologies” (Dean, 1994, p. 225). Foucault’s objective was to sketch out a history of the different ways in our culture that humans develop knowledge. There are four major types of technologies, each a matrix of practical reason (Dean, 1994).

- Technologies of production which permit us to produce, transform, or manipulate things.
- Technologies of sign systems which permit us to use signs, meanings, symbols or signification.
- Technologies of power which determine the conduct of individuals and submit them to certain ends or domination, an objectification of the subject.
- Technologies of the self, which permit individuals to effect by their own means or with the help of others, a certain number of operations on their own bodies and souls, thoughts, conduct and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection or immortality (Dean, 1994).

The four technologies hardly ever function separately, although each one of them is associated with a certain type of domination, “each implies certain modes of training and modifications of individuals, not only on the obvious sense of acquiring certain skills, but also in the sense of acquiring certain attitudes” (Dean, 1994, p. 3). The metaphor of technologies enables us to look for and identify the ways in which power is practiced. It enables us to conceive of ways in which we might intervene and disrupt technologies and ways in which we might take and employ power in our own right.

### *Disciplinary Power*

Disciplinary technologies are effective forms of social control which subtly coerce people into subjecting themselves to normalising practices. Disciplinary power relies on self “surveillance” to create states of docility. It does not rely on displays of physical force or violence, rather, direct force represents merely frustrated or failed forms of discipline. Foucault saw disciplinary power as the primary means by which the cohesion of the social body is ensured and maintained. Discipline increases the forces of the body in terms of economic utility and diminishes these same forces in terms of political obedience (Foucault, 1977 cited in McHoul & Grace, 1997).

There is no need for arms, physical violence, material constraints. Just a gaze... an inspecting gaze... each individual thus exercising this surveillance over and against himself. A superb formula; power exercised continuously and for what turns out to be minimal cost. (Cheek, 1980, p. 155)

The “freedom” of the prostitute to choose prostitution is debated in the literature. The idea of disciplinary power suggests a technology by which a prostitute’s freedom may be restricted by subtle coercion. The concept of discipline reflects Foucault’s idea that power is exercised through social networks and from the bottom up by means of biopower and the self-regulation of social subjects. Discipline offers ways of articulating and debating the power relationships found in diverse constructions of prostitution.

### *Resistance*

In Foucault’s (1980) conceptualisation of power, resistance is a feature of every power relationship. Wherever there is discourse there is the possibility of resistance; for instance, if a person is positioned as powerless by one discourse, it is possible that she or he may position him or herself as powerful via an alternative one. A person is never left without the option of resistance (McHoul & Grace, 1997). Power and more specifically, powerlessness, is a key professional concern in mental health nursing. Both nurses and service users have historically been identified as powerless populations. However, if we understand society as being constantly created through discursive practices, it can be seen to be possible that society can be changed through the creation of new discourses. For example, the second wave of feminism in the latter half of the 20<sup>th</sup> century can be understood as the resistance of women as an oppressed group, giving rise to the discourse of contemporary feminism.

### *Feminism*

Feminism is a politics directed at changing and equalising existing power relations between men, women and society, based on the premise that gender is a central construct in a society that privileges men and marginalises women. To be a feminist implies a particular politicised understanding of being a woman. Feminist theory seeks to analyse

the conditions which shape women's lives and to explore cultural understandings of what it means to be a woman. Feminists argue for equality and refuse to accept that inequalities between women and men are natural and inevitable, insisting that they should be questioned (Jackson & Jones, 2004). The term feminism suggests a monolithic structure rather than a diversity of feminist theories. There is no one feminist theory that can fully articulate the truths for and about all women; it is more correct to speak of feminisms. The "universal oppression of women" discourse has been criticised as only voicing the concerns of white, Western, middle class, heterosexual women. A postmodern feminism replaces unitary notions of woman and feminine gender identity with plural and complexly constructed conceptions of social identity (James & Saville Smith, 1994).

Foucault suggested there are ways of subversively using the positions that have been mapped out by others, opening space for counter-identification, where individuals can take on the stigmatized identities they have been assigned and revel in them rather than accepting them on negative terms (Mills, 2003). Foucault cited in Kritzman (1990) described a subversive counter-identification giving rise to feminism: in response to the claim that 'you are nothing but your sex', feminists said "then let us draw the consequences and reinvent our own type of existence, political, social, economic and cultural" (p.115). A discourse analysis based on a feminist methodology assumes preferential futures can be realized whereas a Foucauldian style discourse analysis does not (Powers, 1996). In assuming a feminist lens, this research assumes a preferential future based on gender equity.

### *Feminist Post-structuralism*

Feminist post-structuralism is concerned with disrupting and displacing dominant, oppressive knowledges. It aims to develop understandings or theories that are historically, socially, and culturally specific and that are explicitly related to changing oppressive gender relations to provide detailed, historically specific analyses, which will enable us to explain the working of power on behalf of specific interests and to analyse

the opportunities for resistance to it (Weedon, 1987). Post-structural feminism has been heavily influenced by French philosophers such as Derrida, Foucault and Lacan and has been articulated by feminist writers such as Cixious, Kristeva, and Irigaray (Aitchison, 2000).

Foucault aimed to intervene in the specific struggles of disenfranchised groups, which encouraged activist feminist theorists to take a serious look at putting his work to use for their political cause (Mills, 2003). Some feminist theorists however have argued that the limitations of Foucault's work for feminism lies in his lack of identification of women as a significant powerless group, his lack of attention to the gendered body and in his lack of focus on the transformation of gender relations. Despite these limitations, much of Foucault's work, for example, discourse analysis and the idea of disciplinary power transcend gender and continue to have utility in feminist analyses.

Feminist post-structuralism is particularly influenced by the Foucauldian idea that language is always located in discourse (Gavey, 1989). Discourse analysis is a research approach compatible with feminist post-structural theory and is the main technique used by post-structural researchers. Both post-structural feminists and Foucault privileged discourse and its capacity to produce and sustain hegemonic power. They also emphasised the power of challenge contained within marginalized and unrecognized discourses. It is the shared interests of Foucauldian discourse analysis and feminist post-structuralism in the production of hegemonic power and their capacity to illuminate marginalized and unrecognized discourses that aligns with the purposes of this research and led to my choice of this methodology.

### **Methodological Strengths**

Cheek (2000) suggests that what Foucault offered us is a way of understanding power and its effects, rather than a grand vision of how power might be overcome. The findings of discourse analysis do not provide definitive answers but insight and knowledge based on continuous debate and argument, which can inform changes in the practices of an

institution, a profession and society as a whole. A further strength of Foucauldian discourse analysis is that discourses which are marginalized or silenced can be analysed and validated. Discourses both enable and constrain the production of knowledge, allowing for certain ways of thinking about reality and excluding others. What we regard as “truth” is not a product of objective observation of the world but of social processes and interactions in which people are consistently engaged with each other (Burr, 1995). The makeup of a discourse is pieced together, with things both said and unsaid, with required and forbidden speech. Gaps and shortcomings in a discourse may be present in the form of silence. Foucault (1976) observed that;

power is tolerable only on the condition that it mask a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms. For it, secrecy is not in the nature of an abuse; it is indispensable to its operation. (p. 86)

Silence is a discursive element, at least as constitutive of social reality as other forms of discourse, and can be a means of suppressing social reality by not allowing certain things to be talked about (Ward & Winstanley, 2003). Foucault (1976) suggested that silence is not only constitutive of overall discourse itself but is an agent of power in its own right. Silence may be illustrative of power being articulated or as a means of resistance, and our understanding of discourse can be potentially increased by focusing on the silence that exists in and around it (Ward & Winstanley, 2003). Silencing can be used by a group as an active means of suppressing the “other”, for example, a minority group. Things that remain unsaid may in some way be forbidden. “Hegemonic discourse” includes implicit rules. A rule that precludes open discussion of the experiences of marginalised people means that knowledge of this taboo is present in the discourse (otherwise the experiences could be alluded to) and thus, is present in the “speech” even if it is not talked about (Ward & Winstanley, 2003). In this way, Foucauldian discourse analysis enables us to engage with, and analyse, the unsaid. Mental health nurses are practised in the skill of listening and in “hearing” the unsaid and the unspeakable. Research utilising discourse analysis can support mental health nurses to speak with authority about what they hear and know.

### **Methodological Limitations**

One limitation of Foucauldian discourse analysis is that its rigour is dependent on the skill, reflexivity and integrity of the researcher rather than on the method itself. The trustworthiness of the findings depends on the force and logic of the arguments and their sustainability in the face of their own deconstructive reading and counter-interpretations (Steele, 2003). However, robust, well constructed arguments will remain authoritative over time. Another limitation of Foucauldian discourse analysis is what is known as the problem of relativism. In the problem of relativism, the claims of each discourse are simply relative to each other and cannot be said to be either “true” or “false” when compared to “reality” (Burr, 1995). Flax (1987) suggested that if there is no objective basis for distinguishing between true and false beliefs, then it seems that power alone will determine the outcome of competing truth claims. “This is a frightening prospect for those who face, or are oppressed by, the power of others” (Flax, 1987, p. 625) and for women as a marginalised group. Foucault’s lack of identification of women as a significantly powerless group, his lack of attention to the gendered body and his lack of focus on the transformation of gender relations have been remarked upon earlier in this chapter.

It is the relativist nature of post-structuralism which is perceived by many radical feminists to be one of the greatest threats to the feminist political project. Postmodernism shares with feminism a scepticism about universal truth claims, maintaining an awareness of knowledge as something constructed from specific locations. However “in refuting the existence of one underlying mechanism of oppression, post-structural feminism has been accused of weakening its critical analysis” (Aitchison, 2000, p. 135). Despite points of convergence, postmodernism can be seen to threaten the intellectual project of feminism since it undermines the attempt to understand structural inequalities. Instead the world is seen as fluid and constantly shifting so that persistent inequalities of gender and class or race are erased (Jackson & Jones, 2004).

A further limitation of Foucauldian discourse analysis is the problem of agency. Any discourse both benefits and silences groups, even emancipatory discourses. If people are



products of discourse and the things they say have status only as manifestations of those discourses, in what sense can they be said to have agency (Burr, 1995, p. 60)? The actions, words and thoughts of human beings appear to be reduced to the level of by-products of bigger linguistic entities of which we may be largely unaware (Burr, 1995). Our actions become the products of discursive cultural structures, not human agency. We continue to believe that human beings can change themselves and the world they live in through independently developed and freely chosen beliefs and acts.

We look around us and see the world changing and imagine that human intention and action is at the root of this but it is an illusion. There is a real danger that we can become paralysed by the view that individual people can really do nothing to change themselves and their world. (Burr, 1995, p. 58)

Problems of intellectual and moral relativism and individual and collective agency can be transcended by a commitment to values and vision, for example, the feminist commitment to gender equity and a refusal to accept that inequalities between women and men are natural and inevitable (Jackson & Jones, 2004). The values and commitments of feminism and mental health nursing and the question of agency in prostitution are discussed in the following chapters.

## **Method**

There is no method to discourse analysis in the usual way. Instead of providing theories or methods, Foucault provides discursive strategies. In discourse analysis, the quality of the findings depends on the strength, logic and rhetoric of arguments rather than a faithful adherence to a particular method (Shumway, 1992). Research design is emergent; it develops as the study proceeds, as methodological questions arise and decisions are made (Lincoln & Guba, 1985).

### *Data Collection*

The data consists of printed, published newspaper text collected by the researcher during the year of 2003, the year in which the PRB was debated and the PRA was passed. The institution and practice of prostitution is usually invisible and silent; however, the PRA

acted as a surface of emergence for debate and discussion, presenting an opportunity for gathering discursive material. The PRA was passed at the end of June, thus, the data for the calendar year of 2003 covers the public debate six months prior to the passing of the PRA and the six months afterwards, the period of time when it was most likely to be of public and media interest. While media articles from a variety of sources of published written media were read by the researcher throughout 2003, the text selected as a data set for this research was from the New Zealand Herald. The Herald is published every day of the week in Auckland, New Zealand's largest city and in 2003 had a circulation of over 200,000, making it by far the largest circulation and readership of any print media in New Zealand. Furthermore, the New Zealand Herald text was selected as the data set because it constituted a discrete and complete set of texts.

Text with reference to prostitution was selected from January 1<sup>st</sup>, 2003 to December 31<sup>st</sup>, 2003 inclusive. The texts were read in sequence and in context as they were published and were then physically collected and collated. To ensure that all text had been collected and taken into account, the Newztext electronic database was searched for references to prostitution, (truncating the search term to prostitut\*) in the New Zealand Herald within the chosen timeframe. A total of 194 articles were identified, downloaded and printed and formed the data set. All pieces were read for reference to the PRB/PRA and can be audited, allowing the research to be replicated.

Of the 194 pieces of the New Zealand Herald text identified by the electronic search, 71 related directly to the PRB and/or the PRA and/or issues arising from them, for example, the issues of citing and certification of brothels. The remaining 113 articles all addressed prostitution without any reference to the PRA/PRB and included 10 articles selected by the electronic search in which neither reference nor relevance to prostitution could be found. The text for discourse analysis was drawn from the 71 articles which had direct reference to the PRB/PRA and all 71 articles were analysed. The texts chosen for analysis were frequently mentioned, constituted an aspect of a wider discourse, represented discourses located in the literature and/or reflected the aims and purpose of the research. The selection of texts for analysis is a subjective process because Foucauldian discourse

analysis focuses on the content of texts, meaning that numerous different readings and understandings of any text are possible. Therefore, my selection of these particular texts for analysis over others is contestable.

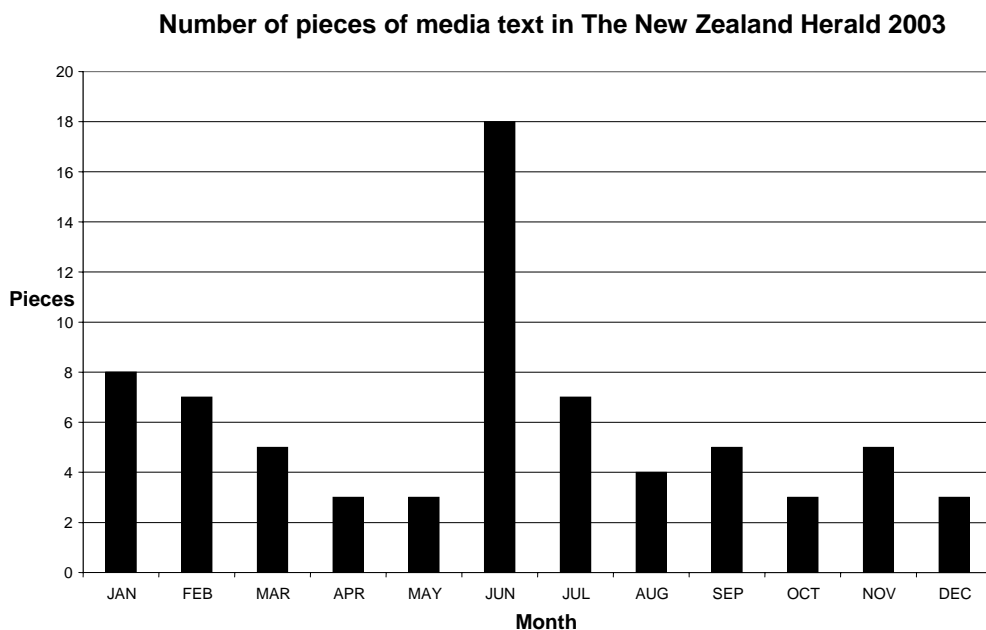


Figure 1: Media texts related to prostitution law reform published in New Zealand Herald 2003

Figure 1 shows the distribution over time of the 71 articles which made direct reference to the PRA in the New Zealand Herald in 2003. The eight references for January were all responses to one of a set of questions posed to politicians as part of a structured holiday feature interview entitled “Question Time”. If not for these incidental pieces, there would be no data at all for January.

### *Data Analysis*

Discourse analysis is an analytical technique which attends to both detail in language and to the wider social picture. Foucauldian discourse analysis focuses on the content of texts, not their linguistic structure. Emphasis is placed on the practice of reading and recognising that there are numerous different readings of a text possible. There is no

essential “true” meaning that resides within the text; rather, different meanings are constructed on every reading. “The discourse analyst is concerned with exploiting the gaps or shortcomings of a given discourse, with systematically demonstrating its contradictions and discontinuities; these are the seams to be pulled at, the joints and weaknesses to be relentlessly stressed” (Hook, 2001, p. 536.) Hook (2001) further suggested that the recovery of subjugated voices is achieved by “tracing discursive formations of power and control, by assembling a strategically organised ensemble of historical knowledges that will be capable of opposition and of struggle against the coercion of presiding discourses” (p. 536).

The approach to this discourse analysis was emergent and drew on a number of approaches derived from Foucault’s work (see Fairclough, 1990; Parker, 1992; Potter & Wetherell, 1994, Willig, 2001), which have tended to fracture texts into different discrete discourses that hold positions for the speaker and reproduce relations of power. The discourses were identified by a reading and rereading of the data and the literature. In the process of reading I employed a Foucauldian analytic technique described by McHoul and Grace (1997) as:

a kind of lamination; building citation upon citation, juxtaposing official and marginal discourses, quoting at length, rarely making interpretive comments, allowing bits of cited text to carry the work, arranging and collecting historical fragments so that the order and arrangement of them, the technique of their montage, perhaps speaks for itself. (p. 21)

This process of lamination mirrors the cognitive and reflective practices which I have developed and refined during my years of practice as a mental health nurse and psychotherapist, and which I brought to my reading of the data. Listening and hearing are primary skills in a therapeutic relationship. The mental health nurse listens to the narrative and knowledge of the service user and simultaneously develops a narrative of the service user’s experience based on her own personal and professional knowledge. These voices, narratives and knowledges are layered and laminated, constructing a montage which reflects multiple realities and therefore multiple possibilities for both service user and professional action. The art of listening is to hear the montage “speak for itself” and the art of psychotherapy is to attune the service user to hear the montage

“speak.” Using the Foucauldian analytical technique of reading, listening and lamination, I have thematically identified the discourses I “heard” within the literature and the text. The discourses located within the literature are identified and analysed in the next chapter and the discourses located in the data are analysed and interrogated in Chapter 4 utilising the questions discussed below.

### *Questions for the Interrogation of the Discourses*

McHoul and Grace (1997) describe Foucault’s approach as an interrogative practice rather than a search for essentials. Foucault locates power outside conscious or intentional decisions. He asks a very basic philosophical question. “Who are we, or, who are we today?” (McHoul & Grace, 1997, p. 21). He does not ask “Who is in power?” He asks how power installs itself and produces real material effects (McHoul & Grace, 1997). Cheek (2000) suggests that once the discursive practices are exposed it may be possible to interrogate them to explore which practices seem to dominate and which are relegated to the margins. The data is interrogated with the following questions:

- What are the conditions that allowed each of the discourses to exist and to continue to exist?
- Who speaks? Who does not speak? What are the rules of each discourse; what statements can be made when speaking or practicing the discourse?
- What power positions does the discourse offer for the speaker and the subject? Whose interests are being served? What are the discourses of resistance?
- What theories and concepts are part of the discourse?
- How are prostitution, the prostitute and the consumer of prostitution constructed and positioned within the discourses? What subject positions/subjectivities does this discourse constitute? What subject positions are offered by the various discourses?
- What is the social context of language and its function in relation to structures of power?

- Which practices dominate understandings and which are relegated to the margins or are absent or unrepresented?

In Chapter 4 these questions will be asked of the data in order to open the texts up to different readings, allowing us to see the assumptions underlying the messages of the data and the ways in which power and hegemonic practices are enmeshed in discourse.

### *Review and Representation of the Literature*

In Chapter 3 the academic literature is reviewed and the discourses within the literature identified. The literature for review was selected by a calculated, structured search strategy. The electronic databases Cinahl, Medline and Psychinfo were searched for literature written on prostitution over the last 10 years, which was then read and reviewed. Falk Rafael (1997) suggested that although the actual focus of a research study may be a critique of discursive practices in the form of a post-structural textual analysis, the research methodology may also inform the review of the literature. A post-structural reading of the literature does not seek fixed structures or essential truths. Readings and meanings are subjective and therefore contested and contestable. The literature is reviewed for evidence of the relationship between power and knowledge and examined for evidence of who decides what counts as knowledge, how power is produced and reproduced and what resistance to it exists.

### **Ethical Considerations**

According to Auckland University of Technology Ethics Committee (AUTEK), Ethics Approval Guideline 6.2; ethical approval is not required for use of research documents or data published in the public domain. In accordance with the spirit of AUTEK in relation to the Treaty of Waitangi, I was mindful of the Treaty principles of partnership, participation and protection as I sought to understand the discursive practice of power and dominant, oppressive knowledges. I have tried to be self-reflective on my theories, beliefs and practices as suggested by Smith cited in Cram (2002) to identify issues and

practices which have the power to shift and destroy racism rather than perpetuate it. Throughout history, women have been enslaved and prostituted on the basis of race and ethnicity as well as gender (Barry, 1995).

Prostitution is an institution that systematically discriminates against women, against the young, against the poor and against ethnically subordinated groups and in New Zealand, as elsewhere, indigenous women are placed at the bottom of a brutal race and class hierarchy within prostitution itself. (Farley, 2004, p. 1117)

Plumridge and Abel (2001) described a segmented sex industry in New Zealand and noted that while the 7% of the population of Christchurch was Maori, 19% of those in prostitution were Maori. In June 2003, there were 326 prostitutes in South Auckland, 150 of them street workers and most of them Maori and working class mothers. The consistent correlation of Maori with negative health, social and economic statistics constitutes a recognisable discourse in New Zealand, with implications for the perpetuation of Maori marginalisation unless there is active resistance to the status quo. I understand that poverty, a significant driver of prostitution, is a sequelae of colonisation. I am also mindful of the implications of discourses on prostitution on the sacredness of Maori women's bodies. The wharetangata, the womb, is the "house of the Maori people" and sexual abuse of a Maori woman desecrates the woman, the hapu, iwi, ancestors and those yet to be born. Thus discourses on prostitution in New Zealand have significant meaning and consequences for Maori.

### *Methodological Rigour*

The basic strategy for ensuring methodological rigour in qualitative research is systematic self-conscious research design, data collection and interpretation (Hammersley, 1992). These activities for ensuring rigour are described in the post-structural paradigm as reflexivity, trustworthiness and fruitfulness.

### *Reflexivity*

Reflexive research is characterised by an ongoing self critique requiring researcher self awareness and an explicitness of assumptions, biases and political commitments as these may affect the research process and its outcome. The self of the researcher cannot claim coherence; rather she or he positions and is positioned in, multiple shifting discourses. In qualitative research, the “cultural self” that every researcher takes into his or her work is no longer a troublesome element to be eradicated and controlled, but can be a set of resources. Sheper-Hughes (1992) suggested that if researchers are sufficiently reflexive about their projects, they can draw on these resources to guide the gathering, creation and interpretation of data.

Post-structuralist feminist researchers highlight the issue of reflexivity and the role of the researcher in the research process, especially the political dimensions of research and on methodology that attempts to understand experiences from the standpoint of those being studied. Lather (1993) viewed validity in qualitative research as being achieved through reflexively understanding the integral role of our political commitments in shaping the way research is conducted. To this end, Sangera (1997) advocated political awareness and “a self critical stance towards one’s own location and attachment to prescriptive or ideological positions” (p. 2). Post-structural researchers need to make their positions and interests explicit. As a researcher, I construct and position myself as a heterosexual woman, a feminist, and a mental health nurse. The purpose and my personal and political interests in this research have been described in the introduction.

### *Trustworthiness*

The quantitative research construct of validity is usually described as trustworthiness when evaluating the quality of qualitative research. Trustworthiness is established by the use of appropriate and sufficient use of methods which ensure the findings can be trusted, are credible and dependable (Lincoln & Guba, 1985). Three types of qualitative validity contribute to trustworthiness. They are descriptive validity, interpretive validity and theoretical validity.



Descriptive validity refers to the factual accuracy of the account as reported by the researcher and how effectively the data selection and processes of data analysis address the intended aims of the research. The implementation of the research method used has been described in detail earlier in this chapter. Methodological and analytical decisions are recorded throughout this document to create transparency and evidence of coherent processes. The texts which were analysed are in the public domain and can be audited. One advantage of sampling naturalistic records and documents is the absence of researcher influence on the data (Potter & Wetherall, 1994). Another advantage is that naturalistic records cancel out the potential risk of inconsistency in data which is gathered by a researcher over an extended period of time (Graneheim & Lundman, 2004). In the discourses on law, human rights, economics, feminism and health, there is sufficient text to provide thick description and to confirm that the identification of these discrete discourses and the analysis and findings are grounded in the data. Within the discourses of moralities and sexualities there is little text; however, there is literature which supports the identification of both the discourses of moralities and sexualities in prostitution discourse. The lack of text is accounted for by the erasure and silencing of these discourses by dominant discourses.

Interpretive validity refers to the degree that the speakers' viewpoints, thoughts, intentions and experiences are accurately understood and reported by the researcher (Johnson, 1997). Interpretive validity depends on accurately portraying the meaning attached by the speakers to what is actually being studied. Text always involves multiple meanings and there is always some degree of interpretation when approaching a text. In qualitative research, trustworthiness of interpretation deals with establishing arguments for the most probable interpretations. In this research, I have attempted to present the texts in a manner which preserves the authenticity of the voices of the speakers and represents their political positions accurately. Potter and Wetherall (1994) suggested that readers of discourse analytic studies need to be able to perform their own evaluations of the analytic conclusions and I have attempted to present the work in a style which allows the reader to evaluate the analysis and look for alternative interpretations.

Participant feedback is one method of testing interpretive validity (Johnson, 1997) but as the text was drawn from the media, this was not achievable. Instead, there is an extensive use of low inference descriptors in the form of direct quotations. Low inference descriptors are the use of descriptions which are phrased to very closely match the speakers' accounts. Verbatim report is the lowest inference descriptor because the speakers' exact words are provided in direct quotes. In a sense they become present in voice. Peer review is also a method of testing interpretation. The preliminary analysis was presented at a research seminar attended by peers and teachers and the developing analysis was reviewed by the research supervisors. My emergent ideas were also discussed with mental health nursing peers over the course of the project, with the constructive feedback and challenges incorporated in the final form of the work.

Theoretical validity is dependent on the theoretical rigour and coherence of the research process. Crotty (1998) suggested that coherence is ensured by the alignment of epistemological and theoretical interests with methodology and method. In the development of this thesis I have aimed to demonstrate an alignment and coherence of texts, literature and argument with the political commitments and positions of Foucault and feminist post-structuralism. Johnson (1997) suggested that theoretical validity, for example, how a phenomenon operates and why it operates as it does, depends on the degree that a theory or theoretical explanation developed from a research study fits the data and is therefore credible and defensible. Theory development needs to be tested and retested. In the process of developing this research I was confronted at times with data and political voices which did not satisfactorily fit the theoretical explanation as it had developed to that point, causing me to reflect on my biases and blind spots and seek a more spacious and accommodating level of theoretical explanation. Attention to, and inclusion of these "inconvenient" voices drove the direction of ongoing reading, thinking and analysis of the discourses, leading to a deeper and broader understanding of the discursive territory and a significant political shift in my position in relation to the PRA over the course of the research. For example, I began the research steeped in concern for the "victims" of prostitution. Encountering the research evidence that many prostitutes

enjoy the work they do and the money and lifestyle it affords, along with engaging with the notion of prostitution as a form of political resistance, caused me to develop a more sophisticated understanding in which prostitutes as victims *and/or* liberated women could co-exist.

### *Fruitfulness*

Another way of determining the quality of a piece of qualitative research is to evaluate its fruitfulness (Potter & Wetherall, 1994). In evaluating the fruitfulness of discourse analysis, the focus is on the explanatory potential of the analytical framework. Cheek (2000) suggested that what Foucault offered us is a way of understanding power and its effects, rather than a grand vision of how power might be overcome. Foucauldian discourse analysis emphasises the ways in which power is enmeshed in discourse and enables power relations and hegemonic practices to be made visible. The findings of discourse analysis do not provide definitive answers but insight and knowledge which can inform changes in the practices of an institution, a profession and society as a whole. By providing cultural analysis and critique, discourse analysis offers mental health nurses new explanations and arguments as a means of resistance at the edges of networks of power (Cheek, 2000). Another aspect of fruitfulness is transferability. Graneheim and Lundman (2004) suggested that it is the reader's decision about whether or not the findings are transferable to another context, and also suggest that a rich and vigorous presentation of the findings will enhance transferability. In the use of direct quotes and in contextualising the New Zealand political environment, I have attempted to assist the reader to determine the transferability of the findings.

### **Limitations of this Research**

Both the strengths and limitations of any research methodology are potentiated by the rigour with which it has been practised. I have attempted to construct a coherent, systematically designed and conducted research project, however, its execution will undoubtedly reflect my status as a novice researcher. The research process is inextricably

linked with how a person sees the world (Kirkby & McKenna, 1989) and once, having taken up a particular position we tend to see the world from that position. Willig (2001) suggested that a researcher authors rather than discovers knowledge and that a reflexive awareness of the process used to construct one's knowledge claims is an important component of discourse analysis. I have attempted to practice and demonstrate conscious reflexivity throughout the research process, to represent the diversity and complexity of the discourses of prostitution law reform in the New Zealand Herald debate, albeit within the limits of my knowledge and subjectivity.

A further limitation of this research may be considered to be the selection of the text for analysis from a public media source rather than from other sources available for academic scholarship. However, if nurses hope to influence public opinion and practices, we must first understand and assess those opinions and practices. Public discourse was therefore of interest to me in terms of its power to represent dominant discourses in general circulation, the ways in which they are constructed, how they are resisted and how they might be open for resistance in the future. This approach is supported by Mills (2003) who suggested that drawing on such material can give us the key to the relations of power, domination and conflict within which discourses emerge.

The selection of the data in any research project influences the quality of the project in its entirety. The selection of one source of data over one calendar year yielded a definable set of data for analysis. Extending the number of sources of media text and the length of time for data collection may have added further depth and breadth to findings, however, as in all research projects, there were resource limitations which required a balancing of scope with pragmatism.

This chapter has described the philosophical approaches of Foucauldian discourse analysis and feminist post-structuralism and has outlined the methods used to carry out the research. The strengths and weaknesses of Foucauldian discourse analysis were outlined and the measures taken to ensure rigour identified and explained. The next chapter reviews the academic literature and the historical and cultural context in which

the PRA was located. It identifies and discusses seven discourses which emerged from the review of the literature.

## **CHAPTER 3: Review of the Literature and the Research Context**

### **Introduction**

The first aim of this research is to develop a comprehensive analysis of prostitution law reform in New Zealand by analysing discourses on prostitution in the New Zealand Herald in 2003. Discourses provide a frame of reference, a way of interpreting the world, giving it meaning that allows objects to take shape or be shaped and reshaped. They are a product of social factors, power and practices and at any one time there are a number of possible discursive frames for understanding and interpreting reality. Discourses represent political interests and the people who position themselves within them are constantly vying for status or power (Weedon, 1987). In order to identify and contextualise the discourses I reviewed the academic literature and the political context of prostitution both in New Zealand and internationally. In the reading of the literature I identified seven discourses. These are; laws, human rights, feminisms, sexualities, moralities, economics and health. The literature review is organised using these seven discourses as a framework.

### **Laws**

Prostitution is commonly known as the world's oldest profession (Roughan, 2003; Wichtel, 2003b). Foucault (1986) in his "History of Sexuality" found accounts of Classical and Roman society showing that it was commonplace for men to purchase sex from prostitutes and that there was evidence of legal and social acceptance of this practice. Prostitution flourished in New Zealand in the colonial era when men, money and alcohol were abundant and women few (Jordan, 2005). In 1869, the Contagious Diseases Act became the first significant legal intervention in the regulation of prostitution in New Zealand. In 1978, in response to the proliferation of the establishment of "massage parlours", the Massage Parlours Act was passed and prostitution became defined as "payment for common lewdness" (Ministry of Justice, 1978). Soliciting for business was illegal while consuming sexual services was not. Under the Massage Parlours Act 1978, women were not allowed to work indoors in massage parlours if they

had been convicted of soliciting or drug taking, so were often forced to work on the street. In addition to the Massage Parlours Act 1978, a number of laws passed between 1961 and 1991 meant that it was likely that someone working in prostitution would be likely to break a law at some stage. These laws were:

- Section 26 of the Summary Offences Act 1981 (soliciting)
- Section 147 of the Crimes Act 1961 (brothel keeping)
- Section 148 of the Crimes Act 1961 (living on the earnings of prostitution)
- Section 149 of the Crimes Act 1961 (procuring sexual intercourse).

Following Barnett's election to parliament in 1996, he positioned himself as an agent of legal and social change, and took a particular interest in working for gay rights. In 2001, Barnett outlined his political agenda suggesting that New Zealand will not have a "queer-friendly" government forever. He believed there was a real urgency to completing the equal rights agenda, so that moving backwards would become totally unthinkable and that over ensuing generations, attitudes could finally "come right". He said that as queer politicians, their mission was to deliver equal rights under the law and ensure that the Government machine was working for the gay community (Moran, 2001).

Barnett worked closely with the New Zealand Prostitutes' Collective (NZPC) an organisation of current and past sex industry workers, to develop and sponsor the PRA. Among the NZPC's stated aims is an environment that supports the rights of sex industry workers and advocates at all levels for the rights of sex industry workers (NZPC, 2003). The success of the women's movement in demanding sexual self determination has led to discursively extending the concept of self determination to prostitution (Outschoorn, 2001). The NZPC's vision involves

fighting for the day when there will be no more stigma attached to writing "sex worker" on our CVs than there would be if we had spent 3 years as a teacher or accountant, Our aim is to see all women in the industry working safely and walking tall. (Jordan, 1991, p. 74)

The NZPC (2003) summarised the problems posed by the law as it existed prior to the PRA.

It promotes a double standard, as sex workers can be arrested for soliciting, whereas a man approaching a sex worker is protected by the law; it supports the sexual exploitation of sex workers, who have no form of redress of unfair practices in the workplace, such as being able to refuse clients; it creates a barrier to sexual health education as the possession of condoms and safe sex literature can be used to achieve prostitution related convictions; sex workers have no access to legal support when in dangerous or violent situations, and prostitution related offences affect the sex worker throughout her life affecting employment, finance and travel prospects. (NZPC, 2003).

The NZPC's account of the injustice and inequity of the Massage Parlours Act 1978 reflects the hegemonic practices of the time of its enactment, a quarter of a century earlier.

#### *International Approaches to Prostitution Law*

During the last 15 years an international debate about how to legally address prostitution has occurred. There are four principal approaches that countries and states have adopted internationally with regard to the regulation of prostitution (PRB, 2000). These are:

- Criminalisation or abolition of prostitution, making prostitution an illegal offence for both consumer and prostitute.
- Criminalisation of the consumers, targeting the demand side of the industry to reduce or eliminate prostitution.
- Legalisation, making prostitution legal under a statutory regime.
- Decriminalisation, removing all laws which criminalise prostitution, making it subject to the same laws and controls that regulate other businesses.

Within these approaches the international focus of policies on prostitution has become largely polarized between the abolition of prostitution and harm reduction (Jyrkinen, 2005). In a survey of the international sex industry, Jordan (2005) found that the ways of achieving regulation of prostitution differ markedly both between and within nations. For



example, in the United States, areas of minimal regulation exist alongside states with highly interventionist policies. Some countries, mainly in Western Europe such as the Netherlands, Germany, Austria and Switzerland, have established various forms of legalised or decriminalised prostitution industries (Raymond, 2004b). Regulation of prostitution ranges from the legalised red light districts of Hamburg and Amsterdam to the arresting of male consumers in Sweden. In Sweden, prostitution is widely interpreted as gendered violence rather than harmless business activity and the consumer has been criminalized (Jyrkinen, 2005).

In Australia, there are distinct differences in the ways state governments view and attempt to regulate the sex industry (Jordan, 2005). In the 1980s Victoria legalised brothel prostitution and subsequently New South Wales, Australian Capital Territories (ACT) and Queensland followed suit (Sullivan & Jeffreys, 2002). Other governments, for example in Thailand, prohibit prostitution but, in reality, tolerate brothels and the buying of women and children for commercial sexual purposes (Raymond, 2004). In 2001 in the Netherlands, in response to the trafficking of women from Eastern European countries, a distinction between “voluntary” and “forced” prostitution was made enabling legislators to adopt a position allowing for both the liberalisation of voluntary prostitution and the regulation of trafficking. Jordan (2005) in her examination of the history of prostitution law, noted that although prostitution has been viewed as a threat to the moral order of society, men’s demand for prostitution services has not abated throughout the ages, leading to states legislating for the regulation of prostitution rather than introducing measures focused on its eradication.

New Zealand’s PRA decriminalises prostitution. Arguments opposing legalisation and favouring decriminalisation were made by both prostitutes and reformers. Prostitutes argue against legalisation out of concern that it will regulate their practices and reduce the freedoms which form part of the attraction of the lifestyle. Hughes (2000) argued for decriminalisation and against legalisation of prostitution so that the state is no longer punishing women for being exploited and abused, and so that legalisation and regulation

of prostitution allowing women to be exploited and abused under state determined conditions is opposed.

*The New Zealand Prostitution Reform Act*

The PRB was sponsored by Tim Barnett who described prostitution law reform as an issue of “unfinished business from when Helen Clark was Health Minister in the 1980s” (Taylor, 2003a, p. 1).

Barnett viewed the PRA as the “third trunk of much needed law reforms” beginning with the 1986 Homosexual Law Reform Bill, changes to human rights laws to prevent discrimination against people with HIV/Aids and now completed with the Prostitution Reform Act. (Tunnah, 2003a, June 28)

Barnett explained that at the heart of the Reform Act is the concept of harm minimisation (Tunnah, 2003a). The PRB proposed the decriminalisation of prostitution and the repeal of all previous prostitution legislation.

The stated aims of decriminalisation and the PRB were: safeguarding the human rights of sex workers; protecting sex workers from exploitation; promoting the welfare and occupational safety and health of sex workers; creating an environment that is conducive to public health and protecting children from exploitation in relation to prostitution (PRB, 2000). For clarity in the PRB, all references to a “child” are replaced with “a person under the age of 18”. Despite the age of consent and the legal age of marriage being 16, 18 becomes the age at which a person can consent to prostitution because the PRB Committee believed the nature of the work of prostitution was such that there should be prohibition beyond the usual age of consent.

In practice, the supporters of the Bill intended it to facilitate contact with occupational safety and health agencies; support the development of models of collective and self-managed prostitution businesses, small owner operated brothels (SOOBS) and make exit from the industry easier. The advantages of decriminalisation were described by the NZPC (2003) as being that sex workers would have the same status in law as their clients; health promotion work could take place openly throughout the sex industry;

labour laws and health and safety regulations could be openly applied and the implicit acknowledgement that the costs of keeping prostitution illegal largely outweighs the gains.

*Regulation of Prostitution: Devolution to local government*

The passing of the PRA saw the regulation of prostitution devolved to local government. Local governments have specific responsibilities under the PRA:

- Every brothel operator must gain a certificate from the District Court.
- Local councils can make by-laws to prohibit or regulate signage advertising commercial sexual services.
- Local councils can make by-laws for the purpose of regulating brothels for example siting and distances from schools and churches.
- The Act allows for SOOBS with not more than four prostitutes where each has control over her earnings. SOOBS can operate in residential areas and no certificates are required.

One of the persuasive arguments underpinning decriminalisation was that once prostitution ceased to be a criminal offence, prostitutes would be able to choose their own working conditions and their consumers and, if working for an employer, would have industry health and safety standards in place. In practice, the supporters of the PRA intended it to allow the development of models of collective, self-managed prostitution businesses, SOOBS.

A set of bylaws were drawn up for all New Zealand local governments:

- Brothels are banned in residential zones but can operate in many suburban shopping centres.
- Suburban brothels banned within 250m of schools, preschools, places of worship, community facilities and big transport interchanges.
- Suburban brothels cannot be set up within 75m of an existing brothel.

- Central city brothels banned within 250m of primary, intermediate and secondary schools.
- Brothels cannot operate at ground level, with Amsterdam-style shop window displays.
- Brothel signs must be no bigger than 1m by 30cm, cannot be neon, flashing or sexually explicit (Orsman, 2003).

The bylaw banning brothels in residential areas contravened the PRA's specification that SOOBS could operate in residential areas. The bylaws were tested in court by the Auckland, Christchurch and Manukau City Councils and were shown to have no standing in law. Local governments were forced to cobble enforcement measures together from their existing statutory powers such as the District Plan and Liquor Licensing laws and use their recourse to Immigration and Inland Revenue legislation. The powers that local governments had been able to use under the Massage Parlours Act were lost and the responsibility for monitoring health within the sex industry was devolved to District Health Boards.

### *Therapeutic Jurisprudence*

Therapeutic jurisprudence is a perspective that regards the law as a social force which produces therapeutic and anti-therapeutic behaviours and consequences. It is a framework for raising certain questions that might otherwise go unaddressed and teases out some of the more subtle, unintended consequences of legal rules that may be anti-therapeutic. Therapeutic jurisprudence does not suggest that therapeutic goals should trump other goals or purposes, nor does it support paternalism or coercion (Wexler, 2000). Prior to the final vote in Parliament, Dianne Yates, a Labour MP suggested that the PRB was anti-therapeutic and would not produce the consequences for the prevention of harm which the was the PRBs stated intent (Young, 2003). Yates proposed an amendment to the PRB which would criminalise the men who use women in prostitution. Yates' proposed amendment followed the example of Swedish legislation which was sometimes alluded to in the PRA debate as the "Swedish model".

In 1999, as the first piece of law of its kind in the world, Sweden criminalised men who buy women for prostitution as part of a comprehensive Violence Against Women Bill which locates prostitution within the framework of gender inequality and male violence against women (Raymond, 2004). The Act on Violence Against Women enacted on July 1<sup>st</sup>, 1998 included several amendments to laws relating to male violence against women including a new offence, the “gross violation of a woman’s integrity.” This legislation is an example of a law implemented as a social force to effect a therapeutic goal, in this case, the valuing and protection of women. In Sweden, intense lobbying by feminists, with assistance from female politicians across party lines, saw the law brought to Parliament, passed with little opposition and brought into force on January 1<sup>st</sup>, 1999. This legislation punishes repeated instances of male violence against a woman in an intimate relationship. The law is supported by the majority of the population and is an expression of the political will and the basic tenets of gender equality politics in Sweden. The main purpose of the law is normative with the specific tasks of the police being to enforce the law and to work preventatively to intervene before a potential buyer of prostitution commits a crime rather than when the crime has occurred (Ekberg, 2004). Money was pledged to assist women to leave prostitution with the provision of access to shelters, counselling, drug rehabilitation, education and job training. Direct responsibility for the provision of services to victims of prostitution and trafficking was devolved to Swedish municipalities (Ekberg, 2004). Sandra Coney and the New Zealand Women’s Health Action Group along with National MP Nick Smith supported criminalisation of consumers however Yates’ amendment failed in a vote in Parliament, marginalising the discursive construction of the PRA as anti-therapeutic legislation. In the next section, the human rights issues arising in relation to prostitution are discussed.

### **Human Rights**

An obligation of the law is to protect human rights and the first stated aim of the PRA is to safeguard the human rights of sex workers. While prostitutes rarely speak individually in public, they have begun to speak collectively to advocate for their human rights.

Through organisations such as the New Zealand groups, NZPC and Empower and COYOTE (Call Off Your Old Tired Ethics), and WHISPER in the United States, prostitutes argue that as human beings they deserve basic human rights. Advocacy for the human rights of prostitutes is also located in the academic literature, with the respect for prostitutes based on the fact that they are human beings. It is argued that prostitutes should not have to stand in a queue for human rights behind the consumers and that their social value should not be contingent upon whether or not they perform labour that is socially valued (O'Connell & Davidson, 2002; Wellington Independent Rape Crisis, 2002).

Sangera (1997) observed that in the prostitution business, trafficking, forced labour, coercion, deception and slavery-like practices exist and that conditions of force and coercion violate the human rights of the worker. A human rights approach to the sex industry advocates that all steps are taken to safeguard the human rights of women as workers and citizens of a civil society. Coercion, violence and issues of power have been identified by prostitutes as greater concerns than health issues (Plumridge & Abel, 2001; Sanders, 2004). There is a strong emphasis in the aims of the PRA towards protection of human rights and in particular, protection from exploitation. The aim to safeguard human rights is addressed by the inclusion in the PRA of the provisions that any sex worker may refuse to provide any sexual service and that it will be an offence to coerce another person into providing commercial sexual services. The PRA shifts the definition of coercion from a list of prohibited acts to a broad, non-specific description of "coercive behaviour". The right of refusal recognises that the provision of sexual services is different to the provision of services of any other kind. The NZPC emphasised that sex workers have the right to say no, in order to have complete control of their own bodies (NZPC, 2003).

#### *Convention on the Elimination of all Forms of Discrimination Against Women*

Shortly after the passage of the PRA in 2003, Ruth Dyson, then Minister of Women's Affairs, presented the New Zealand Government's report on how New Zealand was

meeting its obligations under the United Nations (UN) Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to which New Zealand is a signatory. After receiving the report, members of a key UN women's committee asked the New Zealand Government to overturn the PRA. Hungarian member Kristina Morval told the UN Committee that regardless of whether prostitution was a matter of free choice, it was oppressive and humiliating, for it was about men paying money to use women as less than human beings (Tunnah, 2003c). CEDAW was adopted in 1979 by the UN General Assembly and is often described as an International Bill of Rights for women. The Convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Under Article 1 of CEDAW (Office of the United Nations High Commissioner of Human Rights, 1979), violence against women is defined as "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (1979). CEDAW asserts that violence against women constitutes a violation of the rights and fundamental freedoms of women and that violence against women constitutes a manifestation of historically unequal relations between men and women which have led to domination and discrimination against women by men.

The construction of prostitution as a violation of human rights is contested in the academic literature. Prostitution can be constructed as a right and a freedom, as well as oppressive and violent, and a violation of human rights. Co-opting the language of human rights enables the construction of prostitution as violence against women to be described in powerful ways. Those who construct prostitution as a violation of human rights articulate prostitution as a form of commodification which restricts freedom and citizenship rights, reducing women to second class citizens (Farley, 2003; Hughes, 2000; Jeffreys, 1997). Consideration of whether prostitution is a form of violence against women has become a divisive political issue in the feminist movement. In the next section I present the feminist arguments which both support and oppose the construction of prostitution as harmful and a human rights violation.

## **Feminisms**

Feminism is a politics directed at changing existing patriarchal power relations between men and women and society. Patriarchy describes the structuring of society on the basis of family units, in which lineage is passed on from the fathers. Due to its hierarchical structure, patriarchy as an ideological system has come to be defined as a form of male dominance, an ideological structuring of society whereby men believe themselves to be in positions of dominance over women. Feminism constitutes a discursive space which defines itself in terms of a common identity in which a shared experience of gender based oppression provides the mediating factor intended to unite all participants beyond their specific differences (Felski, 1989). However, a collective feminist position in response to the PRB was prevented by differences in political emphasis on the “problem” of prostitution. Feminists have become divided by differences over sexual culture and practice sparking what have been called the “feminist sex wars” (Chapkis, 1997). Feminist debate on prostitution has become polarised about whether to prioritise “sex” or “sexism” and although proponents of both positions support reform of the legal status quo of prostitution, each argues a different discursive position.

The discourse emphasising “sex” validates the practice and identity of prostitution and embraces a personal politics of individual sexual defiance, where to seek and find physical pleasure is believed to be good, even in a sexist present (Chapkis, 1997). This has been called the Liberal Feminist/Sex Radical discourse by Weatherall and Priestley (2001) and the Prostitutes Rights discourse by Simmons (1998). It is referred to as the Liberal/Rights discourse in this document with Sex Radical feminism included within this discourse. In the Liberal/Rights discourse, sex workers are positioned as active decision makers who “choose” to engage in prostitution and are accorded power and freedom (Chapkis, 1997; Sanger, 1997).

The feminist discourse on prostitution which contests Liberal/Rights feminism has been called the Radical Feminist/Marxist discourse by Weatherall and Priestley (2001) and the Feminists Against Systems of Prostitution discourse by Simmons (1998). This discourse is referred to in this document as the Radical/Abolitionist discourse. In the



Radical/Abolitionist discourse, prostitution is constructed as exploitation and abuse of women, the means of women's subordination, degradation and victimisation. Buying sex is considered to be intrinsically linked to a system of heterosexuality and male power which reproduces male/female power relations and is often viewed as the "sine qua non" of the female condition under patriarchy: the embodiment of patriarchal male privilege (Kesler, 2002; Scoular, 2004; Weitzer 2005). Prostitution has been conceptualised as one locus on a continuum of patriarchal exploitation of women along with rape, wife battering, sexual abuse of women, sexual slavery in marriage, the making of pornography, war rape, sexual harassment, female genital mutilation, dowry burnings and sex selection (Lowman, 2000; Sangera, 1997).

### *Liberal/Rights Feminism*

Barnett and the NZPC aligned themselves with Liberal/Rights feminists. An important difference between the Liberal/Rights and Radical/Abolitionist feminist accounts of prostitution is the different emphasis they place on the liberatory versus exploitative aspects of prostitution respectively (Weatherall & Priestley, 2001). The primary goal of the Liberal/Rights discourse is to eliminate laws against prostitution, to provide choice for prostitutes and for the laws protecting prostitutes to be fully enforced. Liberal/Rights supporters of prostitution argue that poor women should be able to prostitute because it provides independence, good hours and higher income. Liberal/Rights feminists assert the importance of women's agency and a woman's right to choose prostitution. Their arguments are based on the classic principle "a woman's body, a woman's right" and privilege the individual agency of prostitutes (Alexander, 1998). In this discourse, prostitution is constructed as a contract between two freely consenting adults, a job, much like any other. It can be constructed as an occupational choice among other gendered and discriminated forms of work available to women and is seen as potentially liberating terrain for women (Chapkis, 1997).

Liberal/Rights feminism includes a group known as Sex Radicals. Sex Radical feminists view the legal and social binaries of normal/abnormal, healthy/unhealthy,

pleasurable/dangerous sex, as well as gender itself, oppressive. Sex Radicals argue that sex work is treated differently from other jobs only because of the social constraints historically associated with sexual practices (Weatherall & Priestley, 2001). Critical of social regulation that places restriction on sexual activity, Sex Radical feminists celebrate consensual sexual practices that can be read as subverting binaries and view the sex industry as one of the few social arenas where non-normative sexual activities may be practised (Chapkis, 1997).

Romans, Potter, Martin and Herbison (2001) found that 59% of call girls and brothel workers felt that their work was a “major source of satisfaction” in their lives while seven out of ten said they would “definitely choose” this work again. Williamson and Folaron (2003) in their study, on the effects of prostitution over time, found that in the early stages of prostitution women enjoyed its financial rewards and the camaraderie and friendship of other prostitutes further added to their enjoyment of their work.

#### *Radical/Abolitionist Feminism*

Despite Barnett and the NZPC’s alignment with the Liberal/Rights feminist position on sexuality and prostitution, libertarian arguments have been criticised by feminist academics for ignoring unequal power relationships. Gavey (1992) suggested that it would be naïve to believe that individual women will achieve “liberation” by positioning themselves in a feminist discourse on sexuality in an otherwise misogynist material context. The aim in the Radical/Abolitionist discourse is to prohibit men from buying sex from women and children, to criminalise the traffickers and organisers of the sex industry and to end prostitution and all sexual exploitation. The focus of the Radical/Abolitionist discourse is the institution of prostitution, not choices made by individual prostitutes. Women are seen to be compelled by their social circumstances into prostitution so their participation is seen as essentially non-consensual. Specific cultural conditions are understood to constrain women’s choices and the idea of free choice ignores the material conditions in which they make their “choice” (Cusick, 2002; Simmons, 1998).

The passing of the PRA creates a paradox in the Radical/Abolitionist discourse. The PRA is constructed to protect prostitutes from exploitation, when the “job” of prostitution itself is constructed as exploitation. In the Radical/Abolitionist discourse, prostitution is equated with “paid rape” (Raymond, 1999). Prostitution is seen not only as specific acts of violence but as a form of violence by definition; some coercion is claimed to always be involved, even if the worker is unaware of it. Most prostitutes had some violent or adverse experience in the course of their practice with 83% reporting one or more adverse or violent events (Plumridge & Abel, 2001). Street workers had generally experienced more severe and violent incidents, harassment and adversity, and were more likely to have had money stolen by a consumer, been physically assaulted, held somewhere against their will, subjected to verbal abuse and more likely to have been raped and forced to have unprotected sex (Plumridge & Abel, 2001).

### *Hegemonic Masculinities*

In the Radical/Abolitionist discourse, resistance to the institution of prostitution is a politics of transformation of social institutions like the law, the state, the workplace and the media (Chapkis, 2005). By resisting the liberalisation of prostitution laws Radical/Abolitionist feminists contest the privileging of hegemonic masculinities. Hegemonic ideologies preserve, legitimate and naturalise the interests of the powerful, marginalizing and subordinating the claims of other groups (Wetherall & Edley, 1999b). Hegemonic masculinity is the location of ordinary men in positions of power and wealth, and the way they legitimate and reproduce the social relationships that generate their dominance. It involves contest and constant struggle and incorporates relations of power and domination acted out through aggression, competition, heterosexism, homophobia, stoicism and misogyny (Wall & Kristjanson, 2005).

Certain institutions and customs benefit men at the expense of women. The state is understood to be a creation of men, in men’s interests, and it is through various institutions, for example family life, men’s clubs, sports or religion, male economic and

political power that male domination of women is produced. Connell (1983) cautions that;

the political project of rooting out the sexism in masculinity has proved intensely difficult; the difficulty in constructing a movement of men to dismantle masculinity is that it's logic is not the articulation of collective interest, but the attempt to dismantle that interest. (cited in Donaldson, 1993, p. 644)

The success of the feminist movement towards achieving a measure of gender equality has resulted, in some measure, in men fearing their loss of power and hegemony, resulting in a feminist backlash.

#### *A Feminist Backlash*

“Cachet was an upmarket call girl business; a Cachet girl was guaranteed free of substance abuse, infection and feminism” (Ringdal, 2004. p. 350). The second wave of feminism in the latter part of the 20<sup>th</sup> century made significant progress towards gender equity, challenging male entitlement to privilege. However, as sexist behaviour towards women becomes less acceptable, some men appear to be trying to forge a masculinity which is independent of the requirements of gender equity and the threats, from the viewpoints of these men, it has set to male hegemony (Jeffreys, 1997; Marttilla, 2003). Sex businesses offer a social space of male “emancipation” in a post feminist world. In these places, the traditional male order and power still exist and may offer men a social space where expectations and views on gender roles are quite different from the world outside.

Sex businesses can be understood as a space free from women’s demands, where men are able to join together homosocially, somewhere they can act as they want to and where another person can be made to do what that want (Marttilla, 2003; Parker, 1998). Men can perform their sexual fantasies or myths and put on and take off different identities without concern or feeling for the body of another and engage in a parallel universe played by the rules of a fantasy in which women are still under traditional male power (Letiche & Van Mens, 2002; Marttilla, 2004). For example, Asian women are

commodified and marketed as undemanding, smiling, demure, servile, and ready to fulfill any fantasy; unlike the aggressive women of the West, whose femininity has been destroyed by feminism. A mystique is created around otherness and an artificial atmosphere of power and control is simulated, exonerating the consumer from any moral dilemma or responsibility (Sangera, 1997).

### **Sexualities**

Prostitution is a sexual practice. Sexualities refer to the many cultures of sexuality which are recognised in the 21<sup>st</sup> century. In the 19<sup>th</sup> and early 20<sup>th</sup> century there was an essentialist approach to sexuality, which reflected a belief that men's sexual urges were biologically inevitable. By the 1950s and 60s, sexuality was no longer a fixed concept; it was no longer possible to talk about "sexuality", only "sexualities" (Jeffreys, 1997). Human sexualities are understood to be shaped and constructed in social contexts (Kimmel & Plante, 2004) intertwined with economic and political forces, reflecting class and social relations (Sangera, 1997). Sexualities encompass a wide range of phenomena; thoughts, desires, emotions, bodily sensations, acts, images and identities we describe as sexual and are ascribed divergent meanings and values (Kirkman & Maloney, 2005). The sexual practices of prostitution are largely marginalised in both the academic and public debates about prostitution and while the PRA specified official language for all other parts and people in prostitution, it failed to provide an official name for the users of prostitution.

### *Consumers*

Consumers are the most underground part of prostitution and are almost entirely men who have traditionally condemned prostitution in public while ensuring its continuation in private. Although prostitution is recorded as occurring in every society and in every period of history, there has been little research on the consumers of prostitution. The practices of men who buy sex, "the invisible men," have been largely ignored by academic discussion. This lack of academic research is largely due to difficulties in

gaining contact with consumers and getting information from them. Men's ambivalence about the purchase of women is reflected in the relative scarcity of research interviews with consumers and their desire to remain hidden. The buyers of sex have remained invisible and anonymous while attention has mainly been concentrated on prostitutes.

Monto (2001) found that while the little existing research on consumers points to multiple explanations for seeking sex with prostitutes, his study of consumers arrested for soliciting prostitutes in America supported both popular and academic explanations as to why men seek out prostitutes. Their motivations were described as a self-focused, consumer-oriented conception of sexuality in which one can conveniently meet sexual needs through the purchase of illicit, risky or raunchy sex with a prostitute. Some men felt they did not have the time, energy or interest to engage in a conventional relationship with a woman or had difficulty in establishing intimate relationships with women. Some men sought prostitutes because they could do things with them that other women, for example their partners, might find unpleasant or unacceptable. Overall, there was a sense of entitlement to sex among the sample group of consumers who felt they had a right to sexual access (Monto, 2000a).

Prostitution has existed for thousands of years and has become deeply embedded and institutionalised in culture. Male consumers hold an ideological justification for believing women should service their needs and it seems only natural to them that this should be so (Chapkis, 1997; Gavey, 2005a). The "male sex drive" discourse is a pervasive and powerful influence on male sexuality and because men want to buy sex, prostitution is assumed to be inevitable and normal. Hughes (2000) suggested that prostitution may not be the world's oldest profession; it just seems old, because men's sexual exploitation of women and children is ancient and defended as a part of men's sexual natures.

### *Consumers are Ordinary Men*

Human beings are maintained in their apparent unity through an active process of exclusion or opposition. In order to maintain this unity, certain phenomena must be represented as foreign or "other". One is privileged and the other is devalued (Cahoone,

1996). Men who transgress sexual boundaries are often constructed as rogue “others” however men who seek prostitution, are not dramatically different from men in general (Monto, 2000). Pitts, Smith, Grierson, O’Brien and Mission, (2004) studied whether male consumers of prostitution were different to non-consumers. They found there were few significant differences between the two groups. It would appear that consumers of prostitution are not a clearly identifiable “subgroup” of the population of men interested in sex in general. The people who use prostitutes are not monstrous “others” but are members of our society, produced by our society. Monto (2000) found that most of the consumers did not exhibit attitudes that would support violence against women. The main users of women in prostitution are regular men who are in regular marriages, study in regular programmes and have regular jobs, some of whom are entrusted with upholding the very laws that they violate; they are not marginalized men (Atchison, Fraser & Lowman, 2000; Jordan, 1991; O’Connell & Davidson, 2001; Martilla, 2003; Raymond 2004). Schrage (1992) argued against treating prostitution consumers as deviant on the grounds that they are acting in accordance with dominant social values and beliefs. The construction of consumers as ordinary heterosexual men constitutes them as a large group in the marketplace who can be encouraged to increase their demands for the sex of prostitution and therefore the profitability of sex business.

### *Sexualities and Neoliberalism*

A significant feature of Foucault’s (1986) thesis on power and its relationship to the body is its connection with the historical emergence of the recent and “banal” notion of sexuality. In Foucault’s analysis “sexuality was viewed as utilitarian both in reproducing the population and cementing the family bond, with the bourgeoisie claiming their distinctiveness not through blood lines like the aristocracy but by a healthy body and beautiful sexuality” (McHoul & Grace, 1997 p. 77). One of the issues which Foucault consistently drew attention to is that since the 1960s, people have sought the truth about themselves in their sexuality. If one is sexually liberated and freed from all prudish constraints, it was argued, one will in a sense be more truly oneself (Mills, 2003). The 1960s are characterised as the decade of sexual revolution and liberation. Sigusch (1998)

described not one, but a series of sexual revolutions which have led to a cultural transformation of sexuality in recent decades. He described three significant temporal or structural events in the general form of sexuality which may combine or overlap with each other: the first sexual revolution preceding the second world war; the second or social-liberal revolution of the 1960s and 1970s and the third or “neosexual” revolution, observable since the 1980s (Sigusch, 2004).

Sigusch (1998) suggested that rationalisation, dispersion, deregulation, commercialisation, and the compulsion to diversify driven by neo-liberalism have combined to create a new form of sexuality. Extending Foucault’s idea of sexuality as “a recent and banal notion,” Sigusch contended that sexuality, which was once mystified in a positive sense, has lost much of its meaning as the great cultural metaphor of pleasure and happiness and is now widely taken for granted. A proliferation of new desires and the pursuit of pleasure has become an end in itself, leading to the burgeoning of what Sigusch (2004) called commercialised “shop-sex”.

### *Prostitution as Male Sexuality*

Russell (1996) studied the gender differences in the services men and women are willing to purchase. In contrast to men, most women will not buy sex. They are, however, much more willing than men to pay for intimacy in the form of psychotherapy. The construction of female sexuality as a desire for intimacy and commitment functions as a practical ideology to justify why there is no demand for servicing women’s desires (Weatherall & Priestley, 2001). The sex of prostitution is therefore not “just sex” but male sexuality. Traditionally male sexuality has been closely tied in with conquest and appropriation of land, resources and invariably, women’s bodies. Sexual prowess, male sexuality and identity have been conflated with power, virility and success, with the sexual act normalised as a basic male sexual need. In prostitution a woman can be traced as a surface upon which ‘real masculinity’ is reflected (Martilla, 2003; Sengara, 2000). In many instances, male initiation into manhood is marked by a ritualised visit to a prostitute. It was common in Victorian England for upper class men to have their initial



sexual experience with prostitutes (Humphries, 1988), the first of which typically took place while away at university (Brooks-Gordon & Glesthorpe, 2003). A man who can demonstrate his sexual prowess through sexual activity is considered by his peers and himself to be virile, successful and powerful, an active agent in the social patriarchal world and as long as his sexuality is healthy, his identity and self esteem remain intact (Sangera, 1997). The demand generated by the sexual “need” construction of male sexuality is used to explain the relative lack of women as consumers in the sex industry; women are constructed as not needing sex services because they can get sex free (Weatherall & Priestley, 2001).

#### *Masculinity as a Homosocial Performance*

Sexual behaviour, like other behaviours, in our lives is learned from the people, institutions and ideas around us and we assemble it into a coherent narrative (Kimmel & Plante, 2004). Sex can be constructed as a performance which produces a masculine identity. Masculinity is something men learn to perform, especially in the company of other men. Homosociality is vital to the maintenance of hegemonic masculinity. It allows men to perform feats by which other men can grant them their manhood and also acts to suppress non-hegemonic masculinities (Bird, 1996; Kimmel, 1994). Sexual victimisation of women is a currency amongst men, used as a way to facilitate upward mobility in a masculine hierarchy by displaying one’s masculinity to other men (Dworkin, 1993; Kimmel & Plante, 2004). The homosocial element of pornography, men communicating with other men using a particular gendered speech, has been largely absent from most empirical discussions of pornography and its impact, in part because a surface level “reading” of pornography suggests that it is about men’s relationship with women (Kimmel & Plante, 2004). In a similar manner, Dworkin (1993) suggested that prostitution is also a homosocial performance more about the proving oneself to other men than about the prostitute or sexual act itself. Roughan (2007) commenting on the abuse of Louise Nicholas by policemen, mused that:

The still unexplained dimension of the saga that ended this year is the predilection of these policemen when younger to have sex in front of each other – a taste previously thought to be confined to leather gangs and the odd rugby league team. (Roughan, 2007, December 15 A 23. NZ Herald)

## **Sexual Terrorism**

Much of the violence of contemporary society serves to preserve asymmetrical gendered systems of power. The physical and mental abuse of women in patriarchal societies has taken a wide variety of forms that Sheffield (1995) has broadly referred to as “sexual terrorism”. Sheffield defined sexual terrorism as the use of violence and fear that helps maintain male control and domination of females. She particularly cited rape, assault, the sexual abuse of children, and sexual harassment as examples of sexual terrorism. Acts of sexual terrorism are the crimes least likely to be reported, or result in trial or conviction. The victim is often held responsible for the violent acts of sexual terrorism and the acts themselves are often not taken seriously. The abusive use of power inherent in these acts is masked by the common perception that they are really about sex. Rather, male sexual and non-sexual violence against women acts as an important signification and reminder of the lack of ultimate control and power that many women have in their sexual and other relations with men. Wolfe and Copeland (1994) suggested that violence, and the internalized, constant threat of violence, is an instrument of control of women’s autonomy and freedom.

### *Secrecy and Silence*

Masculinity is informed by the dynamics of mateship which affirm masculinity and assert the abstract symbols of masculinity, particularly sexual and physical power, self control and control over others (James & Saville-Smith, 1994). While men perform and claim their masculinity with each other, they preserve a code of silence which conceals their collective homosocial and hegemonic sexual practices. The old rugby maxim, “What goes on tour, stays on tour” is like the mafia oath of omerta, the code of silence. It is designed to draw a discreet veil of silence over any transgressions that may occur on a footy trip (Ralston, 2007). Louise Nicholas experienced her complaints of abuse by police officers being erased by the code of silence.

Police officers... took advantage of her from a very young age and... ensured that any appeal she might make for protection would go unheeded. [Former policeman] John Dewar enmeshed her: while pretending to be her friend, he

systematically worked against her interests as he swept evidence of his mates' scandalous conduct under the carpet. (Gower & O'Rourke, 2007, p. 1)

### **Moralities**

Morality is usually defined descriptively as a practice fundamentally concerned with the distinction between good and evil and right and wrong behaviour in relation to an ideal code of conduct. A descriptive definition of morality does not have implications for a person's specific behaviour. However, morality is an ambiguous term. A normative definition of morality refers to a code of conduct that, given specific conditions, would be advocated by all rational people, therefore, committing a person to a particular form of behaviour. Because accepting a normative definition of morality involves behavioural commitment, there are often disagreements about which normative definition to accept.

Morality is also synonymous with ethics, the philosophical study of the moral. In philosophy, moral relativism is the position that moral or ethical propositions do not reflect objective and/or universal moral truths, but instead make claims relative to social, cultural, historical or personal circumstances. Moral relativists hold that no universal standard exists by which to assess an ethical proposition's truth. In moral relativism there are no absolute rights and wrongs, only different situations (Stanford Encyclopaedia of Philosophy, 2004).

One of the most entrenched assumptions of relativism is that there is such a thing as moral neutrality in which a person is impartial, without judgments or personal views. The PRA was politically positioned as morally neutral legislation, however, the problem with moral neutrality is that while a person can consciously and reflectively recognise their attitudes and values and attempt to suspend their judgments, it is ultimately not possible to be both human and value free.

Historically, religious authorities have exercised control over social and sexual behaviour and until the 1950s it was assumed that the law should specify thresholds of both public and private morality in the regulation of sexuality, and declaim certain acts as moral or immoral. Accounts of Classical and Roman society suggest that there was legal and

social acceptance of both prostitution and consumers of prostitution, although the prostitute herself and her family were considered disgraced (Foucault, 1986). Brooks-Gordon and Glesthorne (2003) described the privileging of male desire and the acceptance of prostitution as remaining reasonably stable for several centuries until the period of 1890-1930 when the concept of conjugal love was promoted and it became less acceptable for men to purchase sex from prostitutes. Moral discourse of the 1890s and 1900s defined prostitution as immoral, drawing on the Bible for its ideas about sin and unchaste “fallen” women. Men were required to curb their sexual urges and to be compelled to become just as chaste as women (Brooks-Gordon & Glesthorne (2003). In the decades before and after World War Two prostitutes continued to be seen as a “deviant pathological individuals” but the resort to prostitution by men, while still seen as inevitable, became less socially acceptable (Sullivan, 1997). Historically, most laws concerning prostitution have been formulated on the assumption that prostitution is an immoral activity with women being the immoral participants. Therefore, laws that ban prostitution usually criminalise women (Hughes, 2000).

In the 1950s and 60s society became more “open” and more “plural” and established laws and legal principles were unable to reflect the rapid changes taking place in society. The law was no longer able to prescribe the type of private morality that should be adopted by individuals (Weeks, 1981). In the 1980s the discourse of prostitution was modernized with prostitution moving from an individual moral discourse to a collective one. The “fallen women” of the past became “victims” of poverty or in the case of trafficking, deceit (Phoenix & Oerton, 2005). Scott (2003) found that prostitutes working in private spaces (rather than on the street) were constructed as victims of adverse circumstances, deserving of protection and compassion. Men’s role in prostitution fell from view and the aim of reforming men was abandoned. For the greater part of the 20<sup>th</sup> century, official discourse constituted prostitution as a public nuisance and a matter of private morality, therefore regulation had focused on the visible aspects of prostitution. In 21<sup>st</sup> century moral discourse, prostitution has shifted from being perceived as a victimless crime and a question of private morality, to a public interest in the moral issue of the victimisation

and exploitation of women and children (British Medical Journal, 2007; Phoenix & Oerton, 2005).

### *Relationships, Family and Sexual Morality*

A paradox of prostitution is that part of the contract is for non-committed meaningless sex; however, there are two human beings involved. Prostitution is understood to involve a form of objectification disregarding the mutuality of sex and its significance as a worthwhile human activity (Marshall, 1999; Plumridge, 2005). Biblical teaching on sexual relationships puts as much emphasis on bonding, with its essential ingredients of love and fidelity, as it does on human reproduction. By contrast the casualisation of sexual activity, or any form of sexual abuse, falls short of Christian standards for the well being of individuals and society (Randerson, 2003). Monogamy has come to refer not to the relationship itself, but sexual exclusivity as a criterion of trust; to go outside a monogamous relationship and purchase sex violates contemporary ideals and cultural customs. The idea of monogamy has had a hegemonic influence on social attitudes and the law (Brooks-Gordon & Glesthorpe, 2003).

Sex is often understood to be the “most intimate” of the emotional connections; a privileged interpersonal relationship ordinarily concealed from public view. In non-intimate sex, for example, prostitution and pornography, selling sex becomes selling oneself, and alienates the inalienable (Sexton & Sexton, 1982). Commercial sexual relationships are threatened by a contradiction rooted in common ideologies surrounding intimacy. Interpersonal relationships are not supposed to be based on lies or performances, intimacy is supposed to be real, love is not supposed to be bought with money (Kimmel & Plante, 2004).

The politics of sexuality and family life have become public issues in the latter half of the twentieth century. Society regulates sexual activity and reproduction through the institution of the family. Historically, the family and prostitution have been seen as institutions opposed both morally and culturally. A perceived view of the late 20<sup>th</sup>

century decline into secularism, materialism and permissiveness with its consequent social problems is viewed by religious conservatives as a reason for a return to “family values.” Family values suggest safety, wholesomeness and an absence of sexuality; however, the sanitisation of spaces and images so as to be suitable for children has frequently been used as a means to control the sexuality of adults as well (Kirkman & Maloney, 2006). One of the key voices in parliament promoting family values was Graham Capill the leader of the Christian Heritage political party which defined its position as anti-homosexuality, anti-abortion, anti-prostitution and pro-family, pro-marriage and pro-smacking. On stepping down from politics in 2003, Capill said one of his major achievements had been to put family policies into mainstream politics (Taylor, 2003b). The family values discourse arising within the religious community parallels developments in the secular moral debate, that a decline in moral standards and sexual practice has cast prostitutes as the victims of abuse and exploitation.

### **Economics**

A society’s material infrastructure is its most basic component in the sense that without it, physical survival is impossible or improbable (Lyon-Callo, 2004). Modern capitalist societies manage the organisation of people, and the maintenance of privilege through institutionalisation (Allen & Hardin, 2001). The institution of prostitution goes back historically to the time when the newly emerging class society began to organise its access to property and resources through the social relations of patriarchy (Sengara, 2000). The non-propertied classes’ only asset was their physical body which performed manual labour in exchange for remuneration or reward, an arrangement which could be formalised contractually as employment. The sale of the body in prostitution was formalised in New Zealand by the passing of the PRA. Decriminalisation removed all laws which criminalised prostitution, making it subject to the same laws and controls that regulate all other businesses. Prostitution was officially transformed from “payment for common lewdness” into “sex work”, a legitimate business activity with official economic language. The PRA offered the following definitions:

- Definition of “prostitute” is amended to “sex worker,” “a person who provides commercial sexual services”
- Prostitution is defined as “lawful commercial sexual services and /or business”
- Definition of “brothel” was amended and replaced by word “premises”
- Definition of “the business of prostitution” was amended to read “a business of providing or arranging the provision of commercial sexual services”
- “Commercial sexual services” are provided within the “sex industry” and are subject to the Health and Safety, Employment Relations, Resource Management and Minimum Wage Acts (Prostitute Reform Act, 2003).

From the 1970s, a new understanding of prostitution began to emerge which repositioned the prostitute not as a “social deviant” or a “sexual slave” but as a “sex worker” engaged in legitimate work (Chapkis, 1997). In 1988 the World Health Organisation (WHO) constructed prostitution as “dynamic and adaptive sex work involving a transaction between the seller and buyer of a sexual service in exchange for money or things of monetary value” (Scambler & Scambler, 1995, p. 18). By the end of the 20<sup>th</sup> century, the literature on prostitution ceased to predominantly focus on “sex” (Vanweesenbeck, 2001) and in 2004, Raymond’s review of the literature revealed that the common academic viewpoint had come to regard prostitution as legally inevitable; that is, to accept the fact that prostitution should be normalised and regularised as “sex work”. Plumridge (2005) noted that in New Zealand, academic researchers have been sympathetic to the position that sex is work, while Raymond (2004) observed that most of the literature used the language of “sex work” as if prostitution had already been accepted as just another job.

In the 1990s New Zealand took up neoliberal economic policies and practices which continue into the 21<sup>st</sup> century. Neoliberalism is a return to the classic liberal idea of the private free market as the solution to social problems and an embracing of the role of government to promote individualization, competition and market based policies (Lyon-Callo, 2003). Neoliberal policy advocates for minimal government spending, minimal taxation, minimal regulations and minimal direct involvement in the economy, believing that market forces will determine realistic outcomes (Hughes & Calder, 2007). A

heterosexual community can be analysed as a marketplace in which men acquire sex from women by offering other resources in exchange (Baumeister & Vohs, 2004). The forces of supply and demand have resulted in the location of sex and sexual services in the marketplace with the price of sex depending on supply and demand, competition among sellers, variations in product and collusion among sellers.

The construction of prostitution as a legitimate market exchange was achieved in part by the jargon associated with a sex-money exchange that corresponds to everyday market exchange terminology. Thus prostitution as “sex work” can be understood as a powerful discourse or metaphor which highlights the payment of a fee in exchange for attending to another’s (sexual) desire (Weatherall & Priestley, 2001; Weatherall & Walton, 1999). Prostitution is constructed as a market exchange by the vocabulary used to refer to it, for example it is described as a “profession”. Within the profession there are various roles including managers, workers and consumers, referred to by a wide range of names, and there are terms for the goods and services purchased and for specialty and niche services. There are terms for competition within the industry and an established tariff (Weatherall & Priestley, 2001).

In the economic discourse, a market exchange of sex for money is viewed by many prostitutes and their clients as morally superior to the “gift” exchange of sex that is characteristic of romantic relationships (Prasad, 1999). Prostitutes are undisputed agents of their lives and destinies and are contrasted with the housewife who is considered enslaved to patriarchal marriage, providing free sex (Sangera, 1997). In the market exchange economic discourse, women who choose prostitution do not see themselves as victims complicit in their own victimization. Rather, they position themselves as active agents of change, seeking to improve the circumstances of their own lives and the lives of their families.



### *A Marxist-Feminist Perspective*

The freedom and agency assumed by prostitutes in the economic discourse are contested from a Marxist feminist perspective. A Marxist feminist perspective places emphasis on the “work” aspect of prostitution, viewing any exchange of services for money as an entrance into a relation of subordination. Commodities are the key distinguishing feature of the capitalist economy and gain their particular nature through market exchange. People’s labour, an aspect of their humanity, becomes a commodity, to be bought and sold. Marx asserted that prostitution is only a specific expression of the general prostitution of the labourer. O’Connell and Davidson (2002) suggested that sex or sexual labour is not exchanged in the prostitution contract. Rather, the client parts with money and or other material benefits in order to secure powers over the prostitute’s person that he could not otherwise exercise. The contract transfers powers of command from the seller to the buyer and so requires the seller to temporarily surrender or suspend aspects of her will. Prostitutes may feel they are free but in looking at the larger economic picture in Marxist terms they are in reality oppressed workers reinforcing and perpetuating an exploitative capitalistic scheme.

### *Women’s Labour*

Women’s labour has been analysed and categorised as either reproductive or emotional labour. Reproductive labour is defined as all labour performed to reproduce human beings on a daily basis as normal functioning citizens as well as the labour which goes into providing new generations of citizens (Sangera, 1997). Reproductive labour has two aspects; sexual and social. The sexual aspect consists of biological procreation and the physical, emotional and bodily pleasure via sex. Prostitution is a form of sexual reproductive labour. The social aspect of reproductive labour consists of a range of functions performed for physical maintenance such as cooking, cleaning and domestic work. All aspects of reproductive labour have been placed on the market. There is a market price on surrogate motherhood, adoption, cleaners, cooks, nannies and the highly diversified sex industry (Sangera, 1997). Prostitution has also been conceptualised as emotional labour. Hochschild (1975, 1979, 1983) developed the concept of women’s

“emotional labour” and found that by socialisation women learn, and practice, a management of feelings to create a publicly observable facial and body display which becomes so routine as to be taken largely for granted. The concept of emotional labour recognises that in being expected to provide a particular “feeling” along with a service, a person’s labour can affect one’s deepest sense of self.

### *Contesting Prostitution as Work*

Chapkis (1997) identified three challenges to the project of constructing prostitution as work. Firstly, that consent in the context of prostitution is impossible or at least meaningless; therefore, prostitution should be defined as slavery, not work. Secondly, prostitutes are “only doing what comes naturally” and can, therefore, not be said to be really working. The third objection to confirming the status of work of commercial sex practices is that because sexuality cannot be separated from the person of the prostitute, the sale of sexuality involves a fundamental sale of self. An important aspect of metaphor is that it highlights some features of an object or experience while hiding others. An aspect of prostitution that is hidden by the market exchange metaphor is the significance of broad economic and social influences, the material conditions which shape the gendered structure of prostitution. The objectification, violence and exploitation experienced by many sex workers are other aspects of the industry that are not highlighted by the linguistic construction of sex work as a legitimate market exchange (Weatherall & Priestley, 2001). The hidden aspects of the market metaphor of prostitution: commodification, poverty, exploitation, violence and abuse, are reviewed in the next section.

### *Commodification*

In an interview with Welch (2003) Coney suggested that prostitution is the “ultimate extension of the market in our lives, reducing women’s bodies to holes to be filled, that can be sold to another person. Prostitution is a form of repeated, sequential slavery” (p.18). When sexuality becomes a commodity for exchange, it assumes the character of an object, of merchandise. Commodities are the key distinguishing feature of the

capitalist economy. Marxist thinkers view liberal discourse in property, labour, contractual consent and freedom as a series of fictions that serve to conceal or naturalise huge asymmetries of economic, social and political power. Since property in the person cannot be separated from the person, the wage labour contract actually involves a transfer of powers of command over the person meaning that the seller must temporarily suspend aspects of her will (O'Connell Davidson, 2002). The commercialisation and commodification of sex follows the affluence in Western countries that characterised the latter part of the 20<sup>th</sup> century. A large demand and a large supply have met in a way that seems to have developed a new kind of consuming culture and consuming habits in the sex trade. The multiplicity of sexual desires in modern capitalist society is, in part, actively produced by the demands of a constantly expanding and fracturing market economy and the sexual form is fragmented again and again to ascribe new desires and meanings to it, to implant new urges and new fields of experience, to market new practices and services (Sigusch, 1998).

### *Prostitution and Poverty*

Poverty is an effect of historical, cultural, and political-economic processes. These processes influence the private resources available to individuals and also shape the nature of public infrastructure, for example, education, health services, quality of housing and occupational health regulations, which form the “neo-material” matrix of contemporary life. Decisions to sell sex are made within a particular set of social and economic and political constraints that are defined by inherently gendered power relationships (Sanders, 2004). Prostitution is as old as poverty and the use of the body as an asset and means of subsistence is suggested as the core of the phenomenon of prostitution (Sengara, 1997). Historically, women with no assets and few options have relied directly on their bodies as a financial survival strategy to maintain themselves and their dependants (Williamson & Folaron, 2003). The common adage that prostitution is the oldest profession reflects the longstanding social and economic disadvantage of women; 70% of the world's poor are women. The gulf between rich and poor is widening. When men are poor, women are poorer and bear the brunt of coping with the

consequences of poverty (Brundtland, 2005). In order to enter prostitution, women need to seek survival or financial gain, to want something better for themselves or their families and in so doing, be able to shed any moral objections to prostitution work.

### *Youth Prostitution*

Youth is a prized sexual commodity. Outshoorn (2001) observed that sexuality is erased in the “sex work” discourse but paradoxically, is re-sexualised in the discourse which prevents people under 18 working in prostitution. The final aim of the PRA was to protect children from exploitation in relation to prostitution and it sets an age limit of 18 years for prostitutes. The suggestion that as long as people over 18 freely choose prostitution and give consent they should be able to trade sex for money, becomes tenuous when globally most prostitutes begin at 14 or 15 years of age, an age when they may be susceptible to psychological and physical coercion (Gorkoff, Ursel, Nixon, Tutty, & Donne, 2002; Raphael, 2002). Skidmore (2000) found that the most common age of first street prostitution was between 12 and 15 years old. Melrose, Barret and Brodie (1999) found that 48% were involved in prostitution before the age of 14.

One experience common to many women in prostitution is a history of childhood sexual abuse (Jeffreys, 1997; Jordan, 1991). Sexual abuse of children was recognised as an antecedent to prostitution in the 1980s (Silbert & Pines, 1985). Sexual exploitation, beginning with incest, can lead to an assumption that prostitution is an inevitable role in life (Hughes, 2000). Dworkin (1997) estimated that 65-90% of female prostitutes are survivors of incest and described incest as “boot camp for prostitution” (p. 25). Abused young people often run away from home or from local authority care and are recruited off the streets by pimps. Running away and homelessness, experience of life on the street and a desire for money, especially when linked to drug use, are highly correlated with youth prostitution (Cusick, 2002). Research with adult sex workers in New Zealand indicates that significant proportions commence sex work as children and workers in services for youth at risk are aware of significant and increasing numbers of young people selling sex, commonly for survival (Saphira & Oliver, 2002).

### *Economic Resistance*

Because of the economic duress of poverty, many women who engage in prostitution are considered not to have not freely chosen it (Simmons, 1998; Williamson & Folaron, 2003). However, Foucault suggests that wherever there is discourse there is the possibility of resistance. For example, if a person is positioned as powerless by one discourse, it is possible that she can position herself as powerful via an alternative discourse. Prostitution provides women with a liveable income and independence, a way to reject the victim role and to find negotiating spaces to assert their agency and dignity (Phoenix, 1999; Sengara, 1997).

Women's impoverishment and dependence leaves them open to exploitation, domination and abuse by men (Brundtland, 2005; James & Saville-Smith, 1994). SOOBS were established with the intention that prostitutes could work for themselves independently, keep their earnings and be less vulnerable to exploitative brothel operators and pimps. Some SOOBS are genuinely independent operations owned by prostitutes themselves. Others have become "\$2 shops" organized and run by people willing to exploit vulnerable women.

One brothel keeper, who did not want to be named, said a lot of Asian women, often working illegally, were offering cheap deals. They ignored health checks and had none of the costs of brothel licenses, food and liquor licenses of the established businesses. Another source said rugby and rugby league players preferred visiting small 'whore-houses' where they would not be recognized. (Orsman, 2008, p. 5)

Paradoxically SOOBS are out of reach of regulation, only subject to inspection if they transgress local or central government laws. SOOBS have none of the overhead costs of the brothel licenses or food and liquor licenses, which are required in other brothel businesses, and are becoming the dominant economic model of prostitution business in New Zealand. Flora's, the brothel named after Flora McKenzie, Auckland's most notorious madam, has closed after 30 years. Annah Pickering, the Auckland regional manager of the NZPC described Flora's as the victim of competition from the work-

from-home brothels that have sprung up since Parliament legalised prostitution changing the face of the sex industry (Orsman, 2008).

### *Globalisation*

The establishment of decriminalised prostitution businesses in suburban New Zealand has occurred in the context of economic globalisation. Sangera (1997) suggested that forces of globalisation affect and direct all the structures and institutions of our contemporary social reality and that no phenomenon or issue can be understood outside a globalised context. Over the last twenty five years there has been a rapid explosion in prostitution and the trade in sex in most countries of the developing world. Rather than individual or brothel prostitution, women and children in developing countries are coming to be seen as a new resource to be capitalised on. Prostitution, sex tourism and sex entertainment now constitute a multibillion dollar international sex industry which is qualitatively different from the old practice of prostitution and sex trade.

### **Health**

The PRA aimed to create an environment that is conducive to public health; however, health discourses were narrowed to a concern with sexually transmitted disease, in particular HIV/AIDS. The NZPC (2003) described the PRA as a health measure, to be effected by requiring operators of brothels or commercial sex businesses to protect sex workers from disease by promoting and providing information on safer sex practices and the use of condoms. The NZPC claimed that the PRA would protect against the spread of HIV/AIDS because existing laws encouraged those operating sex businesses to take complicated precautions to hide evidence of the sexual purpose of the business, for example, an unwillingness to display safer sex literature and products. Historically, the possession of condoms had been used as evidence in court that brothel keeping was being practiced. The NZPC claimed they found it difficult to educate the sex workers who lived a life underground and in hiding and the PRA was seen to remove legal impediments to

the creation of a safer environment and reduce potential risks to public health (NZPC, 2003).

Foucault describes the body as a historically and culturally specific entity, an effect, an inscribed surface on which discourses are enacted and contested. Biomedicine is an authoritative discourse on the body in our culture. Underpinning our commonsense understanding of sexuality is the biomedical discourse. It assumes that sexual feelings, behaviours and identities are explained or determined by the biological functioning of the human body (Kirkman & Maloney, 2005). The medicalisation of sexuality is the process by which aspects of sexual behaviour, relationships and identities have fallen under the purview of doctors and other health professionals. By defining a particular behaviour as pathological, medical authorities are sanctioned with the exercise of considerable power and at various times, masturbation, premarital sexual intercourse, anal sex, oral sex and same sex desire have been declared symptoms of illness (Kirkman & Maloney, 2005).

At the beginning of the 21<sup>st</sup> century, the gaze on sexuality in the biomedical discourse was on the risk of HIV infection. Although the Crimes Act 1961 made it an offence to wilfully infect with disease, the Massage Parlours Act, 1978 did not include any health obligations. In 1989, Earls and David suggested that the time was past for moral, religious or political arguments against prostitution and that what was important was not stamping out prostitution, but modifying the sexual behaviour of consumers and prostitutes to reduce the risk of spreading HIV/AIDS.

Farley and Kelly (2000) reviewed the literature on prostitution from two time periods, 1980-1984 and 1992-1996, finding an emphasis on HIV/AIDS. Vanwesenbeeck (2001) reviewed the literature from 1990–2000 and found the association between prostitution and its negative features, in particular HIV, overwhelming. A current reading of the literature confirms the strong dominance of the HIV/AIDS discourse in the health and social sciences literature on prostitution. Farley and Kelly (2000) suggested that while prostitution is a convenient sexual service, it is also a source of anxiety about physical health. Sigusch (1998) described the way in which sex, once mystified in a positive

sense, has now taken on a negative mystification characterised by abuse, violence and deadly infection. In an analysis of contemporary governance of prostitution in New South Wales, Australia, Scott (2003) found that prostitutes have been made the subject of strategic interventions which have attempted to normalise prostitution and render the prostitute a hygienic subject.

#### *Prostitutes as Vectors of Disease*

Scott (2003) found that prostitutes working in public spaces were constructed as sexual agents wilfully engaged in criminal conduct and the spread of contagion. Plumridge and Abel (2001) examined street prostitution in New Zealand and found that street workers were younger than indoor workers, had started work at a younger age and had less education than indoor workers. More street than indoor workers used money from prostitution for drugs and used drugs at work. Plumridge and Abel (2001) found that in New Zealand there was a high level of condom use and little “negotiation” about them with consumers. Warr and Pyett (1999) described a complexity of meaning that is attached to sex work, love and intimacy and condom use by prostitutes. Furthermore, Plumridge and Abel found that men are inclined to leave the responsibility for safe sex practices to their private as well as their paid sex partners. Weitzer’s (2005) review of the literature found that condom use was considered entrenched in prostitutes’ practices to the extent that it was rarely discussed or reflected on and that the strict use of condoms by prostitutes confirmed the findings of a general trend establishing a high condom use rate. Sanders (2004) found that experienced sex workers were extremely confident in their working practices and routines in terms of their assertiveness over male clients and their command of the sexual transaction. This reflects Barnard’s (1993) findings that control over the client encounter is critical for sex workers to achieve compliance with health related practices. While the PRA promoted the use of condoms and safe sex practices, at the time of its implementation there was already a high level of compliance with condom use by prostitutes in New Zealand.



### *Occupational Health and Safety*

The construction of prostitution as work subjects it to occupational health and safety laws and requirements. An intention of the PRB was to offer the protection of employment and occupational health laws to sex workers. The Public Health Association (2001) supported the PRA primarily for health reasons, suggesting that it would assist in promoting safer sex and hence disease prevention and enable health and occupational safety legislation and employment legislation to be more rigorously applied. Occupational Health and Safety (OSH) guidelines for the sex industry were published (in electronic form only) in 2004 after consultation with the NZPC, self employed sex workers and owner/operators of commercial sex industry establishments. Relevant government agencies such as the Ministry of Health, Local Government New Zealand, the New Zealand Police and the Accident Claims Corporation (ACC) were also consulted. The guidelines set out the relevant health and safety duties that are necessary for owners, operators, employees and other parties in the sex industry to assist them to implement best practice in the workplace.

In the Health and Safety Act, a workplace hazard includes activity, events, occurrences, phenomena, process, situations or substances that are an actual cause of harm and include physical and mental fatigue, drugs, alcohol, traumatic shock or another temporary condition that affects a person's behaviour. According to the OSH guidelines for the sex industry, occupational overuse disorder refers only to the physical stresses in the body and makes no reference to the psychological effects of prostitution. The ACC Fact Sheet in the OSH guidelines states that certain mental injuries are covered and that ACC covers claims arising out of mental or physical injury arising from sexual abuse; however, there is no consideration of the psychological impact of prostitution.

### *Prostitution: A harmful practice?*

The debate on whether prostitution is a harmful or harmless practice is polarised in both the academic and popular literature; however, prostitution does not have a uniform effect on prostitutes' physical or mental health (Weitzer, 2005). Plumridge (2005) found

contrasting accounts of street and indoor prostitutes' subjective experiences in relation to prostitution, suggesting a stratification of the prostitution workforce. Street workers made minimal attempts to construct prostitution as a human encounter, describing feelings of fear, loathing and disgust, and describing the sex as nasty and brutish. The street was constructed as "the death zone" (Plumridge, 2005). In the United Kingdom prostitutes have the highest murder rate of any group of women in the general population (Goodyear & Cusick, 2007). Indoor prostitutes were more likely to have a positive subjective experience of prostitution than street prostitutes. Romans, Potter, Martin and Herbison (2001) in a study of 29 prostitutes in New Zealand (27 of whom worked as call girls, escorts or in massage parlours and two who worked on the street) and an age-matched sample of non-prostitute women found no differences between the two groups in physical health, self esteem, mental health or the quality of their social networks. Further, a study of 95 call girls in Sydney, Australia found that they were generally emotionally healthy. Psychological wellbeing was associated with a range of structural factors including level of education, control over working conditions, resources for protection and the type of consumers they engaged with. The personal resources and the power and control a prostitute has in a sexual transaction play a role in her perception of the experience and whether it has a harmful impact on her physical or psychological health.

In a study of prostitutes over time, Williamson and Folaron (2003) found that the burdens of prostitution accumulate. After an initial period of enjoying the financial rewards, "freedoms" and camaraderie of prostitution, women experienced becoming repeatedly victimised and the work no longer seemed like easy money. If they were not able to leave prostitution, women's physical health deteriorated and they often found themselves overwhelmed with anxiety and depression. The most common reaction to despair and depression, when leaving was not possible, was the use of drugs and alcohol to numb themselves from emotional distress and the loss of bodily integrity.

*The Psychological Harms of Prostitution*

The physical and psychological harms of prostitution, for example, violence and abuse are aspects of prostitution that are not highlighted by the construction of prostitution as a market exchange. Macdonald (2003) suggested that the commodification of sex is one of the worst intrusions of capitalism and commerce into the human experience of consciousness, however, the dominance of HIV/AIDS in the academic literature on prostitution has tended to exclude discussion of physical and sexual violence and the emotional harm of prostitution. The psychological harms have been identified as post-traumatic stress disorder, psychosis, dissociative disorders, depression, anxiety, deliberate self mutilation, self medication with alcohol and drugs and suicide (Raymond, 1999).

Prostitutes can erase psychological pain with alcohol and drugs and they can learn to distance themselves from their sexual use to preserve the intimate connection between sexuality and the sense of 'self' (Chapkis, 1997). In the construction of prostitution as psychologically harmful, the self is understood to be alienated from its true nature, choices and desires. Prostitution becomes a self estranging process as a woman develops an instrumental relationship to her sexuality and hence to herself, learning to split herself into an object and a subject and to manipulate and transfer her sexuality (Chapkis, 1997; Hoigard & Finstad, 1992). She must learn how to "sell the body and keep the soul" (Edwards, 1993, p. 103).

Prostitutes engage in a range of physical and psychological survival strategies in their work. Hoigard and Finstad (1992) found that public and private worlds of prostitutes were divided by secrecy, blanking out techniques, for example, distancing and dissociation, retaining physical boundaries, keeping to time, and avoiding relationships with long term customers. Plumridge (2005) found that prostitutes use deep and surface acting techniques for psychological survival. Many of these psychological strategies are those used by abused children to survive, particularly dissociation and secrecy. While psychological survival strategies are effective, Barry (1995) suggested that ultimately this distancing and detachment from her body and her actions during the sexual act of prostitution is damaging to a prostitute's personal wholeness and mental integrity.

Hughes (2000) suggested that most women do not emerge from prostitution into positions of power, respect or admiration. Most remain powerless as individuals, as an underclass and as a group and emerge from prostitution ill, traumatised and as often as poor as when they entered.

### *Prostitution and Psychiatric Discourse*

Mental health and illness is a contested political issue. Mental health concerns about the spectrum of violence and abuse in which prostitution can be positioned, have been marginalised by the biological discourse of psychiatry in the early 21<sup>st</sup> century. Many service users find biomedical interpretations limited and want to understand their experiences in terms of the social and cultural contexts in which they occurred (Thomas & Bracken, 2004). Abbott (1994) suggested that it is stress and exploitation, in the context of social invisibility of that exploitation which causes mental ill health. In New Zealand, national mental health policy documents have almost nothing to say about the harm of abuse and its impact on mental health in the form of trauma or its link to a spectrum of physical and mental illness. Wells (2004) suggested that New Zealand mental health policy makers have not taken the issue of abuse seriously and do not formally recognise abuse as an issue that affects the lives of a significant number of mental health service users.

Wells (2004), a service user spokesperson, has articulated the needs of mental health service users who have experienced abuse. They request a movement beyond a biomedical approach to mental illness and an end to the pathologising and medicating of the distress of past abuse. They request access to professionals who work effectively with people who have histories of abuse, professionals who ask what the consumer believes about what has created the distress and then work accordingly. This approach has come to be known as “trauma informed care.” Trauma informed services are those in which service delivery is influenced by an understanding of the impact of interpersonal violence and victimization on an individual’s life and development. Trauma informed services avoid retraumatizing survivors or blaming them for their efforts to manage their traumatic

reactions (Salasin, 2005). The role of mental health nurses positions them as witnesses to narratives of trauma. Narratives of harm and abuse have a pattern and coherence in what is said and what is unsaid about the experience of that abuse, whether it is a small child who was abused or a prostitute who was coerced. It takes courage for a person to tell their story and it takes courage for a nurse to listen.

In this chapter I have reviewed the academic literature on prostitution and prostitution law reform using seven emergent discourses as an organising framework. The next chapter analyses the discourses on prostitution law reform found in the New Zealand Herald in 2003.

## **CHAPTER 4: An Analysis of the Discourses on Prostitution Law Reform Located in Media Text in the New Zealand Herald in 2003**

In this chapter, media texts from the prostitution law reform debate in the New Zealand Herald are analysed. I examine the way in which prostitution, the prostitute and the consumer were discursively constructed and politically positioned. This analysis draws on the findings of the previous chapter in which I identified seven discourses: laws, human rights, moralities, sexualities, economics, feminisms and health. These discourses provide a broad context for the analysis which follows. While the seven discourses were constructed as discrete entities for the purposes of the literature review, in practice they are interconnected and these discursive relationships are reflected within the analysis of texts in this chapter.

Discourse analysis enables researchers to identify and analyse discourses and discursive practices, and the social and historical context from which they emerge, enabling a deeper understanding of social problems and issues. One limitation of Foucauldian discourse analysis is that its rigour is dependent on the skill and reflexivity of the researcher, rather than on the method itself. The selection of texts for analysis is a subjective process because Foucauldian discourse analysis focuses on the content of texts, meaning that numerous different readings and understandings of any text are possible. Therefore, my selection of these particular texts for analysis over others is contestable. The following texts were chosen for analysis because they were frequently mentioned, constituted an aspect of a wider discourse, represented discourses located in the literature and reflected the aims and purpose of the research.

Discourses hold positions for the speaker of a text and reproduce relations of power. Hook (2001) described discourse analysis as a process of identification of the gaps or shortcomings of a given discourse “tracing discursive formations of power and control by assembling a strategically organised ensemble of historical knowledges that will be capable of opposition and of struggle against the coercion of presiding discourses” (p.

536). In line with this description of the political purpose of discourse analysis, the texts I have selected for analysis were also chosen for their capacity to illuminate the discursive formations and practices of power which I “heard” spoken within the data. The texts have been interrogated and analysed using the questions outlined in Chapter 2.

Tim Barnett, as the sponsor and spokesperson of the PRB, had a significant investment in its successful passage into law. After the passing of the PRA, he was named “Politician of the Year” for his skill in managing the Bill’s progress through both the public and parliamentary debates. Because of Barnett’s significant role in the PRA, a number of the texts analysed in this chapter report his voice.

### **Reform of an Unjust Law**

The PRA aimed to provide prostitutes with the rights and protections enjoyed by other citizens and workers in New Zealand. As described in Chapter 1, under the Massage Parlours Act prostitution itself was not illegal but, because of a range of illegal acts committed in association with acts of prostitution, for example soliciting or living off the earnings of prostitution, the law would most likely be broken at some stage. Soliciting for business was illegal while consuming sexual services was not. Prostitution was intended to become recognised in employment law and occupational health and safety regulations, creating employment equity and safe working practices. The decriminalisation of prostitution also meant that prostitutes would no longer transgress the law in the course of their practice and could report crimes against them, such as violence, without fear of prosecution. There was agreement among speakers in the New Zealand Herald texts about the inequity and injustice of prostitution law prior to the PRA. This is represented in the following texts:

*I don't think prostitution is a good thing, but talk about stupid and unjust laws. In this particular human transaction, men, who almost entirely create the demand for the service in question, can do no wrong. The women who accept their money are criminals. This is clearly insane. And no one is even pretending the present law works.”* (Wichtel, 2003b).

In this text, the speaker describes the ways in which the Massage Parlours Act 1978 was unjust, outdated, discriminated against prostitutes and produced a sexual double standard. The speaker uses strong language and suggests that prior to the PRA, prostitution law was ineffective, disrespected and ignored. The taken-for-granted sexual double standard inherent in prostitution law prior to the PRA is further highlighted by the following texts:

*“To offer [sex] is to break the law, but to ask for it isn’t. To put the money down is legal but to pick it up is not.”* (Avery, 2003).

*“Most fundamentally the prostitution reform legislation assails the high degree of hypocrisy about the sex industry that pervades society.”* (Editorial, 2003).

*“Prostitutes Collective co-ordinator Catherine Healey asked why society tolerated men paying for sex while denying rights to sex workers.”* (Tunnah, 2003a).

*“Our laws reflect this inequality by penalising women for providing what the men demand. Reforming the law is essential if we are to eliminate a double standard that endorses discrimination and exploitation.”* (Jordan, 2003).

The State was involved in establishing and enforcing a sexual double standard through the implementation of the Massage Parlours Act. The sexual double standard functions to create identities for the prostitute and the consumer to take up. In the next text, the prostitute is constructed as a whore. The female prostitute constitutes a figure in the social imagination with the street prostitute stereotypically depicted as a motif of degeneracy, contagion and sexual lasciviousness (Hubbard & Sanders, 2003):

*“People imagine these women cunningly lingering on the dark and grimy street corners in the small hours of the night, rust on the steelwork of society, preying on men who might not otherwise be tempted to stray from their hearth and home. Oh really.”* (Avery, 2003).



Here the prostitute is constructed as a predator located in a dark and dirty place, suggesting she, herself, may not be hygienic. Her activities are clandestine and suggest a threat to the foundations of society. The imagery of a cunning predator suggests that the prostitute is responsible for the practice of prostitution and the ruin of otherwise virtuous men.

The Madonna and Whore are dichotomous subject positions which have traditionally been available to women to take up. They limit the identities which women can assume and define women in terms of power and moral status. In order to use women in prostitution, men need to overcome any moral or other objection they may have about what they are doing and be able to justify their sexual practices. This can be accomplished by calling upon the stereotype of the whore. The construction of prostitutes as whores transforms them into stigmatised “others” available for sexual use:

*“What is disturbing about the disgust expressed [towards prostitutes] is that it perpetuated the sort of contempt that leads men to feel justified in abusing and exploiting prostitutes. Or women they think act like prostitutes, or talk like prostitutes or wear short skirts like prostitutes.”* (Wichtel, 2003b).

Here the whore stereotype is constructed by a particular form of dress or behaviour. The contemptible status attached to this stereotype serves not only to justify a prostitute’s sexual use but also her exploitation. The next speaker describes the way in which the Madonna-Whore dichotomy was embedded in the unjust and inequitable prostitution law in New Zealand prior to the PRA:

*“We are governed by laws developed by those who believed women could be divided into Madonnas and Whores and that men needed sexual access to whores in order to prevent adultery. The path to whoredom would be condemned, men’s path to the whores would not be. Our laws reflect this inequality by penalising women for providing what the men demand.”* (Jordan, 2003).

Here, the speaker suggests that the Massage Parlours Act reflects hegemonic cultural stereotypes which construct women in terms of their sexual utility to men. Sex with a whore is justified as a male practice which aims to preserve monogamous marriage to a Madonna. Creating a double bind, a situation in which a person is given conflicting cues so that to obey one cue is to disobey another, the whore is constructed to meet men's demands but then becomes subject to legal punishment. The consumer's use of the whore however remains situated within normal social and legal boundaries. In the next text the effect of that double bind is described:

Georgina Beyer, a former MP and prostitute *“supported the bill for all the prostitutes I've ever known who have died before the age of 20 because of the inhumanity and hypocrisy of a society that would not allow them, or give them the chance to ever redeem whatever circumstances made them arrive in this industry.”* (Tunnah, 2003d).

Here the speaker constructs the young prostitutes she knew as victims of the circumstances which placed them on the pathways to prostitution. The hypocrisy which underpins the double bind of prostitution saw them criminalised and further victimised, denying them the chance of redemption, and for some, a chance at life itself. On the passing of the PRA, a speaker concluded that:

*“Whatever had happened in Parliament this week ....at least the law looks less of an ass.”* (Roughan, 2003).

In this text it is suggested that the review of prostitution law occasioned by the PRB had, regardless of outcome, restored the standing of the law itself. Poor or outdated laws not only affect the population who are subject to them, but reflect on the respect and authority in which the Law is held by society. While I found that there was agreement expressed in the texts from speakers about the need for prostitution law reform, the form that change should take was contested. The debate about how prostitution, prostitutes and consumers should be constructed and positioned in New Zealand society is represented in the analysis of the texts which follows.

### **The Discourse of Harm Minimisation and Health Promotion**

Barnett positioned harm minimisation and health promotion as the dominant discourse in the PRB debate. He suggested that MPs (and their constituents) had two choices:

*“They could agree to a law which best protected sex workers while protecting community sensitivities, or they could accept the status quo with all its faults.”* (Tunnah, 2003d).

In this text, Barnett offers only two discursive positions for taking up, narrowing the debate and suggesting that the only alternative to the PRB was to retain the status quo. Barnett emphasises the protection of prostitutes, reflecting his commitment to human rights and health reform. Barnett’s investment in the suite of reforms brought to completion by the PRA reflected his commitment to human rights and health reforms:

*“Barnett admitted to being “immensely satisfied” to have completed what he says was the third trunk of much needed law reforms. It began with the 1986 Homosexual Law reform Bill... followed by changes to human rights laws to prevent discrimination against people with HIV/AIDS and has now been completed with the Prostitution Law Reform Bill.”* (Tunnah, 2003a).

The common threads in the suite of reforms are HIV/AIDS, and discrimination against two marginalised social groups, homosexuals and prostitutes, both of whom have been regarded as being at high risk of spreading sexually transmitted diseases. In the following text, a Herald reporter quotes Barnett’s official construction and political positioning of the PRA:

*“At the heart of the Reform Act is the concept of harm minimisation. That means accepting the inevitability of prostitution, but not endorsing or morally approving of it. The systems and obligations of the new law... each are designed to minimise a specific harm. That offers the best hope to marginalised sex workers. This is about trying to plan good health law, good public planning law, good criminal law, perhaps make a moral*

*statement and patch it all together. And I think it is accepting the inevitability of prostitution.*" (Barnett, 2003a).

Here Barnett constructs the PRA as primarily a strategy of harm minimisation which serves the interests of prostitutes as a marginalised group. He uses the repetition of the word "good" to position the PRA as "good" law, constructing the law as benevolent and the lawmakers as people working in the best interests of society. Barnett also alludes to the systems and obligations of the new law and the ways in which prostitutes will be required to regulate themselves. He constructs prostitution as an inevitability, thereby foreclosing the debate on whether there is an alternative to the acceptance of prostitution, for example the criminalisation of consumers, such as exists in Sweden. Barnett constructs prostitution as an accepted and acceptable cultural practice and suggests that the PRA offers the best hope to prostitutes in New Zealand.

Purposefully positioning the PRB as morally neutral, the Prostitution Law Reform Committee specifically stated that it offered no moral approval of prostitution and that nothing in the bill should be seen as an endorsement or sanction of prostitution or its use (Ministry of Justice, 2000). Hegemonic discourses include implicit rules and the positioning of the PRB as morally neutral, established a rule of discourse. In the next text, Barnett explains this rule:

*"At the heart of the Reform Act is the concept of harm minimisation. That means accepting the inevitably of prostitution, but not endorsing or morally approving of it."* Barnett, 2003a).

Accepting the inevitability of prostitution and decriminalising it, while not morally approving or endorsing it, opens a space for normative morality in the health promotion and harm minimisation discourse. A normative construction of morality refers to the "common sense" idea that in specific conditions a course of action and behaviour would be advocated by all rational people. The inference in this text is that if a morally neutral stance on prostitution is taken, then accepting the inevitability of prostitution and

legislating for harm minimisation become rational responses. However, as the speaker in the following text observes, a paradox in the positioning of the PRA as morally neutral emerges:

*“If New Zealand passes this bill, we will, as a society, be taking a morally neutral position on an activity that is never neutral. And, ironically, we will be asking our MPs to cast a conscience vote in a moral vacuum.”* (Burstyn, 2003a).

Conscience votes are required when an issue is contentious, dividing members within political parties and making a unified party-political stance unobtainable. Conscience votes are rare and are usually about religious, moral or ethical issues, for example homosexual law reform and prostitution law reform. Here the speaker identifies the paradox of a conscience vote when a rule of discourse specifies moral neutrality. On the passing of the PRA, Barnett reinstates moral discourse:

*“Mr Barnett said the issue was the most significant moral debate in Parliament since homosexual law reform 17 years ago.”* (Taylor, 2003a).

Barnett also reiterates the dominant health discourse:

*“This is an historic moment. We have completed the unfinished business around getting sensible public health based measures in our legislation.”* (Taylor, 2003a).

Here, Barnett locates the passing of the PRA and the completion of his health and human rights agenda within an historical context suggesting that a new era has begun. By describing the new health discourse as “sensible” we are invited to align ourselves with the PRA’s discursive “common sense”; to accept the ideology of the new era of prostitution as our own. The discursive emphasis on the law in this text reflects a construction of prostitution as a social institution, erasing the individual, embodied, physical practice of prostitution and the contextual social factors which influence a persons’ decision to participate in prostitution.

Mindful that the PRA had passed into law by the narrowest of margins, Barnett commented:

*“MPs had failed to understand that the health and well being of sex workers had been the key to the entire debate about a conscience vote.”* (Tunnah, 2003a).

In this text, Barnett constructs the lack of support for the PRA by almost half the MPs in Parliament as their “failure” to understand that it was motivated by concern for the health and wellbeing of vulnerable prostitutes. Here he again reiterates the political message that the PRB was a health promotion measure. He appears to construct the lack of support from MPs for the PRB as their failure to comprehend the “goodness” of his Bill, rather than acknowledging that MPs who did not vote for the Bill might have had a valid and robust counter-argument.

### **Prostitution and the Silence of Consumers**

Silence is a discursive element at least as constitutive of social reality as other forms of discourse. It can be a means of suppressing social reality by not allowing certain things to be talked about (Ward & Winstanley, 2003). The practice of maintaining secrecy and silence about men’s sexual use of women in prostitution meant that there was little contribution from men’s voices in the media debate:

*“It sometimes seemed the entire prostitution debate was conducted between women. Apart from the sponsor of the bill, Tim Barnett, men seemed more inclined to shuffle awkwardly and let it be known that they, for one, would never pay for it.”* (Roughan, 2003).

In this text, men are described as being awkwardly present and mostly silent, constructing an absent presence. When they do communicate it is to exclude themselves as a prostitute user, practising the omerta, the code of silence. Women are constructed in this text as the

voices in the debate on prostitution law reform. The only male person who did not observe the practice of silence and the only consumer voice heard in the New Zealand Herald text was the MP John Tamihere:

*“There is an issue about a rite of passage.... Whether you’ve been to your mate’s stag party, whether you’ve been wherever you’ve been with your mates in your teenage years. I appreciate [others have] never been to any of these joints but what I wanted to say is that I have been. “I just acknowledge that in terms of my growing up, in terms of the communities I mixed in, these things have occurred.” (Young, 2003).*

In this text, Tamihere normalises prostitution as the rite of passage of young men and constructs himself as an ordinary man in the context of his community. In the following text, consumers are also constructed as ordinary men:

*“The clients are nice guys – just ordinary, average, everyday guys. Sometimes, the men who pay her want just a cuddle and a chat.” (Middleton, 2003).*

Ironically, in order to create a picture of “nice guys” the sex of prostitution is erased in this text and instead prostitution is constructed as a relational practice.

On the passing of the PRA, the editor of the New Zealand Herald suggested:

*“The PRB recognises the reality of prostitution and that the best means of preventing the exploitation of women in the industry is the introduction of a measure of control. At best the new prostitution law supplies a more honest approach to the realities of modern society... ...in the continuum of social law that eschews a blind eye and instead tackles the proven harm of a practice.” (Editorial, 2003).*

This speaker acknowledges the proven harm of prostitution and attaches the virtue of honesty to the project of prostitution law reform. He justifies the introduction of measures of social control and regulation with the prevention of exploitation and harm of

prostitutes. The speaker assumes that the decriminalisation of prostitution restores the practices of prostitution to public view; however, I suggest that while the official discourses on prostitution law reform have fixed their gaze on the institution of prostitution and the prostitute, they continue to engage their blind eye to avoid seeing the consumer. Thus, a rule of discourse, the traditional complicity which privileges the consumer with invisibility and silence, is maintained.

Silencing can be used by a group as an active means of suppressing other groups. Feminist researchers and activists are concerned with analysing and revealing taken for granted hegemonic discursive practices which express unearned privileges and injustice and limit the power which women can take up. Prostitution became a defining issue in feminism during the second wave of feminism in the latter half of the 20<sup>th</sup> century and feminist voices are represented in the next section of the analysis of the texts.

### **Feminist Constructions of Prostitution**

The passing of the PRA depended in part on constructing prostitution as an activity which, if decriminalised and with proper protections in place, could be defended as a reasonable occupation, and for some women, an occupation of choice. The problem of locating prostitution within feminism divided the feminist movement creating an ideological impasse which centred on the construction of prostitute identities as either empowered working women in charge of their lives or prostitutes as the disempowered victims of men (Chapkis, 1997).

Foucauldian discourse analysis lends itself to an investigation of the way in which the prostitute body is produced and inscribed and the way that power relations produce particular kinds of identities. Foucauldian discourse analysis also enables us to question material conditions, the broad social and economic influences which shape the conditions in which prostitution take place. The question of how women are able to make choices in conditions not of their choosing while keeping spaces open in which to recognize both agency and victimization, is the central problem in the contemporary feminist debate on



prostitution (Chapkis, 1997). In the following texts, feminism appears within the media debate on prostitution law reform.

Green Party MP Sue Bradford identified as a feminist and supported the PRA:

*“One of the bills strongest supporters was Green MP Sue Bradford, who urged women MPs and those who considered themselves to be feminists to support Mr Barnett. “Restrictive laws merely encourage violence, trafficking and rape and the spread of HIV/Aids, not the opposite.” (Tunnah, 2003d).*

In this text Bradford makes reference to the health promotion and harm minimisation discourse and calls on women who consider themselves feminists to support the PRA. Bradford suggests that a pro-PRA stance is the natural allegiance of feminists and that such a stance would demonstrate solidarity with feminism. Dianne Yates, the MP who proposed the failed amendment for the criminalisation of consumers, also cites feminist principles, but constructs them as grounds for opposing the PRA:

*“If the amendment does not pass, she will vote against the bill to decriminalise prostitution, citing feminist principles. “I don’t agree that prostitution and soliciting is a viable occupation for people in this country,” she said. “Coming from a feminist perspective, I think it is exploitation of women.” (Young, 2003).*

Both Bradford and Yates co-opt feminism into their arguments assuming feminism to be a monolithic movement rather than a site of contested political positions. The next speaker identifies the ideological feminist divide:

*“The issue has long divided women. Prostitutes are either disempowered victims of the gender war or its superheroes.” (Wichtel, 2003b).*

In this text the speaker describes the power positions available for women to take up in prostitution as being the binaries of victim or hero. This polarisation of women became

constructed in the feminist movement as Radical/Abolitionist feminism (the prostitute as victim) and Liberal/Rights feminism (the prostitute as hero). In the next section I analyse the Liberal/Rights feminist discourse within the texts. The Radical/Abolitionist discourse is analysed later in the chapter.

### **A Liberal/Rights Feminist Discourse**

As discussed in Chapter 3, Liberal/Rights feminists support the rights, freedoms and agency of prostitutes and view prostitution as a victimless practice. In the following text, the speaker elaborates on the theme of prostitutes as superheroes, citing Camille Paglia, a Liberal/Rights feminist writer who personifies sex radicalism, women's sexual autonomy and its potential threat to patriarchal control over women's sexuality:

*“The prostitute is not, as feminists claim, the victim of men but rather their conqueror,” declares Camille Paglia, “an outlaw who controls the sexual channel between nature and culture.”* (Wichtel, 2003b).

Liberal/Rights feminists view prostitution as a place of agency where the prostitute makes active use of the existing sexual and political order to position herself as sexually and politically powerful. The Liberal/Rights construction of prostitution supports a view of the prostitute as an independent, empowered, entrepreneurial woman in charge of her life; one who might find success, enjoyment, power and wealth in the business of prostitution. From a Liberal/Rights perspective, prostitution law reform and particularly the right to set up independent, deregulated SOOBS offer new freedoms and business opportunities for prostitutes. In the next section, texts which reflect the construction of prostitution as an economic market exchange consistent with a Liberal/Rights feminist perspective are examined.

### **Prostitution Business: The construction of prostitution as work**

In the context of the emergence of neoliberal economic discourse in the 1970s, a new understanding of prostitution began to emerge, repositioning the prostitute as a “sex worker” engaged in legitimate work (Chapkis, 1997). At the beginning of the 21<sup>st</sup> century, Raymond’s (2004a) review of the literature revealed that the common academic viewpoint was to regard prostitution as inevitable, that is, to accept the fact that prostitution should be normalised as “sex work”. The PRA reconstructed the language of prostitution, positioning prostitution as “sex work” and the prostitute as a “sex worker”. Prostitution became “lawful commercial sexual services and/or business” located within a “sex industry.” In the following texts the PRBs reconstruction of prostitution as work is identified:

*“The discussion on prostitution tends to centre around... whether prostitution is work....”* (Avery, 2003).

*“Prostitution is work, but not as we know it....”* (Wichtel, 2003b).

In these texts the new legal construction of prostitution as work becomes centred, however, the speech is tentative. The reconstruction of prostitution as sex work situated within sex businesses within a sex industry represented a paradigm shift in the politics of prostitution in New Zealand. In the following texts the responses to this shift are polarised:

*“[It] will mean... they will have what everyone else takes for granted in a normal job... people may not see this as a normal job but it’s there, it’s not going to go away.”* (Trevett & Walsh, 2003).

*“If it is willing seller-willing buyer between consenting adults, do you think you have a dog’s show of ever making this stop?”* (Young, 2003).

Here, a normalising discourse of work and a construction of the market forces which make the work available have appeared. It is further elaborated in the next text:

*“Of the more than 500 sex workers I’ve met, I can think of quite a number who are well-adjusted people making a living and getting on with their lives. Of course, there are those who have been damaged and hate their work but I can also think of a significant number of teachers, nurses and secretaries who express the same sentiment.”* (Hanson, 2003).

In this text the effects of prostitution as work are normalised by comparison to other forms of labour. Numerous prostitutes are described as well adjusted people engaged in a normal practice of making a living. Those for whom the work of prostitution is loathsome and harmful are compared with other female occupational groups who dislike their work. The negative effects of any paid labour have been described by Karl Marx as the “general prostitution of the labourer”, where any exchange of services for money is understood as an entrance into a relation of subordination (McLellan, 2000).

In the following text the idea of prostitution as work is contested, and condemned as a neoliberal artefact:

*“Let us hope our MPs are not swayed by ill-founded liberal notions that prostitution is just another form of work.”* (Wichtel, 2003b).

Here the speaker suggests that the construction of prostitution as a form of work is ill founded. In the neoliberal economic paradigm, prostitution represents a market exchange. Prostitutes are positioned as active agents of change seeking to improve the financial circumstances of their lives and those of their families. However, in order to enter prostitution, most women must shed their moral or other objections which are associated with prostitution work. The most pervasive form of enticement into prostitution and in overcoming objections is financial gain. In the following texts prostitutes are cited as speaking about money:

*“They are friendly, relaxed and frank. The two most talkative ooze self confidence asserting that they are in control of their bodies and their lives. The money they say is a highly motivating means to an end.”* (Middleton, 2003).

The women are presented as offering plausible explanations for the financial and the lifestyle benefits of prostitution and the sense of agency with which they approach and practice prostitution:

*“Taylor is a mother of two whose long term partner thinks she has a city office job... after 18 months in the game, she’s got “one more financial goal” and then she’s gone.”* (Middleton, 2003).

*“Why work 40 hours when you only have to work 4? I want a life.” The kids are all in bed. This is a couple of hours twice a week, and that’s it. I’m always home by 11.30 because I have to be up at 6.30 to get the kids ready for school. My husband doesn’t mind what I do. He knows I’m a professional. I just see dollar signs in their eyes.”* (Perrott, 2003).

Here the money earned in prostitution is understood as the means to an end. One woman sees money, rather than a human being, in the eyes of the consumers. Two of the speakers are mothers and both have partners. One partner is aware of the prostitution and the other is not. In these texts there is no clear indication of poverty, desperation or lack of choices. One of the necessary conditions for women who are sustaining the practice of prostitution is that the anomalies and contradictions of their lives are resolved and rendered coherent in a way which permits prostitution to be a plausible practice. As all subjects do, prostitutes re-authorise their narratives. Here, making a living and the financial support and education of children constitutes a plausible reason for engaging in prostitution.

**Prostitution Business: The prostitute as a hygienic product**

Prostitutes have historically been regarded as vectors of disease. In the era of a deadly sexually transmitted disease, HIV/AIDS, prostitution is a source of anxiety about physical health and contagion. The discourse of health promotion in prostitution law reform is concerned with the prostitute as a hygienic subject. In the New Zealand Herald texts, the threat of HIV/AIDS was largely erased by the dominance of a generalised discourse of health promotion and harm protection. This dominant positioning of the “health promotion” discourse enabled the prostitute to be constructed as a hygienic subject, compliant with sexual hygiene practices. The prostitute as a hygienic subject is represented in the following text:

*“Summer, a frank and open blonde, is full of tips: always make them shower first – you can get in with them to make sure they’re clean – and check their bodies for any sores. Always use condoms – you can buy them here, 12 for \$5.00.”* (Middleton, 2003).

In this text, it is the prostitute, not the consumer, who assumes responsibility for safe sex practices. The practice and expectation of the prostitute be “clean” and to assume responsibility for safe sex practices on behalf of the consumer was identified in the review of the literature. The PRA obliges the prostitute to provide condoms and other barriers to transmission of disease and the consumer is required to take any other necessary precautions. Occupational Health and Safety regulations for the sex industry describe condom use as a standard expected workplace practice and prostitution businesses are expected to provide a range of protective equipment (Department of Labour, 2004).

The review of the literature identified a very high compliance with safe sex practices by prostitutes in New Zealand. The problem with safe sex compliance was found to be the refusal of some consumers to use condoms, with street prostitutes being more likely than other prostitutes to be forced to have unprotected sex (Plumridge & Abel, 2001).

*“The reform bill naively proposes that educating the prostitute about safe sex will protect her health. But it’s not the prostitute; it’s the customer who avoids using condoms, thereby threatening her life.”* (Farley, 2003).

In this text, the speaker identifies a discontinuity in the health promotion and harm minimisation discourse. The “common sense”, “normal” assumption that condom use is a required and expected practice in prostitution is not shared by some consumers. In this text it is the consumer who has become the vector of disease.

### **Prostitution Business: Growing the market**

Sexuality has become implanted with new meanings and urges, to arouse desire in the absence of desire, to raise appetite where no hunger exists and to provide a market in which people can make profits (Sigusch, 2004). The sex and entertainment industries have co-existing economies and the pornography and fashion industries are also commercially linked. The demand for merchandise, clothing and cosmetic surgery to ensure conformity with new standards of porno-chic “beauty” is driven by global businesses which profit from the production of docile female bodies. Pornography functions as the advertising for prostitution and produces stereotypes for both prostitutes and consumers to take up:

*“The skirts are short, the tops spangled and the heels alarming. They are attractive women, ranging in age from mid-20’s to 30 something. On the street they’d pass unnoticed.”* (Middleton, 2003).

In this text, prostitutes’ costumes are described as extraordinary. The prostitutes themselves, however, are described as ordinary women you would pass in the street. Here, what transforms ordinary women into prostitutes is the style of their dress:

*“Every night when Katrina leaves her 5 year old son to go to work she wears her “normal clothes” In the car on the way to her spot she changes into her prostitute’s*

*uniform – leather jacket, long boots, short mini skirt, and stockings.”* (Trevett & Walsh, 2003).

In this text Katrina transforms herself from an ordinary mother, producing herself as a stereotyped figure of pornographic fantasy available for sale. The stereotype of the prostitute has also shaped the identities and dress of ordinary women:

*“At a party at this year’s Toronto Film Festival, I suddenly realised I was surrounded by hookers... these women had all the requisites - except they weren’t prostitutes. They were average young women out for a good time... and then it dawned on me. It’s about pornography. Women said the effects of rampant I-porn used by almost all the men they knew was affecting their intimate lives and causing them to feel they could never measure up. And that’s where the girls dressed as hookers come in.”* (Burstyn, 2003b).

In this text, the effects of the co-existing economies of the sex, pornography and fashion industries are seen to converge. The effect of pornography on the sexual tastes and expectations of men is described as influencing interpersonal relationships causing women to feel insecure and to adopt porno-chic fashion in order to conform to expected stereotypes of female sexuality. Here, technologies of power determine the conduct of women, submitting them to domination and objectification, transforming and manipulating them, producing them as “docile” female bodies.

### **Prostitution Business: Constructing a prostitution industry**

At the passing of the PRA, prostitution became “lawful commercial sexual services and/or business” located within a “sex industry.” Here Barnett suggests the effect of the development of the sex industry in New Zealand:

*“Christchurch Central MP and reform advocate Tim Barnett said... “There will be a move towards small, worker-run brothels. One of the effects of small brothels is that*



*there may be more of them but they will be smaller, more subtle operations.”* (McMurray, 2003).

The model for SOOBS was based on the classic small owner operated New Zealand business. Under the terms of the PRA, SOOBS can operate in residential areas with up to four prostitutes without certificates being required. The implementation and administration of the new sex industry devolved to local governments who were largely taken by surprise by the implications and requirements of the PRA. Whereas prostitution had previously been mostly camouflaged in inner city or industrial areas, these new businesses were now free to locate themselves and trade in residential areas:

*“Councils around the country are struggling over how to constrain the sex industry now Parliament has decriminalised the sex industry. As they scramble to come up with appropriate regulations, councils, more used to dealing with rates, roads and rubbish collection- have still to figure out how to police them.”* (MacBrayne, 2003).

*“This is going to be a minefield of expense” said Councillor Bill Faulkner. We have fallen right into the hole the government has made for us.”* (MacBrayne, 2003).

Local governments collectively drew up a set of bylaws, some of which ran counter to the responsibilities and scope set out for them in the PRA. For example, they banned prostitution from residential areas although a specific intention of the reforms had been to allow prostitutes to work from home in SOOBS:

*Councillor Brad Shipton said “Like it or not, we have got this legislation and we have to deal with it. The best way is a bylaw keeping brothels out of residential areas and the rest will fall into place.”* (MacBrayne, 2003).

Barnett responded to the resistance of local governments to the PRA by reiterating that the PRA was a strategy for harm minimisation:

*“The Labour MP who promoted the Prostitution Reform Bill, Tim Barnett, has warned local councils to use their powers reasonably. Worried they would continue the wrongs that existed under the previous laws, he said it was ridiculous for councils to use the law to make a range of new rules. They should focus on harm minimisation, which was the basis of decriminalisation, he said.” (MacBrayne, 2003).*

In this text Barnett constructs the resistance of the councils as “ridiculous,” invalidating their views and concerns.

*“It is now three months since the PRB passed it’s tense and memorable final reading in Parliament... now much has changed and some, notably the Auckland City Council, seem to have a limited understanding of their role in the new world of prostitution law. The PRB was driven by a desire to erase the suffering of sex workers. If Auckland City Council ignores reason and effectively declares war on every sex on site location... they will be rejecting the concept of harm minimization.” (Barnett, 2003a).*

Here, Barnett suggests that the Auckland City Council have a limited understanding of the purpose of the PRA and their role in its implementation. Barnett positions the Auckland City Council as failing to understand that it was the concept of harm minimisation which drove prostitution law reform. This ad hominem argument effectively invalidated the council’s effectiveness and authority and closed the space in which the harm minimisation and health promotion discourse might be contested.

The location of the sex industry and sex businesses within residential areas also caused consternation for some residents:

*“I can’t help coming over a bit nimby about this one- not, I hope, in my back yard.” (Wichtel, 2003b).*

*“Most people don’t want to have a brothel next door. It’s not just the noise, traffic, hours of operation, signs, street prostitution, change in the area or the drugs and common gang*

*or criminal connections which are negative effects. It is also the lure that brothels present and the example that sets for children. And for many people brothels are just plain offensive.”* (McMurray, 2003).

Here the speaker constructs prostitution as a socially undesirable practice associated with undesirable people which threatens to pollute peaceful, safe residential environments in which children are raised. Other speakers were more pragmatic, suggesting that prostitution is already discreetly established in those same peaceful places:

*“Brothels are in a lot of places people don't expect to find them, and when you consider that prostitutes outnumber hairdressers in New Zealand they must all be working somewhere. There are eight brothels near where I live, and that doesn't mean I live on the mean streets - it just means that I know who my neighbours are.”* (Avery, 2003).

Since the passing of the PRA, SOOBS have become lawfully established within communities and are now embedded into the residential margins of New Zealand society.

### **Prostitution of the Body**

In the discourses analysed to this point, prostitution has been constructed as an institution and a business practice subject to national and local body regulation. Official discourses emphasise the implementation of law and public policy, a top-down model of power in which power flows downwards to society, decentring and erasing competing discourses which emphasise the embodied, inscribed experience of prostitution. Rather than a top-down model of power relations which examines the way the state or institutions oppress the collective social body, Foucault was concerned with a bottom up model where the body is understood as a transfer point for power, one of the sites where power is enacted and resisted. From this perspective, the individual is considered to be an effect of power. Foucault (1976) suggests that the body should be seen as “the inscribed surface of events” that, is that political events and decisions have material effects on the body, experienced differently depending on the social context and the historical period. In the

next section, the texts represent discourses in which the living individual body of the prostitute, inscribed by prostitution, re-emerges to become present and centred in discourse.

### **A Radical/Abolitionist Feminist Discourse**

Whereas Liberal/Rights feminists are concerned with a woman's right to choose prostitution as an occupation, the focus of Radical/Abolitionist feminism is the specific cultural conditions which are seen to constrain a woman's life and occupational choices. Radical/Abolitionist feminists suggest that the idea of "free choice" ignores the coercive material conditions in which prostitutes make that "choice". Prostitution, in Radical/Abolitionist discourse, is understood as to be harmful practice, since some coercion is claimed to always be involved, even if the prostitute herself is unaware of it.

One form of harm to health commonly experienced by prostitutes is physical abuse. Although health-related matters are of concern to many prostitutes, health risks rate as a low priority compared with the risk of violence (Sanders, 2004). Prior to the PRA, prostitutes were vulnerable to being prosecuted for practices associated with prostitution and could not safely call upon law enforcement agencies for protection from physical abuse or for assistance in the event of abuse. Consequently they had to implement strategies to prevent violence using the resources they had available to them (Sanders, 2004):

*"Tall and attractive, the 24 year old does well enough from prostitution to have her own security guards in an inconspicuous van parked down the street. Other prostitutes could not afford the same safety measures and had to deal with stroppy clients alone."* (Trevett & Walsh, 2003).

In this text, we see the risks and dangers of prostitution, which were decentred in the health promotion and harm minimisation discourse, re-emerge and become re-centred. The risks of violence and abuse are judged sufficiently seriously by this prostitute to

justify the cost of employing a security guard. In contrast, less affluent prostitutes are constructed as vulnerable and must protect themselves from harm as best they can alone. The violent or abusive behaviour of the consumer is described as “stropky” a word derived from obstreperous which means hostile or resisting control or restraint in a difficult situation. However, I suggest that the common usage of this word in New Zealand culture imbues it with a certain acceptance, and sometimes admiration, of a person with a fighting spirit. Stropky behaviour can be understood as a practice of hegemonic masculinity. Hegemonic masculinity involves relations of power and domination acted out through aggression, competition, heterosexism, homophobia, stoicism and misogyny (Wall & Kristjanson, 2005). In the discourse of hegemonic masculinity, the behaviour described as stropky becomes a normalised male practice and in this way the risk of harm to the prostitute of violent and abusive consumers becomes discursively minimised. The embodied experience of dealing with fear or terror all alone has been erased in this text.

In the following text the vulnerability of the prostitute body when her status is unlawful is recognised and the risks of rape and violence in prostitution become explicitly present:

*“New Zealand is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women, article 6 of which states that prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence.”* (Jordan, 2003).

In the next text the double jeopardy of practising prostitution in an unlawful environment is described:

*“Saying “no” to prospective clients can jeopardise work access in general, while being raped on the job is accepted by some as an occupational hazard. Reforming the law is essential if we are to eliminate a double standard that endorses discrimination and exploitation. Evidence of exploitation abounds within our existing framework, with the*

*low status of sex workers rendering them vulnerable to unscrupulous bosses, and placing them at risk from violent clients.” (Jordan 2003).*

Here the speaker argues that prostitution law reform will eliminate the gendered double standard that operated under the Massage Parlours Act, raising the status of prostitutes and rendering them less vulnerable to exploitation by brothel keepers and violent consumers. Rape is constructed as an occupational hazard. However, the fundamental origins and reasons for the low status of prostitution, and for hegemonic practices of coercion and violence, are marginalised and obscured by an assumption that prostitution law reform, in the form of the PRA, is the solution to the problem of violence and abuse in prostitution. By positioning the PRA as the solution to the problem, a discussion about the origins and nature of the violence and abuse both within prostitution and within society is foreclosed.

In the following text, the body of the prostitute as an object threatened with violence appears:

*“I think people expect there to be an algal bloom of prostitutes across the country if the profession gets legalised – that law abiding women everywhere will suddenly throw in their boring jobs and opt instead for the sex industry... it’s not like it’s the easy option. I see the faces of the guys who kerb crawl in my neighbourhood... it’s not Pretty Woman.” (Avery, 2003).*

In this text, we catch a glimpse of the consumers, but only their faces. The speaker describes them as “kerb crawlers” a term which implies contempt. The speaker has seen them driving by in their cars in her neighbourhood. There is a suggestion that the faces are unpleasant and threatening, a suggestion achieved in part by constructing prostitution as not an easy employment option and by making reference to “Pretty Woman”, a romanticised film rendition of prostitution and its consumers. In describing these consumers as not “Pretty Woman” the speaker strips away whatever romantic veil of illusion one might hold up to filter the realities about what prostitution actually involves.

In these next texts, the speakers describe the embodied experience of prostitution. The description of the consumer as a stranger suggests the absence of a face:

*“The everyday life of prostitution is distant from most of us. And here, our imagination is a poor assistant. Negotiate a price with a stranger. Agree. Pull down one pant leg. Come and take me. Finished. Next, please. It becomes too ugly to really take it in. The imagination screeches to a halt. Suddenly it doesn’t seem quite the same as other service industries, does it? Not in the same league as making coffee at Starbucks, or pumping gas, or clipping movie tickets at the Rialto.”* (Burstyn, 2003a).

Here, to emphasise her points, the speaker suggests that the reality of prostitution exists outside of the scope of both human experience and imagination. She presents an account of prostitution in which the prostitute body is constructed as a commodity and in which the sex of prostitution is an ugly physical practice. This account of prostitution is compared to other work that young women might do, leading the speaker to conclude that prostitution cannot be normalised as a service industry and therefore should not be considered to be a form of work.

In the following texts the prostitute body is constructed as being subject to degradation:

*“Guardian columnist Julie Burchill put it more colourfully, ‘Imagine your own son or daughter (or mother, as most of them are) making a living out of being a human spittoon.’”* (Wichtel, 2003b).

*“Stop Demand Foundation spokeswoman Denise Ritchie said society could change men’s attitude that it was alright to treat women as “little more than a public toilet”.”* (Gregory & Tunnah, 2003 June 4).

In these texts the prostitute’s body is constructed as a convenient object; a receptacle bought for use by consumers. The symbolic use of the spittoon and the toilet in these

texts imply shame, humiliation and degradation. One speaker suggests that the attitudes which give permission for the bodies of prostitutes to be used in degrading ways, privileging men at the expense of women, could be changed. It is not stated how this change might occur and who might lead a challenge to the hegemonic ideologies and practices which preserve and naturalise the interests of the powerful (Wetherall & Edley, 1999a).

Three weeks after the passing of the PRA, Ruth Dyson, then Minister of Women's Affairs, presented New Zealand's report on how New Zealand was meeting its obligations under the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW). In her feedback to Ms Dyson, a representative of CEDAW constructed prostitution as shameful and humiliating:

*“Members of a key women's committee at the United Nations have asked the New Zealand Government to overturn the law to decriminalise prostitution. Hungarian Kristina Morval told the UN committee prostitution treated women like pornography. It was humiliating and oppressive, she said in New York this week. The UN committee's formal report on the meeting said experts questioned the new prostitution laws, and listed their concerns. Ms Morval, one of 23 men and women on the committee, wanted the Government to reconsider the laws. She said New Zealand considered pornography harmful because it created inaccurate stereotypes and encouraged inappropriate behaviour towards women. “With all due respect, was that not an outline of what the Government had done to women's equality by legalising prostitution,” she said. “Regardless of whether it was a matter of free choice, prostitution was oppressive and humiliating, for it was about men paying money to use women as less than human beings.” (Tunnah, 2003c).*

Here, the speaker constructs prostitution as an unacceptable practice to CEDAW. The practices of pornography and prostitution are conflated for the purpose of demonstrating a perceived discontinuity in New Zealand's position on women's rights and equality. In



this text, the speaker suggests that the stereotypes of women which pornography generates are causal of inappropriate male behaviour towards women.

In the following text the speaker describes the experience prostitutes as that of being hunted, further extending the construction of prostitutes as less than human beings:

*“Wherever prostitution occurs – in brothels, massage parlours, on the street or in strip clubs, women rent out the most intimate part of their bodies to anonymous strangers. For the vast majority of the world’s women, prostitution is the experience of being hunted, being dominated, being sexually assaulted and being physically and verbally battered. Being paid does not erase the trauma; it just makes you feel as if you have no right to protest. It is a cruel lie to suggest that decriminalisation will protect the health of those in it. There is no evidence for this. But there is much evidence that prostitution causes great physical and emotional harm. It is not possible to protect the health of someone whose job means they will be raped on average once a week.”* (Farley, 2003).

Here, the consumer is once again constructed as a stranger. Prostitution is constructed as a form of domination which is inherently abusive and harmful. Payment for sex is constructed as a form of license for consumer domination and as a form of submission and powerlessness for the prostitute. The neoliberal market exchange construction of prostitution is contested here by the suggestions that money cannot provide recompense for the trauma of prostitution and that the law cannot protect prostitutes from the harm inherent in decriminalised, commercialised prostitution. The speaker observes the double bind which the exchange of money creates in terms of silencing prostitutes from speaking about their abuse, as if the abuse which is inherent in the domination of prostitutes is what is being paid for.

### **Pathways into Prostitution: Childhood sexual abuse**

The focus of Radical/Abolitionist feminism is the specific cultural conditions which constrain women’s life and occupational choices. Radical/Abolitionist feminists suggest

that the idea of “free choice” ignores the coercive material conditions in which prostitutes make those “choices” and which constitute the pathways into prostitution. Two pathways into prostitution which were identified in the texts were childhood sexual abuse and the feminisation of poverty. In the following texts, the speakers construct childhood sexual abuse as a pathway into prostitution. In New Zealand, one in four girls is sexually abused by someone she knows (Fanslow, 2007). Here the speaker cites examples of international research evidence which has correlated childhood sexual abuse with prostitution:

*“There is the fact that about 80 per cent of women in prostitution have been the victims of rape.... Other researchers estimate that 65 to 95 per cent of prostitutes have been victims of incest. And three international surveys indicate that between 60 and 90 per cent of prostitutes have suffered prior sexual abuse.”* (Burstyn 2003a).

*“I’ve got to say it is not a career people necessarily choose because they have high self-esteem. A lot of the people involved have been sexually abused as children.”* (Mold, 2003c).

In this text the speaker correlates childhood sexual abuse with prostitution and observes that those entering prostitution seem to have low self regard. Repeated experiences of sexual abuse in childhood can lead a child to abandon her own heart and spirit and conclude that being a sexual object for the use of other people is her role in life. The abuse of children is accomplished by a sequence of strategic practices which prepare a child for abuse, make the abuse appear acceptable to both the child and the abuser and keep the abuse secret. These practices, conceptualized as grooming, justification and secrecy, are separate but overlapping stages of a technology of abuse (Berliner & Conte, 1990). The sexual use of children can be understood as a transferable process by which they may also be prepared for prostitution. Although the PRA states that one of its aims is to prevent the exploitation of children and the age of consent for prostitution is set at 18, the grooming of children and young people for sexual use by adults both in the home and in prostitution is concealed by the normalisation of the institution of prostitution and by the health promotion and harm minimisation discourse.

### **Pathways into Prostitution: The feminisation of poverty**

The feminisation of poverty was identified in the texts as a pathway to prostitution. An aspect of prostitution that is hidden by the market exchange metaphor of prostitution is the significance of economic, historical and social influences, the material conditions which shape the gendered structure of prostitution (Plumridge & Abel, 2001). Radical/Abolitionist feminists suggest that because of the duress of poverty, many women who engage in prostitution cannot be considered to have freely chosen it. The “choice” to use the body as an object for exchange is non-existent when a woman is poor and desperate.

Poverty is an effect of historical, cultural, and political-economic processes which influence the private resources available to individuals and also shape the nature of public infrastructure to form the “neo-material” matrix of contemporary life (Lynch, Davey, Smith, Kaplan, & House, 2000). Commodities are the key distinguishing feature of capitalist economies and in late neo-liberal capitalism everything is for sale. The structure of neo-liberal capitalism privileges some people and marginalises others, casting them into poverty, with the great majority of poor people in New Zealand and worldwide being women and children (Brundtland, 2005). In the next texts, the structural inequalities which contribute to the taking up of prostitution are acknowledged:

*“When one hears of teenagers in Northland prostituting themselves for drugs and sees young men and women in desperate circumstances selling their bodies in South Auckland, it is time we took stock of the need to break the cycle of disadvantage.”* (Hutchinson, 2003).

*“It is generally accepted that the drivers toward prostitution are mainly economic. Plunket, the Children’s Poverty Action Group, Youth Court Judge Andrew Becroft and the Paediatrics Society have all pleaded for New Zealand to become more concerned about our children’s start in life and the resourcing priorities that go with it.”* (Hutchinson, 2003).

The speakers of these texts identify income inequality as the factor which leads to some women and young people to taking up prostitution and suggest that attention to those same inequalities is the solution to the problem of prostitution.

Poverty can deny women dignity and the power of agency. However, wherever there is discourse there is the possibility of resistance (Foucault, 1980a). Resisting and surviving poverty can constitute a plausible reason for entering prostitution, enabling women to reject the victim role and find spaces to assert their agency and dignity. In the following text, gender based pay inequity in New Zealand is identified as a factor in the feminisation of poverty and the taking up of prostitution by women:

*“The difficulties faced by women in achieving pay equity with men are, for many, their key motive for working in the sex industry.”* (Jordan, 2003).

The material conditions of social and economic disadvantage and discrimination in women’s lives can frame the prospect of engaging in unwanted sex in a way that makes it seem like the best of all possible options. In this way, prostitutes can be constructed as consenting to their sexual use, coercion or victimisation:

*“Sally said [sex] is meant to be a beautiful thing. It’s not very cool to sell it, but when you’re a person like me, you don’t have much choice.”* (Trevett & Walsh, 2003).

While poverty produces women as a commodity and a supply for the prostitution industry, the force and influence of the globalised sex industry produces men who generate an increasing demand for its range of products:

*“The fundamental reason the sex industry will not easily be eliminated is that men vote with their wallets to keep it in existence.”* (Jordan, 2003).

In this text, neoliberal economic market theory is drawn upon to explain prostitution. The “market” and the demands of the market are used to justify and explain the presence of a

range of arrangements in modern life. The imperatives of the market can be understood as a normalising discourse in which prostitution can be constructed as a pragmatic economic practice:

*“Decriminalisation may not seem as attractive an option as elimination. But it is the realistic path to take in a social environment that continues to economically marginalise women.”* (Jordan, 2003).

Here the speaker weighs decriminalisation against the elimination of prostitution and concludes that prostitution will need to continue to be a solution for the structural problem of female poverty in New Zealand. Decriminalisation is suggested as providing a pragmatic partial solution to reducing discrimination against prostitutes and the double bind that the Massage Parlours Act had constructed. The speaker further suggests that:

*“The end of prostitution will not occur until all the preconditions giving rise to it have been removed.”* (Jordan, 2003).

Here it is suggested that the elimination of prostitution depends on social changes which eliminate its preconditions. The Ministry of Health (2002) suggests that it is now apparent that too little attention has been paid to the importance of a wider set of determinants which influence the health of a community and recognises that mental health problems result from despair, anger, fear, job and housing insecurity, social alienation and poverty. While the PRA and decriminalisation of prostitution remove certain inequities and discrimination against individual prostitutes, the elimination of the institution of prostitution itself requires wider social and economic reforms

### **Summary**

In this chapter I have analysed text from the New Zealand Herald, 2003, finding that the harm minimisation and health promotion discourse dominated the reportage on prostitution law reform. The analysis revealed competing discourses which emerged

when the political, social and economic conditions within which prostitution is constructed were examined. The competing discourses centred on the construction of prostitution as a social and economic institution and the effects and inscription of prostitution on the body.

In the next chapter the findings are discussed and conclusions drawn. I suggest some relationships between the discursive formations which emerged in the analysis, illuminating how the power of dominant groups was contested and secured. The final aim of the research is to position mental health nurses as participants in emancipatory political and social change. In the following chapter the concerns of mental health nursing in relation to the findings are discussed and the implications of the findings for mental health nursing are considered.

## CHAPTER 5: Discussion and Conclusions

In this final chapter, the findings are discussed, to illustrate the ways in which prostitutes, consumers, prostitution and the harm of prostitution were discursively constructed within the media texts in the New Zealand Herald and the ways in which the ideology and cultural hegemony of dominant groups was secured and contested. Foucauldian discourse analysis emphasises the way in which power is enmeshed in discourse. Discourses represent interests which are constantly vying for status and power and people who have the power to regulate what *counts* as truth are able to maintain their access to that material advantage and power. This discourse analysis does not seek the “truth” about prostitution and how it is regulated; rather it attempts to reveal the ways in which discourses on prostitution law reform ordered reality to serve political ends. Foucault has offered us a way of understanding power and its effects which can inform changes in the practices of an institution, a profession and society as a whole (Cheek, 2000). Following the discussion, the implications and conclusions of these findings are discussed in relation to mental health nursing and the problem of trauma and abuse in mental health in New Zealand.

### **The Dominant Discourse of Health Promotion and Harm Minimization**

By 2003, the Massage Parlours Act had become a vestige of inequitable gender based laws, most of which had been reformed during the second wave of feminism in the late 20<sup>th</sup> century. As identified in the review of the literature, by the early 21<sup>st</sup> century, the moral construction of individual prostitutes as “rust on the steelwork of society” (Avery, 2003, p. 5) had given way to a more pragmatic public interest in the moral issue of the sexual victimisation and exploitation of women and children (Goodyear & Cusick, 2007; Oerton & Phoenix, 2005). The PRB, with its emphasis on providing prostitutes with human rights and health protections, aimed to reposition prostitution law within contemporary moral and social norms and confer on prostitutes the same status in law as their consumers.

In the analysis of the discourses I identified agreement among all speakers that prostitution law reform was required, although the form a new law should take was contested. Internationally the focus of policies on prostitution has become largely polarized between the abolition of prostitution and a harm reduction approach (Jyrkinen, 2005). Similarly, in New Zealand, the political argument divided on whether prostitution should be abolished or accepted as an inevitability. Some months prior to the vote on the PRB, Yates proposal to amend the bill to criminalise men who use women in prostitution failed in parliament. Yates had claimed the PRB was anti-therapeutic and would not produce the consequences for the prevention of harm which was the PRBs stated intent (Young, 2003).

The defeat of Yates' amendment opened a space in which the harm minimization and health promotion discourse was able to prevail. As illustrated in the text analysis, the discourse of health promotion and harm minimisation was persistently promoted and reiterated by Barnett and was widely taken up, becoming the dominant discourse in the reportage in the media texts in the New Zealand Herald. Foucault was concerned not so much with what happened, as how people were brought to think about what happened. What we think comes from a collective immersion in social and cultural attitudes. Foucault's technologies of power effect a form of training in individuals, in the sense that they take up and acquire certain attitudes (Dean, 1994). Dominant discourses appeal to "common sense" and are capable of generating broad bases of support. Barnett and other supporters of the PRB were able to create their base of support for the vote on the PRB by means of the rhetoric of common sense and benevolence located within the harm reduction and health promotion discourse.

The political power of the harm minimization and health promotion discourse was demonstrated during the Homosexual Law Reform debate in 1986. Pritchard (2005) described how each side of that debate had attempted to respond to the problem of HIV/AIDS in its own ways, but the success of the pro-homosexual law reform movement lay in its ability to take advantage of the language of health promotion. In the health



promotion and harm minimization discourse in the PRB debate, the prostitute is constructed as a hygienic subject deserving of protection. In the PRB debate, as in the Homosexual Law Reform campaign, “both sides of the debate appealed to public health concerns, but the language of reform was a better fit with the pragmatic progression of New Zealand’s political culture” (Pritchard, 2005, p. 95).

### **Shapeshifting**

Discourse analysis can reveal the ideological roots and persuasive strategies of discourses and the ways in which they construct forms, shapes and power. Discourses can be moulded to conform to a preferred ideology and vision of the future. This moulding process can be understood metaphorically as “shapeshifting.” Shapeshifters are mythological animals or people who change physical form and shape to metamorphose and transform identity at will (Merriam-Webster, 2008). There are a number of ways that transformation can occur. One is called the “fold over.” In this transformation, the subject’s new manifestation forms over the top of their original form. It is almost as if the shapeshifters are wearing one body over another while their old form is underneath. I suggest that Barnett was able to discursively shapeshift the old taboo and stigmatized problem of prostitution into a modern “good” “sensible” human rights and public health issue deserving of support.

Barnett assumed a pragmatic position, normalising and justifying prostitution as inevitable. Accepting prostitution as an inevitability allowed him to argue that the prostitute, the most vulnerable person in the prostitution transaction, should be protected from exploitation by recourse to a modern law. The “old” stigmatized prostitution which included the consumer and the underlying material conditions of prostitution, such as poverty and hegemonic male practices, was concealed by a new “body” of decriminalized prostitution constructed over the top of the old one. On the passing of the PRA, prostitutes, a group who had traded at the margins of society and the law, became transformed into “sex workers” and the institution of the multi-billion dollar “sex industry” was established. The analysis of the texts revealed that local governments, who

were to administer the new body, were taken unawares by the establishment of this new industry and the implications for their communities and were unprepared for their role in its administration.

### **Prostitution and Economic Neoliberalism**

Political institutions of the state can serve to either broker and resolve social conflicts of interest or assert the power of dominant individuals or groups (Chilton, 2004). Ingelby (1981) suggested that social institutions do not necessarily represent the common good. Rather, he suggested, they represent a group of interests hiding under the banner of economic progress. The PRA, I suggest, constituted a Trojan horse, discursively transforming prostitution into a fully realized business practice. The dominant positioning of the health promotion and harm minimization discourse and its appeal to common sense obscured the neoliberal economic ideology folded into the PRB. The PRB had been constructed within the context of the neoliberal discourse of New Zealand at the turn of the millennium. Neoliberalism seeks to naturalise a view of economic relationships as the foundational form of human societies (Clarke, 2003 cited in Hyatt & Lyon-Callo, 2003). It embraces privatisation, marketisation and deregulation, and rather than being a set of practices and policies, it is a set of ideas and ways of imagining how the world could be.

In the text analysis, Coney, reported in Welch (2003) suggested that prostitution is the ultimate extension of the market into our lives. The marketplace is an organizing concept for economic neo-liberalism. The taken for granted idea of a market constructed by the forces of supply and demand is a familiar one and appeals to common sense as this speaker demonstrated in the texts: “If it is willing seller-willing buyer between consenting adults, do you think you have a dog's show of ever making this stop?” (Young, 2003, p. 5). The drivers of the market, male demand and female supply, can be understood as a normalising discourse in which prostitution becomes constructed as a pragmatic economic practice, concealing the economic forces which constructed that demand and supply in the first place.

In order to make profits, prostitution businesses need to create and maintain consumers. To do this prostitution has to be generally considered an acceptable business; it has to be normalised and legitimised (Martilla, 2003). Discourse analysis allows us to analyse material and social conditions and the discursive processes through which conditions are accepted as a “normal” part of our society (Lyon-Callo, 2004). The primary method of legitimating prostitution found in the text analysis was through normalising discourses which make the social and sexual practice of prostitution appear natural and inevitable. In the PRB debate prostitution was normalized by the health and harm discourse and in the PRB document by the use of the official language of business. In the analysis of the texts, the shapeshifting of prostitution into an industry and social institution represented an official resetting and normalising of the terms on which prostitution was to be practiced rather than a paradigm shift for which there was a critical mass of awareness or popular support.

The new institution of “sex work” constructs the prostitute as a woman exercising individual agency and improving her financial circumstances. However, the new “fold over” construction of prostitution conceals the poverty and other material conditions which constitute the pathway to prostitution. As Sally said in the texts “sex is meant to be a beautiful thing. It’s not very cool to sell it, but when you’re a person like me, you don’t have much choice” (Trevett & Walsh, 2003 p. 3). Jordan (2003) suggested that “decriminalisation may not seem as attractive an option as elimination but it is the realistic path to take in a social environment that continues to economically marginalise women” (p. 5). Lyon-Callo (2003) suggested that we need to consider such rhetorical justifications for neoliberalism and how these justifications have helped to produce and reproduce social inequality. We need to reflect on who the people are who benefit from such inequality. I propose that we also need to question the neoliberal idea that prostitution is an acceptable solution to the social problem of the feminization of poverty and consider whether a more equitable distribution of public and private resources would improve the health and employment choices of poor women, without recourse to prostitution.

Prostitution can be understood as a form of resistance to both individual poverty and the structural economic inequities which impoverish women collectively, however Foucault's concern was bringing about the actual reversal of power and not just endless creation of new forms of resistance (Gerrie, 2003). Gerrie (2003) suggested that Foucauldian discourse analysis can help us to recognize certain misconceptions that lead to our unwitting participation in the creation of potentially equally problematic new forms of power. Phoenix and Oerton (2005, cited in Scoular, 2006) described the way in which official discourse, by engaging in a "symbolic erasure" of the material realities that generated the problems it seeks to operate upon in the first place, ends up perpetrating its own authoritative power; thus, maintaining the status quo rather than effecting real change. Macdonald (2003) observed that in passing the PRB "the real crime would be to smugly make the prostitutes sorry lot a little more comfortable while blithely nurturing the conditions that led them to sell their bodies in the first place" (p. 5).

### **Prostitution and Governmentality**

Scoular (2006) observed that the state carries out its role by attempting to make its citizens responsible, while simultaneously maintaining spaces for the operation of the capitalist economy. Hubbard and Sanders (2003) suggested that it is always difficult for capitalist societies to maintain the chaotic, contradictory spaces it has produced. In liberal societies people cannot be forced to think and act in particular ways but must be persuaded to do so. The idea of governmentality directs attention to the subtle procedures of power which operate in everyday settings (Scott, 2003), particularly through the media and the organization of social institutions. Practices of governmentality enable governments to establish and maintain their domination, define and set the terms in which events are understood and issues discussed, to formulate ideals and define morality. In this way, Foucault argued, the illusion of the reality of the meanings of social structures and practices successfully create control of the population (Green, 2001).

Foucault was interested in how order is maintained under liberalism when power must be exercised at a distance. Biopower is a political technology which enables the control of

entire populations and is therefore useful for the regulation of modern capitalist states. Biopower places an emphasis on the protection of life (rather than on the threat of death, an option available to rulers of times past) by means of the regulation of the body and bodily technologies of power such as sexuality. Modern liberal governments undertake the dual role of the welfare and protection of the population from harm and also its surveillance (Foucault, 1978 as cited in Burchell, Gordon, & Miller, 1991). They assume responsibility for life processes by medicalising public health, keeping populations alive and sexualized. Sex and sexual practices have assumed political importance and have become an integral part of the administration and management of the body in science and public policy. The role of government in the protection and administration of the health of the population was evident in the dominant discourse of health promotion and harm minimization and was represented by these texts in the analysis:

*“At the heart of the Reform Act is the concept of harm minimisation. That means accepting the inevitability of prostitution, but not endorsing or morally approving of it. The systems and obligations of the new law....each are designed to minimise a specific harm.”* (Barnett, 2003a).

*“The PRB recognizes the reality of prostitution and that the best means of preventing the exploitation of women in the industry is the introduction of a measure of control.”* (Editorial, 2003).

*“We have completed the unfinished business around getting sensible public health based measures in our legislation.”* (Taylor, 2003a).

The PRA’s administration and prescription of the sexual practices of prostitution can be understood discursively as the exercise of biopower by the state. Phoenix and Oerton (2005) suggested that a proliferation of laws, policies and guidelines attempt to determine the complex, vast and ever-increasing rules of human engagement. By decriminalizing prostitution, the state was able to institutionalize and discipline its practice, introducing

occupational health and safety regulations with which prostitutes and their employers must comply.

Foucault identified technologies of production which permit us to produce, transform, manipulate and discipline things. Foucault understood disciplinary power to be the primary means by which the cohesion of the social body is ensured and maintained. Discipline increases the forces of the body in terms of economic utility and diminishes these same forces in terms of political obedience (Foucault, 1977 cited in McHoul & Grace, 1997). Disciplinary technologies are forms of social control which subtly coerce people into subjecting themselves to normalising practices, thus exercising surveillance over and against themselves. Disciplinary power relies on self “surveillance” to create states of docility. It does not rely on displays of physical force or violence, rather, direct force represents merely frustrated or failed forms of discipline. In the text analysis, Summer constructs herself as a hygienic subject and describes her disciplinary practices. “Summer, a frank and open blonde, is full of tips: always make them shower first – you can get in with them to make sure they’re clean – and check their bodies for any sores. Always use condoms – you can buy them here, 12 for \$5.00” (Middleton, 2003, p. 8).

The PRA constructed a sex industry and opportunities to openly set up sex businesses. Phoenix and Oerton (2005) suggested the paradox that the new openness and use of sex and sexuality across many aspects of social life represents not greater freedom, but an increase in the very conditions for increased regulation and control and “grist for the mill” for the expansion of state power. Scoular (2006) suggested that a belief in law reform as the principal means of effecting emancipatory change is naïve and misplaced and argues that framing prostitution law as public health and human rights legislation brings it under the surveillance of the state, enabling the state to consolidate ever more complex regimes of formal and informal regulation. “Therefore reforms that are so often presented and “accepted as self-evidently good, can be viewed in a more critical light as ‘a key linchpin in administration of populations” (Foucault, 1978, p. 103 cited in Scoular, 2006, p. 22). Rather than an expression of increased freedom or justice, Scoular suggested that such reforms may limit the possibilities of social change as they represent

an exercise in the technology of power and control, one which reinscribes its own dominant, hegemonic notions of justice.

### **Prostitution and the Production of Docile Sexual Bodies**

Discourse analysis can display the reproduction of ideology and the more subtle forms of control, persuasion and manipulation in the meanings inherent in discourse (Lupton, 1992). Foucault identified a technology of sign systems which permits us to use signs, meanings, symbols or signification. As found in the analysis, the prostitution business produces a particular kind of disciplined docile body. Women otherwise described as “ordinary” become signified as prostitute “others” by adopting spangles and heels, leather jackets and boots, short skirts and stockings. Radical feminists argue that men are socialized to have sexual desires and to feel entitled to have those desires met, whereas women are socialized to meet those desires and to internalize accepted definitions of femininity and sexual objectification (Gavey, 1992). Gavey (1992) found that women are encouraged to become self-policing subjects who comply with normative heterosexual narrative scripts and that disciplinary power can produce a form of obedience outside of a woman’s conscious awareness. It is through the body that women learn their own particular forms of self surveillance. As observed in the text analysis, women learn how to monitor their appearances and to conform to what their culture presents as the ideal, for example adopting “porno-chic style”. In this way, the discursive practices that produce prostitution are located within the culture and within women.

Foucault (1977) claimed that the manipulation of the body, the moulding of it into the wanted form as opposed to leaving it in its natural form, is the turning point in power relations. Gavey (1992) suggested that normalising technologies of sex produce women as subjects who are encouraged to regulate their behaviour in ways which comply with androcentric versions of sexuality. Barry (1995) suggested that men relate to women as bodies put there for their use and that prostitution has become the operative paradigm of sexuality as we know it in society. “The normalization of prostitution ensures that the experience of prostitution is now not only the daily experience of a class of women,

prostituted women, but of women as a class” (Barry, 1995, p. 57). The demand for a particular kind of disciplined body for prostitution can be understood as an effect of a neoliberal commodification and objectification of the human body, transforming sexuality into Sigusch’s (2004) vision of banal commercialized “shop-sex”.

My analysis of the texts suggests that Barnett and other speakers established a rule of discourse that health and harm minimization was to be prioritised and to dominate prostitution law reform discourse, giving the PRB its best chance of becoming law. Other discourses were then either encouraged or discouraged by the use of certain discursive strategies, thereby narrowing the debate and reducing effective resistance to the PRB. The strategic narrowing of the debate is discussed in the next section.

### **Narrowing the Prostitution Law Reform Debate**

Discourse analysis reveals not only dominant discourses but also discursive discontinuities and gaps. The media plays a role in the way in which issues are presented to the public. It does not merely act as a conduit for the news, it plays a role in structuring the way that issues are presented to the public (Farrow & O’Brien, 2005). The six months of 2003 leading up to the PRB’s final reading in late June were characterised by a lack of media and public debate. Consequently, the PRA debate was described as “the late debate” (Brown, 2003) and “a debate that is tempting to duck” (Roughan, 2003). The media have the power to create discursive frameworks which order reality in a certain way. They enable and constrain the production of knowledge, allowing for certain ways of thinking about reality while excluding others. Discursive constructions and the subject positions contained within them open up or close down opportunities for action. By constructing particular versions of the world and by positioning subjects within them in particular ways, discourses limit what can be said and done (Willig, 2001).

Discourses are constructed in and through hegemonic struggles which aim to establish political and moral-intellectual leadership through an articulation of meaning and identity (Torfing, 2003). Barnett, as the sponsor of the PRA, took up political and moral-



intellectual leadership of the PRA in both the media and in parliament. In the context of a relative lack of public debate and largely uncritical media reportage, I argue that by positioning the harm minimisation and health promotion discourse as dominant, Barnett was able to set narrow terms for the PRA debate. In the analysis of the texts Barnett suggested that MPs (and their constituents) had two choices. “They could agree to a law which best protected sex workers while protecting community sensitivities, or they could accept the status quo with all its faults” (Tunnah, 2003d). Barnett effectively narrowed the argument to whether one was for, or against, protection from the harms of prostitution, foreclosing rigorous debate about other political positionings and possibilities.

Another way in which the debate was narrowed was the construction of the PRB as morally neutral legislation. The stated purpose of the PRB was to decriminalise prostitution, while not endorsing or morally sanctioning prostitution or its use. As found in the analysis of discourses, a moral paradox occurred in the PRB debate. The PRB was constructed as morally neutral, however, as Burstyn (2003) observed, if it passed in parliament, society would be taking a morally neutral position on an activity that is never neutral. Paradoxically, MPs were asked to cast a conscience vote in a moral vacuum. The rare requirement for a personal and moral, rather than party-political position, on a vote in Parliament challenges MPs to take a position on an issue about which they may not be well informed. Marc Alexander, a United Future MP “fumed about the “politically erect women’s career degradation bill” and asked “where’s the vision when we push to legislate a legal tolerance that is nothing more than political correctness dressed up in a whore’s skirt hoisted above the ethical plimsoll line?” (Wichtel, 2003c).

Constructing the PRB as morally neutral was an effective strategy for marginalising moral debate and foreclosed the introduction of moral and spiritual knowledge into both public and media discourse on prostitution law reform. General acceptance of the construction of a moral vacuum and the disappearance of moral debate was made possible in part because issues of sexuality are not easy for New Zealand churches to speak about. New Zealand’s Christian churches were not represented in the New Zealand Herald media texts, however, they presented a combined submission to parliament,

condemning the PRB, five days before the parliamentary vote was due. Speaking for the churches, the Reverend Richard Randerson explained their silence in the prostitution reform debate: “we are fearful of being accused of Victorian morality, or being anti-sex or unprogressive and hence have too often said nothing” (Randerson, 2003, p. 2.). The Federation of Islamic Associations and Muslims were reported in the New Zealand Herald as commenting on Dr Choudhary’s abstention from the conscience vote. A spokesman for the federation said they were “disappointed” because Dr Choudhary’s vote could have made a difference. “From the Islamic perspective, prostitution is prohibited” he said. “So anything which is going to liberalise, the federation opposes” (Roughan, 2003).

### **The Silence of Consumers**

Consumers are the largest group of participants in prostitution. Their silence about their practices created a gap in prostitution discourse and further narrowed the scope of the debate on prostitution law reform. As observed in the previous chapter, apart from John Tamihere, there was no representation of the consumer voice in the New Zealand Herald reportage of the PRB debate. In the literature, consumers were found to be ordinary heterosexual men, acting in accordance with dominant values and beliefs and whose interest in sex constitutes a demand for prostitution and sex businesses generally. Hegemonic masculinity locates ordinary men in positions of power and wealth and legitimates the practices which support that dominance. Prostitution constructs a space in which men can forge a masculinity which is independent of gender equity and its threat to male hegemony. Silence is a discursive practice which conceals, and thereby maintains, the privilege of the “sex on demand” which prostitution supplies.

Discursive silences also open spaces for the practices of “othering” a hegemonic process of creating strange “others” who can then be excluded from society and thereby restore a perception of social stability. An example of othering is the construction of child abusers as strangers: “strange others.” Children are taught about “stranger danger” and how to thwart the stranger’s evil intent, thus stabilising an illusion of lives lived in safety in

ordinary homes with ordinary men. In her New Zealand study, Fanslow (2007) found that only 1% of sexual abusers of girls were strangers to the girls; rather, most abusers are ordinary men in ordinary social roles and positions. In the text analysis, the ordinariness of the consumers was remarked upon. Some ordinary men who are also child abusers were found to have been represented in this thesis. Graham Capill, former Christian Heritage Party leader and police prosecutor, was convicted of sexual offences against girls under 12 and is currently imprisoned for 9 years; Brad Shipton, a former Tauranga City Councillor and police officer is currently imprisoned for 8½ years for rape. Former policeman John Dewar is imprisoned for 4½ years for perverting the course of justice by covering up rape allegations against his former colleagues and friends Brad Shipton and Bob Schollum. The construction of the strange “other” allows ordinary men who are abusers to pass unseen unless they are brought to public attention.

The stereotype of the prostitute as “other” rather than an ordinary woman has enabled society to project social responsibility for the institution of prostitution onto her and also hold her responsible for the men using her services. The stereotype also averts the eye from seeing the prostitute as an ordinary wife, daughter or mother. The discursive space created by the silence and invisibility of consumers and the denials of ordinary men that they are prostitute users, encourage us to conjure a stereotype of the consumer transforming him as “other.” By means of ‘othering’, the hegemonic discourses and practices of prostitution are concealed from view and society is protected from the destabilisation that an open practice of prostitution could precipitate, for example, the destabilisation of monogamous marriage and the reproductive family.

### **Prostitution: Agency or victimisation?**

The question of how women are able to make choices in conditions not of their choosing, while keeping spaces open in which to recognize both agency and victimization is the central problem in the contemporary feminist debate on prostitution. In the text analysis, prostitution was constructed as both agency and victimization; however, the harm of violence, especially rape, was frequently cited. Interpersonal violence is epidemic and

constitutes a normative part of female experience (Salasin & Rich 1993). Violence was identified in the literature review as a greater health concern for prostitutes than the risk of disease. The objectification, violence and exploitation experienced by many prostitutes are aspects of prostitution that are not highlighted by the construction of sex work as a legitimate market exchange (Weatherall & Priestley, 2001). In the text analysis the discourse concerning the violence and abuse occurring to individual prostitute bodies, for example rape, constituted a discourse of resistance to the institutional discourse of prostitution which emphasised the decriminalization and industrialization of prostitution. Prostitution was found to be constructed as inevitable in the PRA debate and Scoular (2006) suggested that in accepting prostitution as inevitable, the possibility of recognizing the material, lived reality of intimate relations between men and women in which violence and threat are routine, is foreclosed.

Power is asserted at the level of the institutions of the state by either co-operatively resolving conflicting group interests or serving the interests of dominant groups. At an interpersonal level, power can be played out as a struggle for dominance. Much of the violence of contemporary society serves to preserve asymmetrical gendered systems of power. The physical and mental abuse of women in patriarchal societies has taken a wide variety of forms that Sheffield (1995) has called “sexual terrorism” in which violence, and the internalized, constant threat of violence, becomes an instrument of control of women’s autonomy and freedom (Wolfe & Copeland, 2004). Women are thus discursively constructed as victims.

Scoular (2006) observed that paradoxically, co-opting the rhetorical category of “victimhood” into prostitution debates can reduce feminist claims to a narrow platform of victims’ rights leading to a strengthening of the state’s powers in law and order. This protective response serves to obscure the material basis of patriarchy, simultaneously reinscribing and reducing women to their gender. Counter hegemonic feminist campaigns are “recast and reduced into a legal project which simply operates to protect a historically and culturally produced category of vulnerable women from a culturally produced group of rapacious men” (Scoular, 2006, p. 527). Scoular (2006) further suggested that this is

why, despite living in an increased culture of control with its proliferation of codes, norms, registers and risk assessments, sexual predation and violence by men has not receded at all. Gavey (1992) suggested that “it would be naïve to believe that an individual woman will achieve “liberation” by positioning herself in a feminist discourse on sexuality in an otherwise misogynist material context (p. 330).

There is a call from some quarters to regenerate the feminist movement in order to end sexual violence (Newman & Thompson, 2006). In the opinion of former UN Secretary General Kofi Annan (as cited by Gavey, 2005b) violence against women is perhaps the most shameful and pervasive human rights violation. Annan suggests that as long as violence against women continues, we cannot claim to be making real progress internationally towards, equality, development and peace. Willits (2003) suggested that

to overcome the apparent epidemic of depression and mental distress in women today, we need to target the root causes; we need to work against rape, against domestics, violence, against pornography, against prostitution, against discrimination. Mental health services as they are today are doing their best to control the end result of this patriarchal oppression, but we need to attack its root. We must end violence against women. (p. 54)

Feminism is considered by some to be an idea whose time had passed. Rayner (2005) suggested that feminism in New Zealand has become stale, correct and unimaginative and that its concerns are poorly argued. The polarization of the problem of prostitution within feminism has created a stalemate, reducing feminism’s power to provide a coherent political analysis of social problems, to lead strategies of resistance to the practices of cultural hegemony and to disrupt and displace oppressive knowledges. Chancer (1998) believed that an adequate and effective feminist sexual politics must defy the either/or positions of the feminist sex wars. She suggested that two things must again become possible for feminists: both to disagree from within *and* to focus on effecting the desperately needed changes that require collective feminist action. Chancer further suggested that the most effective route to sexual freedom and social equality is a non-divisive “third path” in which feminist efforts would be directed at both transforming social institutions and asserting individual agency, refusing to accept that inequalities between men and women are natural and inevitable.

### **The Implications for Mental Health Nursing**

There is significant literature on prostitution in the health and social sciences; however, there was no representation of prostitution as a mental health issue in the texts of the New Zealand Herald in 2003. Interpersonal harm is common to both prostitution and to the experiences of mental health service users and because mental health nurses deliver specialist care for people with psychological distress arising from trauma and abuse, public or legislative forums in which violence and abuse are debated are important to the profession. At the beginning of this project, I hoped that the prostitution law reform debate would open a space leading to an informed public debate about the problem of violence and abuse in New Zealand society. However, as a consequence of the “late debate” and the “debate that was tempting to duck” the issues and social context of prostitution were generally poorly investigated and analysed by the New Zealand Herald, constraining informed debate and political resistance. Former Commissioner for Children Dr Ian Hassall (2007) suggested that, on social issues in New Zealand, the media lacks critical analysis and largely fails to move beyond finger pointing and blaming of social agencies.

Discourse analysis has the potential for transforming public health and health care by highlighting power relations within society which have been overlooked or ignored. The New Zealand Herald’s discursive silence on prostitution as a mental health issue and the role of interpersonal violence in mental ill health may reflect a state of paradigmatic uncertainty in mental health knowledge and policy in New Zealand. The issue of whether we are dealing with a breakdown of the mind or a breakdown in social or cultural connection is contested (Stuhlmiller 2003) and has become a divisive issue within mental health services, professions and professionals.

The dominant biomedical model of psychiatry argues that psychosocial factors have little or nothing to do with the development of mental illness (Davies & Burdett, 2004). This view is contested by some non-dominant mental health groups, for example groups of

nurses and service users whose understanding is that social dynamics and power relationships within a society can give rise to psychosocial pathology. Abbott (1994) believed that it is the particular coming together of stress and exploitation, in the context of the social invisibility of that same exploitation that is causative of mental ill health. One of the social issues minimized by the emphasis on biomedical factors is the effect of belonging to a disempowered group. Being poor, a member of an ethnic minority or a colonised people, or being female in a patriarchal society, can have harmful social and psychological consequences (Read et al., 2005).

Mental health policy is a neglected area of the health care agenda because the determinants of mental health are complex and require us to pay attention to cultural life. Davies and Burdett (2004) suggested there are two main strands to achieving the conditions which prevent mental ill health. The first is building the capacity for autonomy in individuals and the family group. The second is ensuring that the social, political and economic environment is fertile ground for the promotion and exercise of autonomy. Albee (1996) believed that primary prevention research will inevitably make clear the relationship between social pathology and psychopathology and then agencies will work to change social and political structures in the interests of social justice. Albee suggested that “it’s as simple and difficult as that!” (p. 1131). How mental health nurses might go about advocating for social justice and reducing the suffering and illness consequent to interpersonal harm and abuse are discussed in the next section.

### **The Role of the Mental Health Nurse**

Attention to the complex issues of cultural life can be understood as a part of the role of and knowledge of mental health nurses. However, the role of the mental health nurse is contested. Mental health nursing seems to be perpetually in change and transition, with little agreement about the most likely or preferable future; we have yet to arrive at an agreed definition and summary of our roles and responsibilities (Keen, 2003). Historically, mental health nurses have co-opted the dominant biomedical psychiatric discourse as the basis of practice (Crowe, 2000). Discourse analysis enables us to solve

problems, not by providing unequivocal answers but by making us ask ontological and epistemological questions (Steele, 2003). Confronted with competing discourses of the aetiology of mental ill health, mental health nurses may well ask “who are we and who are we now? Who are we in terms of our knowledge of ourselves; of the ways we are produced in political processes; in terms of our relations with ourselves and the ethical forms we generate for governing these? What is the role of the mental health nurse? What is the role of the mental health nurse in social, political and economic life?”

The recovery movement has reordered psychiatry, opening a space in which mental health nurses can focus their attention on the significance embedded in the narratives of service users. Stuhlmiller (2003) suggested that the unique contribution of mental health nurses has been the simple elegance of “being there” to bear to witness those narratives. However, being there and witnessing narratives of interpersonal harm and abuse is a complex political and professional practice. It involves the participation of the mental health nurse in the co-construction of a narrative which assists the service user to produce meaning and identity from abusive experiences. This practice requires mental health nurses to draw on professional knowledge of the effects of hegemonic cultural practices and their collateral damage to women’s health.

Until relatively recently the effect of hegemonic cultural practices, such as childhood sexual abuse, was not an available discourse in the dominant paradigm of psychiatry and therefore, unavailable for being taken up or spoken about by mental health nurses. Discursive silences about abusive practices benefit the perpetrators of those practices. In the text analysis, a discursive silence about harm was maintained, paradoxically by the dominant positioning of the harm minimization and health promotion discourse. The harm minimization and health promotion discourse reduced the problem of the harm of prostitution to one of the protection of prostitutes from rapacious men and the opening of a space for women to call for assistance from police and health care workers to ameliorate the collateral damage of prostitution. Constructing harm minimization as simply protection and assistance after an event effectively conceals the hegemonic



ideology and practices which enable the victimization of prostitutes and other women and children.

An effect of the discursive silence about interpersonal harm in both public and professional discourse is that mental health nurses unwittingly participate in keeping New Zealand's "dark secret" of abuse. The skilled practice of delivering effective trauma informed mental health nursing care combines with mental health nurses' lack of public voice to conceal both the effects of the abuse and the hegemonic practices which gave rise to it. Mental health nurses therefore unwittingly collude with the secrecy of the practices which constructed service users as victims in the first place.

Davies and Burdett (2004) have suggested that it is unfair to ask those whose role it is to bear witness to the profound distress caused by abuse to also address the source of that distress. However, Powers (1996) suggested that "nursing has the opportunity to demonstrate the operation of a practice that offers more than a limited traditional philosophy of science oriented toward prediction and control of phenomena with the unfortunate and unintended consequence of the oppression of people" (p. 216). Clinton and Hazelton (2002) acknowledged that the issues facing mental health nursing are very complex but suggest that mental health nurses can use technologies of the self to conduct their professional conduct to conform to whatever they envision the future practice of mental health nursing to be. Mental health nurses can speak about their knowledge of the relationship between hegemonic cultural practices and mental ill health and thereby challenge the social order.

### **Mental Health Nursing and Social Activism**

Herrman (2001) suggested that the activities of mental health promotion are mainly socio-political and that mental health practitioners have often underestimated the scope of mental health promotion or prevention of illness because of their day to day focus on their clinical roles. Prevailing knowledge and practices of mental health promotion have been criticised for failing to pay attention to the effects of cultural and social life. Mental

health promotion can be re-conceptualised to include political activism which addresses the social, environmental, political and economic determinants of health. Albee (1996) suggested that there is wisdom in putting as much effort into changing the social structures that keep groups of people powerless as there is into initiatives which help people to cope better with the status quo. To give up on the creation of more just social structures ensures the perpetuation of human distress and despair (Davies & Burdett, 2004).

Torring (2003) argued that discourse theory exposes a dilemma-filled play of meaning that can only be resolved by the making of ethico-political decisions. Choosing what we centre and de-centre in those decisions is one of the most political acts researchers and scholars can make (Allen & Hardin, 2001). Emancipatory social change and political practice in mental health nursing requires nurses to analyse complex social problems in order to propose and promote changes to patterns of social and cultural life. Mental health nurses have a potentially loud and influential voice. Hughes (2007) observed that policy is an underdeveloped area in mental health nursing in New Zealand and believed mental health nurses need to analyse issues, take a position on them and push them up the political agenda for health. Mental health nurses in New Zealand can extend their perception of their professional role to incorporate social analysis and activism into their professional identity.

Benner (2000, cited in Buresh & Bush, 2000) has called on nurses to apply their courage and develop their skills to speak out forcefully and effectively to the public in the media. Buresh and Bush (2000) found that the invisibility of nursing is an international problem caused by nurses' reluctance to speak; a problem of a lack of professional "voice". They suggest that nursing cannot be seen as a significant health care profession unless it is visible and vocal, speaking about the major health care issues of our time. They invite us to envision how things would be if the voice and visibility of nursing were commensurate with the size and importance of nursing in health care. Society is constantly created through discursive practices; therefore, society can be changed through the creation of new discourses. Wherever there is power there is the option of resistance. Mental health

nurses can re-imagine the world without interpersonal violence, just as those who went before us imagined a world without war or slavery; a society in which interpersonal harm ceases to be tolerated and mental health nurses are required to ask again “who are we now?”

## **Hope**

Foucault’s work can be put to use for activist purposes to create a space in which mental health nurses can counter the hegemony of prevailing discourses. Becoming consciously aware of hegemonic structures of power and making decisions about positioning for change are political practices which offer hope. Hope is the foundation stone of both the recovery movement and mental health nursing practice. Gavey (2005) suggested that if we turn our attention to the possibilities of cultural resistance rather than individual agency, there is cause for some degree of optimism. Stuhlmiller (2003) believed that to nurture, protect and guard against alienation and despair, are the everyday practices of mental health nurses and that we honour those we serve by becoming politically active in trauma prevention. By engaging in resistance and social action, mental health nurses can foster hope for themselves and thereby offer hope and an optimistic view of the future to service users.

## **Suggestions for Future Research**

One outcome of this discourse analysis on prostitution law reform is the challenge to mental health nurses to reflect on their roles in trauma informed mental health care and in normalising trauma informed care within the profession. This suggests a future qualitative research study examining how mental health nurses co-construct political explanations of the experiences of service users’ abuse. What gendered, personal, political and theoretical knowledge do mental health nurses bring to this co-construction? How is power understood and explained? What are the implications of these political constructions for the service user? How might these political constructions offer hope to individual service users and hope for a more peaceful society?

Another piece of research suggested by this work is a discursive analysis of leadership programmes in mental health nursing in New Zealand to identify both the hegemonic discourses which maintain dominant ideologies and the status quo of mental health nursing and also discourses which offer potential for political resistance and social change. By developing a critical awareness of the effects of these discourses, a visible and articulate group of nurse leaders could be developed to lead a project of social change.

### **Summary**

The subject of prostitution forms a crucible which melds and tests discourses of sexuality, money, disease, religion, gender, human rights and law. Official discourses on prostitution law reform can be constructed as either attempts by institutions of the state to co-operatively resolve conflicting interests, for example the management of sexually transmitted disease and the human rights claims of prostitutes; or as serving the interests of dominant groups, for example party political agendas, consumers of prostitution and the global sex industry. This analysis of the texts on prostitution law reform in the New Zealand Herald has illustrated the ways in which the claims of interest groups were ordered to serve political ends, each vying for status and power. The discourse of harm minimisation and health promotion, which was of interest for the political purposes of this research, was ultimately foreclosed by its use as official discourse to claim the PRA as a “common sense” solution to the “inevitability” of prostitution. The transformation of a woman’s body into a product for commercial industry, albeit protected by regulation and rules of engagement, conceals the problem of violence and abuse, the sexual terrorism by which gendered systems of power are maintained and women’s power and freedom are limited. The socio-political practice of mental health promotion has been largely overlooked by mental health nurses in New Zealand. A space exists in which mental health nurses could become a political force, advocating for the rights of all people to live lives free from abuse, enjoying the good mental health which is their right.

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