The prostitution debate seems entrenched, with 'Left' libertarians facing off social conservatives. But Belinda Carpenter is uneasy. She contends that both sides in the long-running debate share the same dubious assumptions about what prostitution is. The answer may be a more complex approach to the question.

The prostitution debate in recent years has taken on a very familiar guise. In the Right corner we have the conservative, religious, anti-sex anti-prostitution lobby; in the Left corner the libertarian, pro-sex, pro-prostitution contingent. The conservative Right argues for the retention of criminal law as it currently stands, while the libertarian Left promotes the decriminalisation, and often legalisation, of prostitution and related activities. But is this debate really as clear-cut and divisive as it appears in policy documents and in the media? And is this dichotomy the only way in which the prostitution debate can be understood?

I want to argue here that despite the apparently opposed stances, both sides of the debate define their respective positions through access to the same assumptions about and understandings of pornography. Moreover, these ways of understanding prostitutes and clients have only become available since the nineteenth century. This puts paid to many prevailing assumptions about the longevity of the institution (including those by Queensland's Criminal Justice Commission), including the depiction of prostitution as 'the oldest profession'. This historical grounding for the debate also suggests that the current way of understanding the issue as an either/or scenario is not somehow etched into the foundation-stones of modern society. This helps make space for new understandings of prostitution, prostitutes and clients than the current divisive (and clearly unproductive) debate. As a means of focussing this analysis I want to look in particular at the prostitution debate in Queensland arising out of the Fitzgerald Inquiry (1987-88).

The Fitzgerald Inquiry uncovered a thriving prostitution industry. The inquiry discovered that not only was 'vice' largely unpolicied, but politicians and police also had a
vested monetary interest in keeping ‘the oldest profession’ alive. The Fitzgerald Report alleged that in mid-1981 “the first steps were taken to organise payments in relation to prostitution” and “by the end of 1984, police protection of prostitution was well established”.

A central recommendation of the Fitzgerald Inquiry was the establishment of the Criminal Justice Commission (CJC), an integral aspect of whose review program was to be the examination of the criminal laws “relating to voluntary sexual or sex-related activities”. Specifically, this meant the “type, availability and costs of law enforcement resources which would be necessary effectively to police criminal laws against such activities” and “the extent (if at all) to which any presently criminal activities should be legalised or decriminalised”. In March 1991 the CJC released a Review of Prostitution-Related Laws in Queensland. According to the CJC, “the purpose of the paper was to inform members of the community of the various issues and then to seek input from the public and organised groups”. A total of 117 separate submissions was received; their general tenor was summarised by the CJC in its report on prostitution, Regulating Morality? An Inquiry into Prostitution in Queensland, tabled in September 1991. Their general summary maintains that “(t)here were almost equal numbers of submissions in favour of legalisation or decriminalisation of some kind as there were those totally opposed to any relaxation of criminal sanctions”. Interestingly, the CJC’s recommendations centred on a strategy of
current effort to define and discuss prostitution outside of its historical context. I want to argue here that, rather than understanding prostitutes and clients as well-worn players in the 'oldest profession', it may be more productive to recognise that our current way of 'arguing the prostitution debate' is an outcome of new ways of looking at prostitution introduced in the 19th century. Specifically, it was the rise of medical, criminological, psychological and scientific discourses, accompanied by changes in established religious knowledge (specifically the relationship between morality and sexual behaviour), which situated the behaviour of prostitute and client alike chiefly in terms of their sexuality. In several important respects, then, both of the main opposing positions in the current debate share common underlying assumptions derived from that 19th century experience.

In the policy documents released by the CJC during 1991, both sides of the debate appear able to identify and discuss prostitutes (and, to a lesser extent, clients) without any sense of confusion or difficulty. There is no doubt who is and who is not a prostitute: in fact, it is taken as given. A definition of a 'sex worker' is provided in the CJC's initial Information and Issues Paper. However, it gives no indication of the sex of the prostitute (even though it has been recognised that men comprise only 5% of all prostitutes), nor of the difficulty of defining when prostitution is taking place. For example, is a woman a prostitute if she accepts dinner and a night in an hotel room with the knowledge that sex will be expected? Under the current criminal law, this is an example of the way in which social definitions can subtly mould and transform the personal meaning given to sexual activity. For Walkowitz and Mahood, this represents increasing state control of working class women's sexuality. Whether or not this is the case, it certainly demonstrates a mismatch between the official definitions of prostitution and popular conceptions of 'being a prostitute'.

Not surprisingly, discussion of the client materialised when the figure of the prostitute was first being identified in the 19th century. However, while the same bodies of knowledge provided definitions of the behaviours of both prostitute and client, the rising notion of the sanctity of the family and the chastity of the wife meant that the double standard excused the client and admonished the prostitute for an activity that came to have very different significance for men and women. This double standard is evident both in arguments that oppose decriminalisation and in arguments that support the CJC recommendation of decriminalisation with regulation. Indeed, it could be argued that such a double standard is central to any discussion of the relationship between prostitution, prostitutes and the spread of disease.

Health issues were central to many of the submissions, with opinion divided over the validity of compulsory health checks, but not health checks per se, as part of the regulation strategy and the relation between legalisation of prostitution and the control of sexually transmissible diseases. Some felt that a policy which drives sex workers away from public view (criminalisation) may indirectly encourage the spread of AIDS and STDs.

Health also figured strongly in the arguments of those who opposed decriminalisation. They feared that the legalisa-
tion of prostitution would result “in severe medical and police control of prostitutes; but not in better control of sexually transmitted diseases”. A Mr R claimed that the “costs of enforcing the law are relatively small compared to the overall social costs associated with the gradual spread of depravity (including) HIV, AIDS and STDs”. Both positions are informed by the medical conception of a relationship between sexual activity (in this case prostitution) and the transmission of disease—a way of thinking about prostitution which has been in currency only since the 19th century.

While at various times since the 14th century prostitutes had been associated with the spread of syphilis, more often than not the association was purely arbitrary. As Linda Mahood demonstrates, in the 15th century in Scotland for example, ‘whores’ and ‘light women’ were banished from the town or confined to their homes and/or banned from entering the vicinity of butchers, bakers, brewers and laundries—punishments based on the belief that syphilis was communicated by air. But while next century saw the discovery of an association between sexual activity and the spread of syphilis, in many parts of Scotland at this time it was still believed that “syphilis spread via contact with clothes, personal possessions, baths, kissing and especially breath”. Thus, to punish women known to be ‘light’ through public rebuke and carting, branding, banishment or torture and death cannot be understood as a specifically medical effort to stop the spread of syphilis. And, as Linda Mahood maintains “it is evident that the link between women and dangerous diseases was established long before it was proved that the disease was communicated through sexual intercourse”.

The medical understanding of the relationship between syphilis and sexual activity culminated in the passing of the Contagious Diseases Acts in Britain in the 1860s. These were directed toward the sanitary supervision of ‘common prostitutes’, and allowed women believed by the police to be prostitutes to be arrested and forcibly inspected by doctors for venereal disease if they refused to submit voluntarily. An ‘unclean’ diagnosis led to internment in a lock hospital for up to nine months.

It is clear that a double standard was in evidence and that this focus on prostitutes as a way of containing the spread of syphilis was as much a product of the new and powerful association between morality and sexuality as it was the rise of new medical knowledge about syphilis. The new punishment of incarceration in the 19th century was promoted to cure not only medically, but morally; thus lock hospitals combined medical treatment of venereal disease with religious teachings and domestic chores.

The belief that government has a responsibility to protect or improve its citizens’ morals underpins this 19th century attitude to criminal justice. This question of the proper role of the law was explicitly raised in the CJC’s Review paper which asked “Is law an instrument to uphold morality or should it reflect prevailing community attitudes?” Many submissions in support of the CJC proclaimed that “the law should reflect reality and that a refusal to legislate for activities which were commonplace, diminishes community respect for the criminal justice system”. In contrast, a Mr M maintained “that the government should use the law to shape values, behaviour and attitudes in the community...that young people should be able to grow up in a community knowing that its moral values promoted clean living and a healthy lifestyle.”

This view, of course, reflects the straightforward belief that prostitution is morally wrong. The Presbyterian church and Professor B maintain “that if there is no moral basis for decision making on public issues such as prostitution, legislators were saying the concepts of right and wrong were irrelevant to government policy and law”. Similarly, the Reverend Dr Kim wrote “a community has an obligation to state its moral convictions and practices as a clear guide to its members. The function of any law is to act as a moral restraint/guide”. Both sides of the debate agree that the government has a responsibility (by and through the law) towards its citizens. However, according to their preferences, they choose to interpret this responsibility either as protection for the general community from the evils of prostitution, or as protection of the rights of all its citizens as individuals.

Again, this concept has only been thinkable since the 19th century when governments began to gain the apparatus necessary to monitor and regulate populations. Thus, while prostitutes had been the subject of civil and parish laws prior to the 19th century, the system of networks that began to operate to control and regulate them in the 19th century—courts, hospitals, police, prisons—made the permanent identification of ‘being a prostitute’ more difficult to avoid. It could be argued that previous punishments such as banishment from the town simply allowed known prostitutes to escape their reputation, but it is more probable that the identification of a prostitute as a specific type of (criminal) sexual being was neither desirable nor achievable prior to the 19th century.

It does appear that an increasingly complex government apparatus has led to an increasingly complex array of regulatory practices against prostitutes. While the Contagious Diseases Acts were removed from the statute books in 1886, they were replaced by the Criminal Law Amendment Act which placed prostitution squarely within the new institution of criminal law. However, prostitution’s involvement in this rising legislation was only a small part of the state’s attempt to formalise its new position in the governing of populations—a role that enabled the state to raise the standard of health and education among the work-
ving class, as well as to legislate for a higher age of consent, and give married women property rights for the first time, for example.

There is still a plethora of governmental regulation relating to prostitution, but the direction of government intervention has been increasingly influenced by notions of social justice. The conviction that, as workers, women in the sex industry have rights to better working conditions and standardisation of wages without the exploitation by pimps, madams or police was an argument used to support the CJC’s recommendations. In the opinion of one educator “(women) have a right to sell their sexual labour and sex workers have a right to safe, legal and humane working environments”. This coincided with the discourse that asserted woman’s right to the integrity of her own body and her agency and choice in the profession of prostitution. For example, Ms S “thought that the present laws discriminate against women and should be repealed”.

Those opposed to decriminalisation were motivated by similar concerns. For example, there was the fear that legalising or decriminalising prostitution would indicate a state sanction for prostitution. The National Council for Women in Queensland “was opposed to any changes in present laws on the grounds that the State would appear socially to approve of the commercialisation and exploitation of women”. Similarly, Mr M and Mr R “thought that any regulation of prostitution by the state...would give prostitution pseudo-legitimacy and protection...and would lend itself to implied community acceptability”. That prostitution exploited women, and that legalisation would do nothing to lessen this, was used by many to add a further dimension to their opposition for the removal of criminal sanctions. Moreover, when survey respondents were given a number of possible areas of concern related to prostitution, 11% in Queensland and 14% in Melbourne were concerned with the fact that prostitution exploits women. This was the third highest concern after AIDS and STDS and prostitution’s relation to crime.

In this case, both sides of the debate have been motivated by (and utilise) the discourse of equity and social justice, arguments that only became associated with the prostitution debate in the 19th century. It was at this time that a general flurry of legislative change and opposition to unjust laws began, which have their basis in the 18th century notion of égalité, and which, according to Jeffrey Weeks, rested on “the abstract rights of all reasonable creatures to self-determination”. Part of this general opposition (which included campaigns as diverse as the abolition of slavery and the acquisition of the vote), was a concern with the rights of prostitutes. This concern was motivated by the proposed extension of the CD Acts beyond the initial eighteen garrison ports and towns (and the fear that respectable working class women would be identified as common prostitutes), but quickly became concern for the prostitutes themselves and an opposition to the Acts in general. The repeal movement (as it came to be known), combined a number of different interest groups; feminist, socialist, liberals and radicals as well as religious groups and working class men and women.

While the original opposition to the CD Acts centred on a challenge to the sanitary arguments of the extensionists—from claims of exaggerated statistics on the incidence of venereal disease to the prohibitive cost and unenforceable nature of extension—the feminist protest introduced arguments concerning the injustice of the acts against women: “(T)he acts violate the legal safeguards hitherto enjoyed by women in common with men; they allow police absolute power over women; they punish the sex who are the victims of vice and leave unpunished the sex who are the main cause of the vice and its dreaded consequences”. The prostitute as the victim of male lust was augmented in the campaign by the socialist-influenced argument that the prostitute was a victim of her poor social conditions, stimulated by industrial capitalism. Both arguments also gained the support of repealers more than a little influenced by the rising evangelism.

Was such a critique of male sexual licence regulatory or emancipatory? I would argue that it was not necessarily either. Rather, it occurred in the 19th century as a result both of the new bodies of knowledge that identified and defined the client, and the new agenda of liberalism, with its notions of individualism and égalité. Both égalité and individualism appear also to have informed feminism, socialism, and evangelicalism—and this, in turn, had a marked impression on the direction of the state’s involvement with prostitution, demarcating the critical point at which women were deemed to need protection, and men prosecution.

The repeal movement’s focus on the client also meant that the latter was made visible for the first time. However, their critique of male sexual licence regulatory or emancipatory? I would argue that it was not necessarily either. Rather, it occurred in the 19th century as a result both of the new bodies of knowledge that identified and defined the client, and the new agenda of liberalism, with its notions of individualism and égalité. Both égalité and individualism appear also to have informed feminism, socialism, and evangelicalism—and this, in turn, had a marked impression on the direction of the state’s involvement with prostitution, demarcating the critical point at which women were deemed to need protection, and men prosecution.

There was also a common view that prostitution provides society with a kind of safety valve against potentially violent men who would not otherwise have their sexual needs met. A submission from AH and JH put it this way: “The Government should legalise prostitution, it has worked well overseas and would help the AIDS problem,
it would cut down on attacks on women and children."

In a similar vein, submissions to the CJC argued that prostitution was necessary for elderly men and those men who are handicapped, lonely and/or unloved; that is, those men who are not serviced adequately by normal women.

The biological model of male sexuality is not however confined to support for the CJC’s recommendations. Those who oppose decriminalisation do not question the model of male sexual drive; rather, they stress control of sexual instincts over and above sexual release, and condemn sexual release outside of marriage. Thus, Dr MMY Kim of the Presbyterian Church of Queensland “saw prostitution as an attack on the fidelity of relationships within marriage and a threat to chaste lifestyle for single persons”. Similarly, the Australian Family Association asserted “that men who use prostitutes have little regard for their wives and that this soon shows itself in the marriage relationship”.

Understanding the male sex drive as essentially active and in constant need of relief was first scientifically legitimated by Charles Darwin. In *The Origin of Species* the Victorian ideal of the active male and the passive female became located in nature. And while the necessity for prostitution to cater for man’s natural propensity for sex was well established before Darwin, his theories placed man’s behaviour outside the realm of the social and into the realm of ‘instinct’. More importantly, however, it gave authority to the current direction of legislation aimed at prostitutes, while simultaneously supporting the prevailing domestic ideology and the double standard.

Men had paid women for sex prior to the 19th century. However, without a strict relationship between sexuality and morality the client (like the prostitute) was not easily identified as committing a sexual or moral transgression. We are told that the demand for prostitution in Europe rose dramatically in the 19th century—Engels estimated that there were 40,000 prostitutes in London in 1845—but this says more about the new craving to identify the client than about real trends. In England parliament continued to resist formal procedures to identify clients. Yet, by the end of the 1880s, legislation raising the age of consent to 16 provided an increased capacity to do so. This trend was accelerated by an increasingly visible split between society’s private and public spheres. This had specific implications for sex in the public sphere which was now considered quite different and separate from sex in the private sphere.

It is often argued that the ‘double standard’ of 19th century morality allowed men to escape identification in the relationship of morality and sexuality. However, this is clearly not the case. During the 19th century society gained an increasing capacity to regulate the types of extra-marital sexual behaviours that men could legitimately engage in. Homosexual relations and sexual relations with children and animals for example, were identified, named and understood as perverse by social theorists and conceived of as illegal by the state. Similarly, men’s involvement with prostitution was examined by criminologists, psychoanalysts and sociobiologists; it became, however (and still is), the extramarital sexual relation sanctioned by the state.

The prostitution debate as it currently stands, then, is a product of the rise of specific bodies of knowledge impinging upon the conceptions of the prostitute and the client since the 19th century. To continue to see prostitutes and clients simply as familiar players in ‘the oldest profession’ misunderstands the nature of prostitution, placing it outside history and into the timeless realm of the ‘natural’. It particularly behoves policymakers to be aware that prostitution as we know and understand it is not an integral aspect of civilisation—contrary to the spirit of the proposed Queensland legislation, which argues that “very few societies during the course of recorded history have been free from prostitution and it seems an unrealistic expectation to eradicate it from ours”.

Moreover, these ways of understanding prostitution are common to both sides of the current ‘debate’. This might suggest that the current positions available in the prostitution ‘debate’ are rather less than satisfactory. It might also suggest that a space exists to move beyond the narrow confines of those current parameters of debate. I would suggest this requires a shift from the current either/or fixation of the prostitution debate to an approach that stresses the need for historically specific answers to community concerns about prostitution—concerns that are not easily constructed in terms of the simple dichotomies of the conservative/libertarian opposition.

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