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The socio-legal dynamics and implications of 'diversion':

The case study of the Toronto 'John School' diversion programme for prostitution offenders

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Abstract

This article explores the socio-legal dynamics and implications of the 'John School' diversion programme for prostitution offenders in Toronto, Canada. The analysis is based on quantitative and qualitative data collected as part of an evaluation study of the programme conducted between 1999 and 2001. The analysis begins by exploring the socio-political forces that have shaped prostitution control in Canada over the last century and ultimately led to the emergence of the 'John School' as a reform compromise. The article subsequently investigates the particular role of 'victims' discourses within the rationale and practices of the 'John School' initiative. It traces the ambiguous nature of the programme's objectives by contrasting its widely promoted 'educational' and 'constructive' aims with the more punitive qualities that emerge in practice. Drawing from the critical literature on informal justice and diversion, it is evidenced that the programme focuses disproportionately on participants from lower socio-economic classes. Serious questions are also raised with regards to 'due process'. Particular attention is given to the requirement by participants to waive basic procedural rights in return for admission in the 'John School' programme and the subsequent withdrawal of

criminal charges. The degree of 'choice' involved in accepting these conditions is evaluated with regard to the specific characteristics of the target population. Policy implications are discussed.

Key Words

• Canada • criminal justice • diversion • prostitution

Introduction

Over the past several decades, the criminal justice system in Canada—as well as in most other western countries—has undergone a fundamental process of fragmentation, pluralization and reform in terms of ideology and practice (Vass, 1990; Roach, 2000). In essence, a profound challenge to and transformation of the traditional criminal justice system—rooted in the core elements of law, punishment and corrections, the main mechanics of deterrence and rehabilitation and the key institutions of the police, courts and state correctional programmes—has gradually occurred. Various factors have influenced or replaced these traditional features. What has emerged may even be considered a distinct 'fourth phase' in western penal policy (Vass, 1990: 3).

In the wake of penology's 'nothing works' discussions (Gendreau and Ross, 1987), a substantial debate has emerged about the appropriateness and effectiveness of conventional criminal justice procedures and institutions. This is especially relevant to the prosecution of minor offences (i.e. petty or 'victim-less' crimes such as illicit drug use and prostitution). Amid the emerging context of neo-liberal governments and policies, these general doubts about the effectiveness of conventional justice procedures have been accelerated by the claim that conventional, state-run criminal justice operations and institutions are not only expensive, but also not cost-effective (Vass, 1990). Consequently, a diversity of policies and frameworks including 'diversion' programmes on charge or corrections levels have been developed and introduced. These programmes have been designed to manage as many offenders as possible outside of the traditional criminal justice system (Walgrave, 1995; Junger-Tas, 1996; Nuffield, 1997).

An additional impact of this 'fragmentation' process has been the increasing privatization of certain criminal justice system operations, including many within the fields of policing and corrections. On a more ideological level, considerable debate has arisen with regards to the objectives and goals of criminal justice interventions and proceedings, leading to a state of pluralization rather than unity (Roach, 2000). While neo-conservative political environments are promoting retributive, punitive, 'tough on crime' discourses, academic or local voices have advocated models of 'restorative justice' and more conciliatory alternative measures as solutions to the current impasse of effective operations in criminal justice system practices (Junger-Tas, 1996; Braithwaite, 2000; Roach, 2000). The

latter practice has been advocated as a seminal opportunity to provide more effective and constructive interventions in terms of addressing harms done, avoiding future deviance and responding to the needs of all parties negatively affected by criminal behaviour.

Related to these dynamics, the recent criminal justice system landscape has increasingly been characterized by a shift in emphasis away from crime and criminals. 'Victims' as well as their rights, needs and interests are currently considered as a key determinant of criminal justice policies and practices (Roach, 2000). Several observers have seen the focus on victims as a counter-movement to the long-standing emphasis on 'due process' and its central focus on the rights of the accused. In Canada, the latter movement formally culminated in the establishment of the Canadian *Charter of Rights and Freedoms* in 1982 and the ensuing jurisprudence.

Looking more substantively at 'prostitution' as an arena of legal and governmental regulation in Canada, this offence generally falls into the realm of 'moral', 'sin' or so-called 'victimless' crimes (Packer, 1968) which also include drug use, alcohol abuse and gambling. Canada has traditionally taken a conservative and punitive stance towards such offences (Boyd, 1986; Giffen et al., 1991; Fischer, 1999). Yet, after numerous decades of social, political and legal challenges to literally all of these 'sin' statutes, it seems that many of these traditional walls have begun to crumble. Indeed, calls for the decriminalization of prostitution in Canada have a long history (Federal/Provincial/Territorial Working Group on Prostitution, 1998) and have culminated in the recent local yet unsuccessful efforts to establish street prostitution tolerance zones (or 'red light districts') in the city of Montréal (Canadian Press Newswire, 2000).

Within this crude factual context of developments in criminal justice, as well as the law and control of 'morality', the establishment of the 'John School' diversion programme for male prostitution offenders (i.e. customers of street prostitutes) may come as no surprise. This article will provide a socio-legal assessment or critique of a specific 'John School' diversion programme, drawing on a substantial body of socio-legal literature on alternative justice in general, and diversion programmes more specifically. This article examines the 'John School' programme as a case study of key social and legal dynamics, practices and implications associated with criminal justice diversion.

Prostitution law and control in Canada

Prostitution has been an issue of social and legal contention in Canada for over a century. Although the facets of its control have evolved over this period, the debates and practices relating to prostitution control have always been closely linked to the larger determinants of morality, public order and gender (Boyd, 1986; Larsen, 1996; Lowman, 1998). Canada's first prostitution act, incorporated into the 1892 *Criminal Code*, made

street solicitation a status offence of 'vagrancy' for women who were unable to provide a 'good account' of themselves (Robertson and Morris, 1991: 2). The law applied to women only, which was eventually found to be inconsistent with common law privileges as well as fundamental principles under the Canadian *Bill of Rights*.

In 1972, a new prostitution law was introduced partly as a reaction to criticism contained in the Report of the Royal Commission on the Status of Women. This law prohibited solicitation in public places for the purposes of prostitution, thus shifting the focus from vagrancy to public order. However, the law left many details unspecified, including questions about what 'solicitation' really meant and whether it would apply to customers as well as prostitutes. A landmark Supreme Court of Canada decision rendered that solicitation must be 'pressing or persistent' to be enforceable under the law. This ruling led to a decrease in enforcement and a subsequent increase in the prevalence of street prostitution (Roach, 1999). As a response, some cities attempted to establish their own city by-laws to deal with street prostitution. However, these municipal statutes were deemed unconstitutional by the Supreme Court.

In the early 1980s, the landmark 'Fraser Committee' investigated the social and economic determinants of prostitution and made recommendations in 1985 to address these factors. The Committee also made suggestions to revise the law in order to shift the focus to the public nuisance component as well as other adverse effects of prostitution on citizens. Provisions were also included that would allow prostitutes to work as individuals from their own homes (Larsen, 1996; Federal/Provincial/Territorial Working Group on Prostitution, 1998). These recommendations, in combination with the general frustration about the ineffectiveness of the 'soliciting law', led to the establishment of the 'communicating law' by the Conservative government in 1985. This law, which is still part of the present Canadian *Criminal Code* (s. 213), makes it illegal to communicate with any person in a public place, or impede traffic, for the purposes of prostitution (Robertson and Morris, 1991). The summary offence carries a maximum sentence of six months in prison and/or a $2000 fine. Although the law has been challenged under the *Charter of Rights and Freedoms* regarding the principles of freedom of expression and association, it has been upheld. However, a study report commissioned by the Justice department concluded that the law has had very little impact with respect to reducing street prostitution in Canadian cities (Fleischman, 1989; Lowman, 1998).

The introduction of the new 'communicating' law entailed a considerable increase in the enforcement of street prostitution in Canada. Indeed, arrests for prostitution-related offences rose from 1225 per year in 1985 to 7165 in 1995, with over 90 per cent of these arrests being for 'communicating' offences (Duchesne, 1997). Furthermore, unlike the previous law's exclusive focus on the female prostitute, approximately 50 per cent of these 'communicating' arrests were made for male customers. Sentencing appears

to vary considerably. According to 1997 statistics (Duchesne, 1997), 28 per cent of offenders received a discharge, 50 per cent received a fine and 13 per cent received a probationary sentence. Statistics further indicate that considerable variation exists in prostitution enforcement across Canada, with the vast majority of arrests occurring in Vancouver, Montreal or Toronto. Between 30 and 50 per cent of 'communicating' arrests have occurred in Toronto alone over the past 15 years. Due to the specific nature of the summary offence law, arrests under the communicating law are usually made on the basis of undercover or sweep operations in which police officers pose as either prostitutes or customers.

Despite a dramatic increase in arrests, the 'communicating' law has still come under attack for its ineffectiveness in reducing the prevalence of street prostitution and related problems. Its main effects have been described as the 'systematic displacement' of street prostitution in public spaces (Larsen, 1996: 45; Hubbard, 1998; Fischer, 2001). Its enforcement has 'failed to significantly affect the prostitution trade' (Todd, 1986: A8). In response, an Inter-governmental (Federal/Provincial/Territorial) Working Group was set up in 1992 to propose steps further to reform law and control of prostitution in Canada. After many years of investigation, the Working Group supported, in principle, social and diversion programming for individuals involved in the street prostitution trade, but could not agree on recommendations for changes to the law (Federal/Provincial Territorial Working Group on Prostitution, 1998).

History and background of the 'John School'

On a local level, an increasing sense of frustration proliferated in Canada through the 1990s with regard to both the ineffectiveness of the current prostitution law as well as the ability of political authorities to initiate decisive measures to address the persistent problem of street prostitution. In Toronto, an increasing number of local citizens' and neighbourhood groups started putting pressure on politicians, lawmakers and police regarding the issue of street prostitution. These groups claimed to be one of the principal 'victims' of street prostitution, harmed by the negative impact of the sex trade on their 'communities', safety and quality of life (Fischer, 2001). In 1995, a local prostitution committee was formed, consisting of city councillors, Attorney General representatives, the police and the Salvation Army, as well as several social service agencies dealing with street prostitutes. The committee ultimately proposed the establishment of a Toronto version of the 'John School' diversion programme for the male customers of street prostitutes. It was felt that this alternative intervention programme promised more effective results ('John School' Diversion Programme Toronto, 1996).

The 'John School' concept was created in San Francisco in the early 1990s by an ex-prostitute and several supportive criminal justice representatives (Monto, 2000). Generally framed as a diversion programme, it set out to 'educate' Johns about the social, economic, health and personal risks and harms related to street prostitution in the form of a 'school', hoping to accomplish more effective behaviour change than abstract and impersonal criminal proceedings against offenders. The programme quickly gained enormous public and media attention. The programme administrators claimed a high success rate, professing that 98 per cent of the 2300 men who had gone through the programme between 1995 and 1998 had been 'rehabilitated' (Jerome and Rowlands, 1998).

The Toronto 'John School' is set up as a post-charge/pre-trial diversion programme. Upon arrest for a communicating offence under s. 213 of the Criminal Code, it can be offered to men for whom the charge for attempting to solicit a prostitute constitutes a first offence. The programme is offered to the offender by the prosecutor at the court hearing. If the accused is interested in pursuing the 'John School' diversion option, he must register for the programme with 'Streetlight' Support Services, a Toronto social service agency in charge of the administration of the 'John School'. After collecting personal information on the offender, as well as a $400 'programme fee', the agency schedules the diverted individual for one of the full-day 'John School' events, held approximately once a month. Once the offender has successfully completed the programme by attending the 'John School' day, the Crown Prosecutor may withdraw the criminal charge. Consequently, no criminal conviction or sentence is produced, and no criminal record is created ('John School' Diversion Programme Toronto, 1996).

The actual 'John School' event takes place on a Saturday to minimize disruption to offenders' work and/or family schedules. It is moderated by a Toronto police officer and consists of a series of six presenters. Each speaker gives a formal presentation on the risks and harms of street prostitution from his/her own particular perspective. The presenters include:

1 a crown attorney who discusses the criminal offence of prostitution and its legal ramifications;
2 a vice-squad officer who talks about crime, violence and victimization related to prostitution;
3 public health nurses who address issues surrounding the dangers and prevention of sexually transmitted diseases;
4 'community' representatives who speak about the harmful impact of street prostitution on residential life;
5 an ex-prostitute who discusses the myths and harms related to street prostitution work; and
6 a representative from 'Sex and Love Addicts Anonymous' (SLAA) who talks about 'sex addiction'.

Group exercises and discussions on issues related to these topics are interspersed throughout the programme.

There are approximately 25–40 'students' per 'John School' session. According to estimates provided by the organizers, some 2700 offenders had gone through the programme between its inception in 1996 and the spring of 2001 (Wortley and Fischer, 2001).

Data and methods

All empirical data reported in this article were collected as part of a multi-component evaluation study of the Toronto 'John School', conducted between January 1998 and April 2001. The study was conducted by a research team based at the University of Toronto (led by the two principal authors of this article) and independent of the institutions implementing the 'John School' programme. The study consisted of five main components (for details, see Wortley and Fischer, 2001):

1 A pre-/post-survey of offenders diverted to the 'John School'. This survey was conducted with 366 male prostitution offenders (88.6 per cent of the total number of diverted offenders during the study period) who entered the 'John School' diversion programme between March 2000 and March 2001. The survey examined the offenders' perceptions of guilt and the process around the prostitution charge; their knowledge of and attitudes towards prostitution laws; their reasons for deciding to attend the 'John School' diversion programme; their patterns and justifications for using prostitutes; their awareness of both the victims of prostitution and the potential health and victimization risks associated with prostitution use and, finally, their anticipated future behaviour. The survey was conducted in the form of an anonymous face-to-face interview before offenders registered for the programme, and a questionnaire administered immediately after completion of the programme. A sub-sample of offenders ($N = 106$ or 36.6 per cent of all participants) were also reinterviewed approximately six months after their participation in the 'John School' programme in order to assess the longer-term effects of the programme. Subjects provided informed consent for participation.
2 An examination of official recidivism rates of offenders diverted to the Toronto 'John School' programme. A sub-sample ($N = 867$, or approximately 30 per cent of the total number of offenders diverted to the 'John School' programme) of offenders diverted to the 'John School' programme and identified as such between 1996 and 2000 in the Toronto Police Service 'CIPS' (Criminal Information Processing System) database was screened for criminal recidivism after completing the 'John School' programme.
3 Key informant interviews. A total of 34 key informant interviews were conducted with key stakeholders and active institutional participants in the 'John School' diversion programme. These key informants were interviewed about the history and workings, as well as the benefits and limitations of

the Toronto 'John School' programme. The list of key informants includes: Judges; Prosecutors; Duty Council; officials of the Attorney General of Ontario and Toronto Police Service; Toronto City Councillors; Sex Trade Workers; John School Facilitators (police); Police, Community, Public Health and Sex Worker representatives; and, finally, Streetlight Support Services and Salvation Army representatives (the current and former 'John School' programme administration agencies).[1] All interviews were examined using a content analysis methodology.

4 A general population survey. A random telephone sample of Ontario adults ($N = 2149$ individuals, contacted as part of the 'CAMH Monitor'—a regular Ontario adult household telephone survey) was conducted between January and December 2000. Respondents were interviewed about their knowledge, perceptions and attitudes of prostitution, in general, and the 'John School' programme, in particular.

5 Field observation and note-taking. Between April 1999 and March 2001, both the two principal study investigators as well as members of the 'John School' research team observed and took detailed field notes of all components of the 'John School' programme (registration and actual programme day).

The socio-legal dynamics and implications of the 'John School'

The new 'victims' of prostitution

The argument has been made that perhaps the strongest force in legal politics and practice over the past decade or so has been the emerging paradigm of victims' rights (Sanders, 1988; Roach, 1999, 2000). The focus on the rights of victims in the implementation of justice has recast the phenomenon of crime. No longer perceived as a matter to be settled between communal values represented and protected by the state, criminal sanctioning is now conceptualized as an approach in which the severity and necessary consequences of criminal behaviour are defined by the extent of real or potential harms to 'victims' (Weitekamp, 1995). These victim-centred interests and pressures are based on the claim that criminal law has failed to 'protect and respect victims' (Roach, 1999: 5). This paradigm has influenced a wide range of criminal justice interventions including the treatment of violent and domestic crimes, gun control, drinking and driving and petty crime. Given that most of the pressures advocated under the umbrella of victims' interests have pushed for more legalistic and punitive approaches to crime, criminal justice researchers have concluded that the victims' rights movement poses a strong counter-force to the emphasis and protection of 'due process', especially in the context of a neo-conservative legalization of politics. Furthermore, they contend that it will provide the grounds and legitimization for the 'new and improved face of crime control' (Roach, 1999: 318).

The discourse of the 'victims' of prostitution played a central and distinct role in the emergence of the Canadian 'John School' initiative. It did so on a number of different levels. Canada's first prostitution law, in effect until 1972, explicitly targeted women believed to prostitute themselves in public (Robertson and Morris, 1991) and thus explicitly projected the prostitute as the criminal villain in the prostitution 'problem'. Its two successor laws—the solicitation and the communicating law—both worked with gender-neutral language, remaining ambiguous about their spirit and intent.

However, the shift in law enforcement practice was more explicit. Under the solicitation law (1977–85), almost two-thirds of all arrests were of women (prostitutes) as opposed to men (customers). This ratio changed to approximately 50 per cent under the communicating law in the mid-1990s. Yet, women offenders still received much harsher penalties when charged. For example, convicted female prostitutes were 12 times more likely to receive a prison term than male prostitution offenders in 1993/4 (Shaver, 1993; Duchesne, 1997). Nevertheless, certain strands of feminism and 'social justice' activism continued vigorously to push discourses stating that female prostitutes were the victims of bad circumstances and male exploitation. Furthermore, they argued that these realities needed to be translated into legal and social practice (Shaver, 1993; Phoenix, 2000). In Canada, these 'victim' discourses subsequently started to find expression in jurisprudence. For instance, in a 1990 Supreme Court decision, Justice Lamer cites and refers at length to a brief by the Ontario Advisory Council on the Status of Women, stating that ' here is a real victim in prostitution—the prostitute herself. . . . [Prostitution] is certainly a blatant form of exploitation and abuse of power . . . Prostitution is a symptom of the victimization and subordination of women and of their economic disadvantage' (reference re ss. 193 and 195.1(1)c of the Criminal Code, 1990). He furthermore condemned the sex trade as 'degrading to the individual dignity of the prostitute' (reference re ss. 193 and 195.1(1)c of the Criminal Code, 1990).

The 'John School' fundamentally disseminates and builds on the imagery and symbolic mechanisms of the prostitute as 'the victim'. Indeed, the very creation of the 'John School'—as captured by key informants—originated from a plan for . . . a comprehensive exit and social reintegration programme for street prostitutes who wanted to leave the sex trade. However, sufficient funds were not available. Consequently, the plan became that of the establishment of a 'John School' programme for male prostitution offenders (which was also seen as much more palatable to the public). This diversion programme would charge its students a fee and these funds would be used to support the women's exit programme. Setting up a diversion programme for male customers on a fee-for-service basis and thus funding a women's programme was seen as justified since '[the Johns] support our drug habits [now they] need to be paying us to get well' (JS28).

Another powerful group of 'victims' also emerged as a key determinant of the 'John School'. Certain neighbourhood groups, set up in the context of 'community policing', started to exercise considerable pressure to 'finally deal with the problem' of prostitution that they found increasing in their neighbourhoods. They argued that street prostitution had made them (as residents, children, innocent women and property owners) the 'real victims', by destroying the fabric of their neighbourhood, bringing drugs and violence to the areas, undermining safety and lowering property values. One 'community' representative explains that her neighbourhood is a

> great place to live [but] there is a handful of people that make life intolerable for us, for everybody there, and they're the problem. It's the John, it's the pimp, and it's the drug dealer who are all contributing to the community problem—and it is a community problem as opposed to sexual problem. (JS30)

In the same vein, a police officer describes the broad 'victimization' effects of street prostitution on the 'community':

> The garbage, the increase in traffic, and . . . with prostitutes come drugs. . . . The drug pushers follow them . . . [and] the neighbourhood feels the impact. There's garbage, there's used needles, condoms that are lying around, now start to become a hazard for children. . . . You then have the criminals who are committing crimes to buy the drugs. You have the prostitute's children and their family [as victims] maybe. . . . It's like a pyramid, or you could say concentric rings, when you drop a stone in a pond and you have this ripple effect. It ripples through everything with the community. (JS29)

The 'John School' builds on and merges these victims' discourses as its main rationale and legitimization. It also conveys the message to its students that they are 'responsible' and 'accountable' and that they have been given a merciful 'break' for their harmful and immoral behaviour. Throughout the 'John School' day, the facilitator vigorously emphasizes to the participants that prostitution has many 'victims' and that there is no such thing as 'victimless' prostitution.

The theme of victims is also starkly embodied and picked up by the other presenters at the 'John School'. During his presentation, the vice squad speaker tells the story of 'true cases' of abused, molested, beaten, exploited, drug addicted, street prostitutes barely escaping death on a daily basis, whose lives sharply contrast with the romanticized version of prostitution provided by movies like 'Pretty Woman'. These impressions are further reinforced and illustrated by the ex-prostitute speaker and her account of a 'career' of prostitution starting with early childhood abuse, lack of and longing for love, a destructive lifestyle dominated by sex for money and drugs, the exploitation and violence experienced from pimps and the constant degradation, humiliation and disgust that they receive from the 'Johns'. Finally, it is the 'community' representatives who vigorously claim the 'community's' status as a 'victim' of street prostitution.

These representatives cite increased crime, violence, noise, litter, the harassment of women and children residents by Johns, fear and loss of safety and decreases in property values as the indicators of victimization imposed on them by the villainous John population.

The emphasis on 'victim' discourses in the 'John School' setting is further illustrated by a group exercise at the end of the day-long session in which the facilitator requests participants to write down the 'victims' of street prostitution. According to the John School's 'instructor's guide', this exercise is intended to produce an exhaustive list of victims that includes 'Prostitutes, Prostitutes' children, Prostitutes' families, Johns, Johns' children, Johns' families, Community, Businesses, Health Workers, Politicians, Police, Ambulance, Taxpayers, Justice system workers, tourists' (Metropolitan Toronto Police, 1996: 19). The facilitator's prescribed closing line of this group exercise—which was frequently reproduced verbatim by the participants in the post-'John School' questionnaire—is that 'Everyone is a victim in street prostitution' (Metropolitan Toronto Police, 1996: 19).

In sum, the 'John School diversion programme provides an exemplary illustration of how 'victims' rights [are] used to legitimate crime control' (Roach, 1999: 122). The mechanisms by which the programme expands the social and legal control exercised upon the 'crime' of street prostitution will be discussed later in this article.

The ambiguous goals and objectives of diversion

It has been suggested that the current diversification and fragmentation of criminal justice sanctions has led to a situation of 'legal pluralism' (Roach, 2000: 254). This may be particularly true with regards to the principles and mechanics of sentencing, as they are applied to accomplish the overarching goals of 'justice', through alternative means of diversion or others. While 'traditional' measures of justice have primarily focused on the punishment of offenders and thus aim to utilize the mechanics of deterrence to avoid future crime, recent 'alternatives' strive to instrumentalize more constructive methods of 'rehabilitation', restoration and reintegration. Specifically, concepts of 'restorative justice', as exemplified by Braithwaite's model of 'reintegrative shaming', have pointed to the adverse effects of punishment per se and made the case for a conciliatory reintegration of offenders (Weitekamp, 1995; Braithwaite, 2000; Walgrave and Aertsen, 2000). However, it has been suggested that frameworks of reparative justice have traditionally been implemented 'with no concrete goals' (Weitekamp, 1995: 80) or can be seen to 'serve all potentially conflicting goals of sentencing' (Roach, 2000: 262).

Consistent with this argument, a close examination of the 'John School' reveals that a variety of different objectives and discourses are aimed at the offenders. This discussion should be premised by the observation that, in strict functional terms, the behavioural goals of the 'John School' diversion

programme have never been clear and that there has been fundamental disagreement among the key stakeholders. While some stakeholders have insisted that the key goal of the 'John School' is to make people stop engaging in all prostitution-related activities, others have suggested that its objective should be, more pragmatically, to convince offenders to stop engaging in harmful street prostitution. In this way, the Johns' continued use of non-public forms of prostitution (i.e. escort or massage services) would be considered an acceptable and successful outcome.

To the outside, the 'John School' promotes an image of non-judgemental 'education'. It symbolizes a non-punitive 'second chance' for first offenders by providing an opportunity to avoid criminal justice proceedings and related consequences. As one of the police facilitators explained:

> [The] objective [of the John School] is to give people a significant emotional experience that they need to make a change in their behaviour. . . . We are trying to heal people. . . . Should we destroy marriages for an offence that in the criminal justice system would accrue a suspended sentence? I don't think so. . . . [The John School] is an educational environment . . . just like taking a night school course. They're coming to learn about prostitution. It isn't really about what they've done wrong, it's about the nature of prostitution and how we can all work to correct it. (JS6)

The ambiguity surrounding the goals of the 'John School' is clearly illustrated by the attempts of a Duty Council to explain its objectives:

> The main objective [of the programme] has to be educating the people . . . so that they are not going to commit an offence again. You are also hoping it's going to be a deterrent but also that it's a rehabilitative kind of thing that's going to change the mindset . . . so they're not repeating. [But] I don't think the John School is a lenient option. There is the embarrassment factor, the financial factor, the commitment of time. So it's fairly onerous. (JS17)

In practice, the interventionist mechanisms that the 'John School' utilizes appear to contrast with the widely promoted 'educational' and non-punitive objectives. On the one hand, the key discourse and communicative strategy towards the 'John' is one aimed at moralizing, blaming and shaming. The programme organization and its central message are that prostitution causes a great variety of 'victims' and 'harms'—all of which are caused by the 'John' and his selfish, immoral behaviour. The 'John' is cast as a fundamentally irresponsible citizen who is unable to control his sexual urges. Throughout the 'John School' day, the speakers repeatedly emphasize to the 'John' that he is at the root of not only the prostitutes' miserable lives, but also the drugs and violence associated with prostitution, the spread of STDs, the pain and suffering of their families, increased costs to the criminal justice and health care systems and the destruction of neighbourhoods. The presentations conclude with the facilitator reinforcing these harmful aspects by asking the Johns 'how do we feel now that we have heard about the harms that our behaviour causes to a prostitute's life?—Do we still think prostitution is OK?'

The blaming and shaming dynamics of the 'John School' didactics are powerfully reinforced by the often-repeated reminder that they are being given a merciful 'second chance'. Despite these shaming tactics, however, the 'John School' does allow for one understandable reason for the behaviour of the 'John'—that he may be suffering from the pathological problem of 'sex addiction' which eliminates all rational control over his sexual urges, 'forcing' him to purchase sex from street prostitutes (Metropolitan Toronto Police, 1996).

Many view the 'John School' approach as a 'punitive' measure. For example, the 'programme fee', officially labelled a 'user fee', was seen by many of the stakeholders as a retributive or restitutive form of punishment. One of the judges interviewed characterized the fee as a 'quasi-fine' or a 'levy'. Although one of the main goals of diversion is to offer less punitive sanctions for minor offences, a number of the key stakeholders of the 'John School' programme were even discontent with the low level of true punishment in the 'John School' and demanded that it be increased. Illustratively, an ex-sex worker explains:

> I think [the John School] is . . . too lenient. . . . It . . . [should] be less convenient for them—give up a day's work or whatever. If it's going to be that lenient, they should be paying through their balls . . . so pay $1000 or $1500—even if you have to make payments, you pay. . . . The onus really needs to be where the onus belongs. . . . [Sending] them to jail would probably impact more than the John School. (JS32)

A Crown Attorney also suggested that the 'John School' was 'too easy' and not sufficiently punitive on the culprits: 'In an ideal world, you would want the offenders to do a trial, be found guilty and then do a . . . diversion programme; you would want them to do both of it' (JS27).

'Community' representatives also questioned whether the 'programme fee' provided sufficient punitive restitution or a 'deterrent'. One representative stated that the fee is a 'tremendous hardship for people but you know what—that's too bad [because if] you screw up you've got to pay up' (JS30). Another recommended that the fee be increased to '$500 or $600', which s/he saw as justified since this amount for the offender would still be 'cheaper than a lawyer, having a record, taking time from work' (JS33).

Based on these arguments, it is difficult to pinpoint the 'reparative' aspects of the 'John School', except that the diverted offenders are systematically 'educated' post factum about the creation of a multitude of victims in the hope that this will keep them from further engagement in street prostitution. 'Reparation', 'restitution' or 'reintegration' of offenders in the strict sense does not occur through the 'John School'. Rather, it seems that what is conveyed under the surface of 'non-judgmental education' is primarily a 'relabelled' or 'alternative' approach to punishment (in the literal sense) through a combination of moralization, monetary requirements and the personal expenses required for the 'John School'. This

conclusion illustrates Sanders' view that there is little 'possibility of reducing punitiveness through diversion' (Sanders, 1988: 529).

The expanded role of police in diversion

Critics of diversion have also pointed to the 'overextension by law enforcement agencies' (Austin and Krisberg, 1981: 171), whereby the police perceive themselves as 'part of the prosecution executive' (Sanders, 1988: 524). In fact, many diversion programmes blur the traditional lines of separation between the different levels of criminal justice and the respective institutions, since both the arresting and/or charging of the offender as well as the diversionary disposition or 'sentencing' rests with the police. Empirical evidence about police work, of course, has repeatedly documented the role of discretionary power and the subjective determinants of its use in the practices of law enforcement (Skolnick, 1966; Bayley, 1994). On the other hand, discretionary police powers in Canada are not as explicitly institutionalized as they are in some other countries. For example, through the police 'cautioning' system widely used in the United Kingdom since the 1990s, the police both enforce the law in defined circumstances of minor offences and deliver a quasi-judicial disposition without a prosecutor or a court being formally involved (Evans and Wilkinson, 1990; Collison, 1994).

In the 'John School' diversion programme, the dynamics of police discretion and interests have shaped the patterns of prostitution enforcement as well as diversion, and have assumed peculiarly distinct features. First, it needs to be highlighted that prostitution enforcement in the Canadian setting is predominantly exercised by undercover 'sting' operations in which the police 'produce' prostitution offences and related arrests. In this way, the police largely determine how much 'prostitution crime' is enforced or 'created'.

Furthermore, not only do the police constitute crucial players in the delivery of the diversion programme (in their role as the programme facilitators), but they also have a clear stake in the (financial) welfare of the Streetlight Support Service agency that receives the $400 'tuition fee' from the 'John School' programme. At the time when this research was conducted, at least three of the regular police facilitators/speakers of the 'John School' programme sat on the 'Board of Directors' of the Streetlight institution, one of them as the Chair of the Board of Directors. Since the social service organization's financial welfare depends, to a great extent, on the number and volume of prostitution offenders diverted to the 'John School' programme, and given that this volume largely depends on the level of prostitution enforcement, it becomes apparent how — at least in theory — considerable conflicts of interest can arise. Moreover, the dangers of 'uncontrolled and ad hoc' police power (Sanders, 1988: 513) are significantly increased. Indeed, two of the judges interviewed for the study

expressed their concerns about the prominent role of the police in the 'John School' programme. They suggested that this may be 'fraught with peril [since] it could give the police the opportunity to decide who to charge and who not to charge' (JS26), and that, therefore, 'it might be more advisable if the police had less [of a central role]; a neutral agency would probably be better' (JS23).

With its informal or pre-formal procedures and enforcement, diversion has also been criticized for imposing 'alternative sanctions' on offenders that 'would not have been fully prosecuted, convicted or even given a significant sanction if they had proceeded through the usual course of the justice system' (Austin and Krisberg, 1981; Nuffield, 1997: I). This extension of the 'diversion' arm of criminal justice to those who otherwise might not have been affected has been identified and criticized as the 'net-widening' effects of social control, creating 'wider, stronger and different' nets, via diversion (Blomberg, 1983: 24; Rudin, 1999). Such effects have been observed among non-criminal or alternative measures in the control of illicit drug use, leading to the introduction of lower intervention thresholds and sudden increases in the number of offenders processed under such measures. For example, the introduction of non-criminal 'expiation notices' in lieu of criminal charges for cannabis possession offenders in several Australian states has produced a substantial increase in the number of cannabis possession offences processed by police, with no evidence that the actual prevalence of cannabis use behaviour has changed over the same time period (Sutton and Sarre, 1992; Single et al., 2000). Similar dynamics have been observed for the police 'cautioning' system widely used in recent years for cannabis possession offences in the United Kingdom (Collison, 1994).

Institutional politics and conflicts of diversion

Austin and Krisberg observed in one of their assessments of 'diversion' dynamics that the involvement of outside agencies is creating a more 'open system in which agencies compete and conflict with one another' and where 'decision makers exert considerable discretionary powers' (Austin and Krisberg, 1981: 170). While 'privatization' in the criminal justice system has aspired to create competition for the sake of increased quality and lowered costs (Vass, 1990), 'diversion' involving outside agencies may entail other dynamics of 'conflict', especially in relation to the access to financial resources.

Following the decision made by the key public stakeholder institutions for an experimental 'John School' diversion programme, the original mandate for the implementation and administration of the 'John School' programme was given to the Salvation Army's justice branch. This branch

is involved in numerous and diverse criminal justice system efforts, particularly those dealing with parole and probation programming. The Salvation Army originally offered the programme to diverted offenders free of charge. To cover costs incurred to the Salvation Army for running the programme and to contribute to the exit programme for street prostitutes run by 'Streetlight Support Services', diverted Johns were asked to make a donation when attending the 'John School'. Due to limited amounts of money being donated and subsequently flowing to the 'Streetlight' agency, this organization lobbied to gain administrative control over the 'John School' programme. To the Salvation Army's surprise and discontent, two years after the beginning of the programme, the administration duties of the 'John School' were suddenly and without formal notice shifted to 'Streetlight Support Services'. 'Streetlight' subsequently established a mandatory $400 programme fee for 'John School' attendees, the proceeds of which going entirely to 'Streetlight'.

This type of competition and conflict between social service agencies for control of diversion programmes, primarily for financial reasons, subverts the goal of diversion as a concept. The main focus in the administration of these programmes no longer seems to be on criminal justice practice. Furthermore, considering the scarcity of resources in the social service sector, this arrangement can trigger a situation where the administrating organization is existentially dependent on the 'user' fees associated with the programme. This vested financial interest that the administrating agencies may have in keeping these types of diversion programmes going can contribute to a net-widening process. These agencies may encourage increased police enforcement in order to bring more offenders to their programmes for the benefit of increased revenue to their organizations. In the words of one of the Salvation Army key informants, the diversion programme and the struggle over its control had

> always been a dollars and cents issue. It was always an issue with the finances where Streetlight was concerned. . . . Streetlight wanted 'x' number of dollars, but [the Salvation Army] didn't have the dollars to send . . . because [they] did not get that amount from the Johns. (JS2)

The class politics of diversion

The objectives of the 'informal justice' initiatives that developed throughout the 1960s and 1970s were to produce 'therapeutic, conciliatory and non-coercive effects' (Merry, 1982: 173) as well as a general 'democratization of justice' that would not only benefit the victim and the offender but also the wider community (Auerbach, 1983: 96; Weitekamp, 1995). This would be accomplished by moving away from an adversarial legal system that was not only 'producing either winners or losers' but also seemed to be stacked in favour of the rich and powerful (Matthews, 1988: 4). However, in-depth research into the processes and outcomes of 'informal justice'

gradually revealed that under the veil of democratization, informalization and empowerment, the main effects of these institutions were the informalization of the law's traditional hegemonies, namely the reinforcement of socio-economic and other power inequalities. In particular, this occurred through 'informalism as a mechanism by which the state asserts and extends its control' primarily against the 'disadvantaged', namely 'workers, the poor, ethnic minorities and women' (Abel, 1982: 9; Auerbach, 1983; Fitzpatrick, 1988).

An examination of the socio-demographic characteristics of the 'John School' participants surveyed for our study reveals a predominantly socio-economically marginalized population. Of our 'John School' respondents, 66 per cent are foreign (non-Canadian) born or first generation immigrants. Only half of the subjects speak English as their first language, and 52 per cent of the offenders indicated high school or less as their highest level of education. While about 87 per cent of the sample is employed either full or part time, 60 per cent of the sample reported an annual income level of $40,000 or less. Observational field data supplementing these socio-demographic data suggest that the 'John School' populations come from a wide variety of ethnic backgrounds, with a majority being part of visible minority groups. Hence, the men diverted to the 'John School' tend to be working class, visible minority and English as Second Language (ESL) immigrants, with comparably low levels of education and income levels. As such, they do not constitute a representative sample of the average Toronto male population, nor is there any evidence that they constitute a representative sample of Canadian men buying sex for money. Rather, the 'John School' participants seem to confirm the per se hypothesis of informal or alternative justice schemes 'punishing' the lower socio-economic classes (Wortley and Fischer, 2001).

However, two caveats to this implied class dynamic warrant further examination. First, the distinct possibility exists that the larger control apparatus of the Canadian prostitution law as well as its application on the enforcement level systematically targets lower class prostitution customers. The 'communicating' law (s. 213) and its enforcement focuses on street prostitution—the typically lower end and cheaper part of the sex trade—which occurs largely in metropolitan urban corridors. This casts a net that appears prone to catch the typically poorer, less educated and non-white/ESL users of street prostitutes. As such, the John School diversion programme continues and further facilitates existing class biases of prostitution control in Canada.

Second—and this may be a more complex and challenging issue with different implications—it may be that in the case of a prostitution arrest, lower-class status may function as a determinant for offenders accepting diversion. In contrast, better-educated and English-speaking offenders may choose to deal with or fight their charge through the traditional court process or 'would be able to buy themselves out of prosecution' (Sanders, 1988: 528). These potential dynamics may be related to many factors,

including knowledge and understanding of the law and the legal process, access and affordability to professional legal help and the perceived implications for family, job or travel consequences at stake in case of a criminal conviction. A judge elaborates on and confirms these potential, implicit class dynamics of diversion for prostitution offenders:

> [T]he choice people are making [regarding diversion] depends on their status and background. . . . [The John School] is not a good compromise for the middle-class dentist, but it's a great compromise for the immigrant who knows that if he gets convicted neither he nor his family are ever going to get into this country. So if you are a person who is charged and wants to avoid a criminal record, the John School is an automatic safe choice. It does more for that person and the system at the end of the day. (JS26)

While it is apparent that the 'John School' diversion participants are largely drawn from a lower-class population, it is not clear to which extent it is the class dynamics of diversion specifically, or the practices of Canadian prostitution control at large, that are producing these class biases.

Dynamics of due process and crime control

Perhaps among the most severe socio-legal implications of diversion are its potential infringements on 'justice' through the erosion of the due process rights of the accused, and indirectly, the increase of social control.

Diversion programmes have been strongly criticized for failing to accord divertees the rights to due process, thus even 'imperiling democratic rights' (Blomberg, 1983: 31). Given that the idea of diversion is to divert offenders away from formal charges or trial proceedings, participation in diversion programmes is paradoxically 'conditioned upon a formal admission of guilt'—usually without or 'before any formal determination of guilt has been made'. This has been considered a critical 'erosion of due process' (Austin and Krisberg, 1981: 171; Roach, 2000). Sanders has pointed to the fact that in diversion, it will 'not always be offenders who are diverted [but] suspects who are—or believe themselves to be—innocent' (Sanders, 1988: 515). One problematic issue with diversion practice is that many programmes impose substantial 'required donations' or 'quasi fines' in the form of programme fees on divertees without any formal finding of guilt (Rudin, 1999: 299).

A further important point suggested by Sanders (1988) is that the 'voluntary acceptance' of diversion by offenders, or the construction of diversion as a 'choice' is rather misleading or even untenable. Many offenders, 'regardless of their guilt or innocence . . . prefer to "admit" offences and be diverted' because this option provides certainty that a criminal conviction with all its negative consequences will be avoided. The alternative of facing court proceedings and risking a trial with an uncertain outcome is often rejected (Sanders, 1988: 515). The nature of the 'voluntariness' or 'choice' is further compromised by the fact that many offenders

do 'not know that an acquittal would be possible' or do 'not realize that they have a choice' (Sanders, 1988: 516).

As such, diversion programmes may well be understood as a further distinct element in the machinery of the 'ordering of justice'. The accused or suspect is a 'dependant rather than a defendant' on rules and procedures operating on the basis of structures and interests far removed from the ones genuinely concerned with his/her own welfare (Ericson and Baranek, 1982: 4; McBarnet, 1981). In other words, 'diversion' may be another element in the apparatus of 'crime control', whereby the divertee is constructed and processed according to the interests of efficiency, superiority and output of 'successfully diverted offenders' (analogous to McBarnet's 'successfully convicted offender') (McBarnet, 1981). Paradoxically, these dynamics occur under the popular utilitarian rhetoric of justice, fairness, participation, restoration and reparation (Packer, 1968; Roach, 1999).

An important indication of the 'crime making' and 'crime control' dynamics of the 'John School' diversion programme is that almost half (45.5 per cent) of the programme participants surveyed stated that they were 'not guilty' of the crime. While, naturally, subjects' perceptions about questions of their own 'guilt' must be treated with caution, the vast majority of the offenders who saw themselves as 'not guilty' listed reasons that would have provided them with sufficient reasons for a trial. For example, 30 per cent of subjects stated that they were framed or entrapped, 23 per cent indicated that there had been a misunderstanding, 12 per cent noted language difficulties and 21 per cent reported that they had been 'just joking' in the alleged 'communication' act (Wortley and Fischer, 2001: 37ff.).

All of the study's criminal justice informants (judges, Crowns and Duty Council) agreed that under current sentencing practices, a first-time male prostitution offender who opts for regular court proceedings and enters a 'guilty' plea may not even get a conviction, but rather a full or a conditional discharge, possibly in conjunction with some light community service. In the case of a finding of guilt, key informants agreed that a $100 to $200 fine would likely be the maximum penalty that the offender would receive in court. One judge explained that if a first offender 'plead[s] guilty, I would sentence them immediately—[he] would likely get a conditional discharge. [If it's a repeat offence], I will usually give them a conditional discharge' (JS26). An Attorney General's official corroborates that for a

> first offence there might not even be a conviction. There might be an absolute or a conditional discharge . . . [O]n a second offence, there would be some form of a conviction, but it could be suspended without any financial penalty, or it could be a fine. (JS25)

Thus, with the exception of the criminal record which comes with a conviction (including conditional discharges), it seems that first offenders

would, at face value, get off 'cheaper' and more 'leniently' when dealing with their charge in court than through diversion.

More interestingly, those who plead 'not guilty' at a trial would have a high probability of winning their case, in one criminal court judge's opinion:

> [If there] was a trial, people are presumed innocent, and there must be proof beyond reasonable doubt. . . . I would assume that a lot of them would get acquitted if they ever went to trial. They [would be] not guilty. They walk away from this, no criminal record, and that's the end of it. . . . If someone wants to avoid a conviction and a criminal record, you hire the best lawyer you can get and your chances are damn good' (JS26).

Yet, the judge '[couldn]'t recall ever anyone going to trial for this [communicating] offence' (JS26).

In this context, it becomes evident that the crucial issue is that pleading guilty or going to trial for a 'communicating' offence offers the potential prospect of a more lenient or desirable outcome (at best: an acquittal) for the defendant, with a certain level of risk. Conversely, even with all its onerous details including the $400 'programme fee', registration efforts and participation in the full day programme, the diversion option guarantees that a conviction and record, and their negative consequences, are avoided. As a Duty Council explains, the 'John School' diversion programme allows offenders to 'avoid a criminal record. I think that's it, probably to get it over with too, but mainly to avoid a criminal record. That's what our selling point is on it', usually making it an 'easy sell' (JS9). In this context, diversion cannot be seen as a 'voluntary choice'. Rather, it is a coercive alternative for the defendant in dealing with the circumstances of a criminal charge in the least risky and harmful way, even if aspects of 'due process' or justice are sacrificed (Sanders, 1988).

These dynamics are actively fuelled by the front-line criminal justice agents in the diversion setting who deal with the accused. By 'advising' him/her of the best choices, these agents are actively contributing to and shaping the 'ordering [of] justice' (Ericson and Baranek, 1982) according to their own interests and views. A Duty Council elaborates on how s/he promotes the diversion programme with offenders as well as the underlying rationale.

> [D]efinitely, I encourage diversion whenever possible . . . [In cases where] people want to make a point [or] fight the charge . . . I say, fine, you have a right to a trial. You will have to pay for it or do it yourself. The judge may well not believe you . . . and there is a good chance that you will be convicted . . . and I would never take that chance. My advice generally is . . . you would be wise to take the diversion and avoid the possibility of a criminal record. And I usually talk them into it. In any kind of diversion programme, the worst thing that could happen is that they would make a donation to charity . . . So there is not too much damage. (JS9)

Yet a few Crown Attorneys expressed general uneasiness about the 'trade' of a certain degree of protection from criminal punishment in exchange for the requirements of the 'John School' diversion programme. As several interviewees commented:

> The fee acts as a deterrent. [But] sometimes I think to myself, is it appropriate to charge a $400 fee to promise to withdraw [the charge]? It's almost like an extortion of some sort—give us $400 for some programme that we are running, or we will prosecute your case. I am not entirely comfortable with that. (JS31)

> We don't charge [the Johns] for going to court, but we charge them for a diversion programme. . . . [But then the programme fee is a] forced charitable contribution — it is equivalent to a fine and you have to pay a fine [only if] you are guilty. [The Johns] are basically paying a fine without being found guilty. There is a bit of an injustice there. (JS27)

Conclusions

The Toronto 'John School' diversion programme for male prostitution offenders is an enlightening case study of the trends, dynamics and implications of current and future criminal justice in Canada. It illustrates that under the seemingly sensible, humanistic and efficient 'common sense' of the diversion approach, a multitude of social, political and institutional factors are at work, shaping a paradigm of late modern criminal justice and punishment. This paradigm is characterized by the phenomenon of retreating sovereignty of traditional state power and punishment, discourses of risk, responsibility and efficiency, and a convoluted mix of justice and punishment objectives (O'Malley, 1992; Garland, 1996; Roach, 2000; Rose, 2000).

This article has recognized the long-standing history of prostitution control as primarily an issue of morality, gender and public order in Canada. We suggest that the evolution of the 'John School' must be understood as a (perhaps desperate) response to the fundamental crisis of traditional state and criminal justice efforts in dealing with the 'problem' of prostitution, with the popular discourses of 'victims' as a driving force. At the heart of the 'John School' ideology is the image of the 'John' as a moral, social, legal and economic perpetrator or 'villain', causing a multitude of 'victims' requiring effective intervention and repair.

Upon closer scrutiny, it becomes evident that the objectives of diversion, as exemplified in the Toronto 'John School' programme, are an ambiguous composite of 'education', rehabilitation, retribution, punishment and deterrence discourses and objectives that realistically characterize the true state of the new 'pluralism' in current criminal justice practice. This case study also confirms suggestions that 'diversion' involves non- or semi-public

institutions and carries the potential for institutional conflict. It is also an example of the possible implications of the expansion of police power into domains of criminal justice previously closed to them by the traditional safeguards. The realities of the programme under study further suggest considerable class dynamics and biases within the control of prostitution in general, which are further facilitated and extended by the dynamics and practices of diversion. These realities are congruent with suggestions made in a long-standing body of research on different forms of 'informal justice' over the past quarter-century. Not only has the regulation of prostitution historically been constructed as an apparatus of control towards lower socio-economic classes, it is now the case that 'diversion' of such offenders is almost exclusively exercised with lower socio-economic class and minority groups. In this context, diversion's supposed 'voluntariness', in reality, unfolds as a coercive mode of operation leveraging the offenders' existential assets and concerns, as well as their lack of information about the law's content and process. It also involves criminal justice system institutions funnelling into and facilitating, on the basis of their own agendas and interest, 'diversion' as part of the new mechanics of the soft but relentless machine (Ericson and Baranek, 1982; Sanders, 1988; Cohen, 1989) of 'crime control' outside of formal court proceedings.

On the one hand, some participating offenders may be saved some degree of hardship or trouble through the 'second chance' or 'educational approach' that diversion provides (Roach, 2000). However, the most worrisome outcomes are perhaps tied to the implications for principles of law and 'due process'. The ambiguous practices surrounding the presumption of innocence for an offence that may or may not have been committed, as well as the monetary 'purchasing' of freedom from prosecution under the umbrella of an 'educational fee', render 'due process' an evasive phantom. Thus, diversion, as illustrated in the Toronto 'John School' programme case study, may offer and bring many gains and benefits while, at the same time, threatening to sacrifice many of the fundamental principles and values of 'justice'. Despite or because of its almost overwhelming popularity and fast expansion, diversion deserves and requires further thorough scrutiny.

Notes

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1 Each of the key informant subjects was given an original but anonymous subject code (i.e. JS1, JS2 . . . to JS34), which is indicated as such when verbatim data from key informant interviews are reported.

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