JUSTifying Scrutiny: State Power in Prostitution Diversion Programs

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JUSTifying Scrutiny: State Power in Prostitution Diversion Programs

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Neoliberal policies are characterized by a blurring of therapeutic and coercive mechanisms, heightened scrutiny, and a focus on individual problems at the expense of systemic factors. Foucauldian scholars typically examine the mechanisms by which government regulates people in subtle and overt uses of its power; yet scholars often neglect empirical exploration of people’s lived experience and its relation to larger social and policy contexts. In this article the authors draw upon their separate ethnographic research projects on the formation and functions of state programs that work with women engaged in street-level prostitution to foreground women’s lived experience. Attention to how prostitution diversion programs work and how they are experienced demonstrates the higher costs women may pay under this incarnation of the neoliberal state. Nevertheless, many workers carry out this surveillance and coercion with empathy and care. Women prostitutes recognize this care and may respond to it, even crediting it with their lives’ improvement. Despite their gratitude, the reality is that these programs are appreciated because the alternative is so untenable and potentially life threatening. Regardless, the neoliberal policies that have withdrawn welfare assistance and which therefore facilitate rather than address the problems of prostitute women remain unchanged by the care of devoted workers within these programs.

KEYWORDS prostitution, diversion programs, neoliberalism, rehabilitation, governmentality

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The neoliberal state is characterized by a retreat of the state from its role as a protector “responsible for the security and safety of its [most vulnerable] citizens.” (O’Malley, cited in Balfour, 2006, p. 738). Instead, citizens are viewed as responsible for their own circumstances, including poverty, unemployment, and poor health. They are encouraged to act in ways consonant with societal norms through business-inspired models of rationality, which are enforced through mechanisms of reward and punishment designed to heighten compliance through positive and negative incentivization (Schram & Silverman, 2012). Neoliberal policies are characterized by a blurring of therapeutic and coercive mechanisms, heightened scrutiny, and a focus on individual problems at the expense of systemic factors. Scholars across many fields have examined neoliberalism; this article builds upon work inspired by Michel Foucault.

Foucault (1978/1990) examined how government inserts itself into the lives of citizens in ways that are often undetected. These subtle techniques, referred to as “governmentality,” have dramatic impacts. Punishment scholars have examined how “governing through crime” has become the typical mode of regulation by the state, at many levels and in many places, including schools and neighborhoods (Simon, 2007). In addition to expanding the criminal law, crime has become a master narrative used to justify government intervention into people’s lives; in fact, “people deploy the category of crime to legitimate interventions that have other motivations” (Simon, 2007, p. 4). But scholars often neglect empirical exploration of people’s lived experience and its relation to larger social and policy contexts. Balfour (2006) criticized scholars of women’s lives who avoid the political and practical; the “whys” and “what is to be done” (p. 736). She argued that feminist scholars who fail to keep personal and political concerns squarely in mind, particularly when conducting research with criminalized women, risk enabling the negative consequences of neoliberalism. In this article we draw upon our ethnographic research on state programs for women engaged in street-level prostitution in three Mid-Atlantic states to foreground these women’s lived experience. Our work confirms the role of less visible state regulation in coercing criminalized women, demonstrating that attention to forms of governance can powerfully augment women’s standpoints (Smith, 1999). Building on the work of Foucault, scholars have noted that the ubiquitous and diffuse operation of power provides unending opportunities for controlling citizens and bureaucratic agents; it also provides opportunities for resistance and change (Abu-Lughod, 1990; Cruikshank, 1999). In this study, we employ ethnographic research methods (interviews, observations, and focus groups) that focus on contextualized relationships between government actors and citizens to observe manifestations of control and resistance in three prostitution diversion programs.
NEOLIBERAL REGULATION OF PROSTITUTION

Prostitution has long been viewed as a crime in the United States, with the exception of Nevada that leaves the classification of prostitution up to local government (Weitzer, 2010). According to Weitzer (2010), criminal classification stems from morality and the perceived danger and nuisance associated with prostitution. In our three research sites, prostitution has been troubling to neighborhood residents or to criminal justice personnel. Some concerns center on the nuisance of prostitution and related activities such as substance use, violence, solicitation of neighborhood residents, and used condoms and syringes strewn in the streets (Anderson, 2007; Ditkoff, 2008; Peirce, 2008; see also Shively et al., 2008). Other concerns are for those engaged in prostitution who are perceived as needing rescue (Shdaimah & Weichelt, 2012). Cycles of arrest, incarceration, and rearrest have been noted across the United States and the United Kingdom and are exacerbated by the collateral legal consequences of prostitution charges and the vagaries of prostitution, which narrow women’s choices for legal employment alternatives (Phoenix, 2007; Shdaimah & Wiechelt, 2012; Wolf, 2001).

This article brings governmentality and examination of neoliberalism into dialogue with the current interest in prostitution diversion programs that has taken off in some areas of the United States, inspired by the problem-solving court movement. Problem-solving courts have increased in popularity across the United States since the early 1990s (Casey & Rottman, 2005). Most are drug courts, but there are also mental health courts, veterans’ courts, and domestic violence courts. Significant federal resources have been devoted to problem-solving courts (e.g., “SAMSHA awards,” 2009). They have been endorsed by the Conference of the Chief Justices/Conference of State Court Administrators Problem-Solving Courts Committee (2004) and are popular with judges (Farole, 2009). These initiatives are based on the notion held by the reformers that rehabilitation through therapeutic interventions will change the habits of repeat offenders (Wolf, 2001) to eventually reduce the prevalence of the targeted crimes (McCoy, 2003; Mirchandani, 2005; Wolf, 2001). Problem-solving courts were designed to suspend or postpone punishment while offenders participate in some form of programming or treatment. Participants are typically required to engage with the specified programs, make progress toward set goals such as therapy or drug treatment, and undergo regular supervision such as reporting or urinalysis, in exchange for leniency. A growing number of academics and practitioners have voiced concerns with problem-solving courts. Leon (2007) noted the inherent conflict between the adversarial model upon which the U.S. court system is based, and the problem-solving model that promotes teamwork and involvement in people’s complicated lives. At the practical level, according to Mae Quinn (2000/2001), past programs similar to prostitution courts actually raised some of the same issues around ineffective deterrence and unfair
punishment that they were designed to address. The most vocal critics of problem-solving courts are public defenders, who are worried about defendants’ rights, unequal distribution of opportunities, and net-widening effects that result in increasing arrests and surveillance (O’Hear, 2002; Sanders, 1998). Many question whether defendants are better off participating in problem-solving courts in the long run (Orr et al., 2009). Defendants are often required to plead guilty to participate in problem-solving courts and to gain access to the much-needed resources; this therefore raises concerns about coercion of defendants as well as the diversion of community resources into the criminal justice system (Leon, 2007; Shdaimah, 2010).

Others have critiqued the appropriateness and quality of treatment, the creaming effects that devote resources to those most likely to succeed, the diversion of scarce resources into the criminal justice system, and the way in which the public shaming and moral disapprobation that is part of many problem-solving court programs may stigmatize participants and interfere with therapeutic goals (Nolan, 2010). In an overview of recent evaluations of drug courts, Boldt (2010) concluded that findings are decidedly mixed with some of the best outcomes found among program participants who were likely to succeed in treatment regardless of court involvement. On the other hand, problem-solving courts can have worse outcomes for participants who do not succeed, such as increased surveillance, longer incarcerations, or the effectual waiver of a trial with the activation of guilty pleas that are tendered as a prerequisite for program participation (Boldt, 2010; Orr et al., 2009). In fact, Nolan (2001) reported that judges often pride themselves and “sell” programs to the public and legislatures based on the more stringent demands that drug courts place on participants in comparison to traditional models. All of these should be serious considerations for policy makers, advocates, and researchers in weighing the risks and benefits to vulnerable populations who are offered participation.

METHOD

Program Sites

This article reflects the rich data collected by each author at three different sites. In this article, we draw on data from qualitative studies of programs in three Mid-Atlantic states. The first program, Baltimore City’s Specialized Prostitution Diversion Program (SPD), has been in existence for 2 1/2 years and has just received funding for another two. The second, Philadelphia’s Project Dawn Court program, began in 2010. The final program located in Peterson County¹ is just beginning. The sites were selected to allow exploration of programs in different stages of development, but that experienced somewhat comparable urban contexts. Although selection was also based on the authors’ access to these particular programs, it is important
to note that very few prostitution diversion programs exist in the United States, despite the popularity of other problem-solving courts and drug courts in particular,\(^2\) and there are therefore limited opportunities to study such programs.

The authors conducted semistructured interviews and focus groups with professional staff and program participants (or members of the target group, in Peterson County) in each of these locations to better understand their experience of the existing and proposed diversion programs, the experience they had with other programs, the kinds of services they envision, and their hopes and expectations from the programs. In Baltimore and Philadelphia, we also conducted observations in the court room, waiting areas, and in meetings between participants and program staff. All research was conducted with Institutional Review Board approval; pseudonyms are used throughout to protect the confidentiality of participants.

The programs share some traits, such as a shared target population of those who are charged with prostitution offenses\(^3\) and the consequences of successful completion. However, the two existing programs differ in several respects that have been considered key areas of contention including gender of those served, duration of the program, program arena, whether a guilty plea must be tendered for admission, and the kind of services provided. The consensus for the planned program in Peterson County tracks closely with the Project Dawn Court, although it is interesting to note that stakeholders from Peterson County visited the Baltimore SPD and frequently referred to it when considering program options. Key differences and similarities are summed up in Table 1.

### Data Collection and Analysis

Shdaimah drew from a series of interviews, focus groups, and observations with professional staff and participants of the two existing prostitution diversion programs housed within a traditional criminal justice response to prostitution \((N = 47)\). Questions included why they became involved in the program, their attitudes about prostitution and why people engage in it, what factors make it easier or harder to stay in the program, and their hopes and concerns regarding the provision of services within a criminal justice framework. These data are from hundreds of hours of observation and interviews with more than 39 program participants (37 women, 1 man, and 2 transgender)\(^4\) and eight program staff at the two locations. Data collection is ongoing at both sites.

Leon asked similar questions in Peterson County. Although research interests were very similar across projects, Leon’s project was instigated by criminal justice system professionals and community partners who asked Leon to collect data to help create evidence-based interventions for prostitute women. Thus, in contrast to Shdaimah, Leon asked potential participants and
<table>
<thead>
<tr>
<th>Program</th>
<th>Participant Gender</th>
<th>Program Duration</th>
<th>Pleading Requirement</th>
<th>Program Arena</th>
<th>Program Content</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baltimore Specialized Prostitution Diversion Program</td>
<td>Any</td>
<td>90 days</td>
<td>Preplea</td>
<td>Social work and pretrial offices at the courthouse</td>
<td>Individualized</td>
<td>Success: Null processing. Failure: Return to plea state.</td>
</tr>
<tr>
<td>Philadelphia's Project Dawn Court</td>
<td>Women only</td>
<td>Minimum one year</td>
<td>No contest plea* required and clients are supervised through probation</td>
<td>Courts and probation officers</td>
<td>Individualized with common services such as trauma focus and sexual abuse therapy</td>
<td>Success: Case(s) dismissed. Failure: Guilty verdict entered.</td>
</tr>
<tr>
<td>Peterson County (reflects the perceived consensus in planning)</td>
<td>Primarily women</td>
<td>90 days</td>
<td>Guilty plea required and clients are supervised through probation</td>
<td>Courts and probation officers</td>
<td>Individualized with common services such as trauma focus and sexual abuse therapy</td>
<td>Success: Null processing. Failure: Guilty plea accepted.</td>
</tr>
</tbody>
</table>

* The Colloquy signed by participants specifies that participants give up all rights to a trial and appeal.
potential stakeholders (e.g., workers at each point in the justice system and in welfare and health agencies) about their goals and beliefs surrounding prostitution. Leon facilitated 12 focus groups with stakeholders, numbering more than 100 participants. In addition, Leon conducted short, structured interviews with approximately 30 professionals that asked the same questions as were used in the focus groups. Leon’s research team also attended eight planning meetings in which stakeholders discussed their goals and beliefs and considered possible interventions. To hear directly from people involved in prostitution, Leon surveyed women in Peterson County prisons \( (n = 272; \) 87% response rate, with 67 reporting prostitution) and interviewed people at the county courthouse and on the streets, focusing on known “hot spots” for prostitution. Forty people (37 women, 1 female-identified transsexual, and 2 men) shared their experiences with prostitution and opinions about interventions in open-ended interviews.

Our separate scholarship, as well as that of many others, documents the central role of poverty in shaping women’s entry into, and experience of, prostitution (e.g., Baker, Case, & Policicchio, 2003; Rekart, 2006; Wahab, 2006; Weitzer, 2010). Data were coded in a two-stage process that focused on explicit discourse about the participants and programs as well as implicit understandings of those engaged in prostitution, their lives, problems, and appropriate strategies (Berg, 2001, pp. 253–255). Data were analyzed for descriptive and theoretical themes (Sandelowski, 2000). The authors engaged in secondary coding of their own data, using an analytic lens (Sands, 2004) focused on the features of neoliberalism that emerged in both studies. These include a blurring of penal and therapeutic logics and a focus on individual behavior, motivations, and interventions decoupled from the broader societal factors that make prostitution appear a viable choice even in the face of criminal liability.

NEOLIBERALISM IN PROGRAM PLANNING AND PRACTICE

The Perception of Prostitution as a Problem

Despite similar criminal laws across the United States, the enforcement of laws against prostitution varies, and this variation is reflected in our study sites. In all three areas, the prosecution of prostitution is generally enforced in “sting” operations with police officers posed as customers. Across the three sites, prostitution is perceived as a nuisance problem that continues despite enforcement. The programs in Baltimore and Philadelphia grew out of a discomfort with penalizing women and, in some cases men, who are perceived to engage in prostitution to survive, with few alternative options. Program staff and participants alike cite circumstances, often in combination, that propel people to engage in prostitution. Jordan, a staff person who conducts assessments, was surprised by the range of concerns,
particularly dire financial circumstances, that women cited as motivating factors:

My honest first thought—I really believed that all the prostitutes were going to need substance abuse treatment. And it was enlightening to find out that everyone that prostitute[s] doesn’t have a substance abuse issue. And maybe not even a mental health issue. Like a lot of times it’s a financial issue. That make these people go out and prostitute—sell themselves.

In Peterson County, the impetus for enforcement comes either from property owners who ask for police response, or from the sporadic availability of funds devoted to sting operations. Examination of official correctional data shows that no one is currently incarcerated for a primary offense of prostitution; law enforcement officers from across departments and at the street and policy levels agree that they rarely arrest women on prostitution charges; instead, they use loitering or other misdemeanor charges. Nonetheless, state workers within the judiciary, police, and service agencies continue to see women they believe to be engaged in prostitution who are arrested and detained multiple times each year. Although Phoenix (2007) traced the “nuisance” construction of street prostitution to the moral condemnation evident in Britain’s Wolfenden report (p. 78), in all three locations, the value judgments from state workers take a different tone. As discussed below, the moral underpinnings of the desire to “help” “survival prostitutes” is rooted in a belief that these “fallen” women are essentially victims of exploitation, trauma, and addiction, who therefore merit help, as opposed to offenders who deserve punishment only. But despite this “softer” moral view, the governance of prostitute women is still coercive, paternalistic, and punitive.

Intense Scrutiny and Enhanced Surveillance

In all three sites, as prostitute women and state workers discussed their experiences with prostitution and its governance, the salience of neoliberalism was pronounced. In this section, we use our observational and narrative data to demonstrate three components: heightened scrutiny, the blurring of therapeutic and coercive mechanisms, and a focus on individual problems at the expense of systemic factors.

Our respondents described the intensive scrutiny experienced by prostitute women through the nongovernmental groups who work in conjunction with the state. Women in Peterson County complained that the existing programs aimed at poverty alleviation invaded their privacy and urged program planners to avoid such burdens in the proposed prostitution diversion program. For example, Meredith had this to say:
When it comes to women I am getting kind of angry now, because when it comes to women, women are left out in the damn streets, you understand what I am saying, so if a man go down to the shelter, they don’t check him to see if he high. So I think it should be a safe haven for like if I am out on the street and I am working and I have done all I have to do and I want to go somewhere to lay down for a couple minutes and I don’t want to hear no crap behind it and I should be able to walk to the door and do whatever you tell me to do and I should just be able to lay down go to sleep and get up in the morning, take a shower, get something to eat and go on my way.

Others discussed rejecting diversion programs in the past to avoid the increased supervision, “I turned it down. I could have given 14 clean urines with my eyes closed [but] I turned it down because I knew I would beat the case and I did beat the case.” For this woman, contesting the charges was simpler than completing repeated urine testing, with the frequent trips to the testing site and other disruptions this would have required. Drug testing was the most frequently recognized form of enhanced surveillance reported by prostitute women. However, additional requirements placed on women, either in contrast with men in parallel situations or with women who rejected specialized programs, were also apparent to us, and sometimes to prostitute women or the workers who engage with them.

In the Baltimore City program, eligible participants are offered entrance in the SPD program at the plea stage. If they accept the offer and there is space available, they are removed from the court process and given a court date 90 days from their original date. In this sense, it might appear that they are subject to lower levels of penal scrutiny than their counterparts who are not in the program. However, they in fact face higher levels of state oversight and supervision compared to the majority of those who plead guilty, who are usually subject to probation. During their tenure in the program, participants are required to meet weekly with their assigned social worker and to call or visit weekly with the pretrial staff. Participants are also referred to various other programs, such as addiction treatment or behavioral health interventions, and must comply with any requirements that these additional programs stipulate. These can include curfews, drug testing, attendance at individual and group therapy sessions, or classes. Although the 90 days is often shorter than the probation that they might otherwise be assigned, the forms of supervision and the required level of disclosure are far greater than the often rote reporting that participants face in “regular probation” (Corrigan & Shdaimah, 2012).

In Philadelphia’s Project Dawn Court, people participate for a minimum of 365 days, divided into four stages. Like Baltimore’s SPD, participants are required to meet with program staff at designated intervals that are usually weekly. They are also placed, based on individual needs, in appropriate
programs that often have their own rules. Project Dawn Court requires treatment for sexual abuse, which is identified as a factor for all of the women in the program. Breach of program requirements at any point returns participants to the beginning of the phase that they are in at that point in time and may also result in additional sanctions or requirements such as writing an essay, heightened reporting, supervision, or jail time. Most Project Dawn participants are incarcerated at the start of the program, and entrance allows them to leave jail and be placed in rehabilitative programs in their stead. This means that successful participants face shorter and “more helpful” supervision if they succeed; however punishment for those who fail is expected to be longer than it would have been had they not tried.

Participants often felt burdened by the onerous reporting requirements and were aware of the potential negative consequences if supervision revealed noncompliance. Those who complete the program successfully have their charges dismissed; those who fail face heightened penalties from all of their accumulated cases. Program participants in all three sites indicate that the professionals they encounter are intrusive. To illustrate just how thoroughly Jan enters into detail with her clients, this supervisory worker picked up Shdaimah’s arm and showed her how she examines prostitute women’s veins and fingertips for signs of drug use. Jan tries to build relationships of trust and believes that gathering the information through that relationship allows her to locate the most appropriate treatment for each person:

I start every interview off by telling the women that I’ve heard, there’s nothing that I haven’t heard before, and I want you to know that I’ve heard it all. There’s just nothing that’s really a secret. And you need to tell someone. And then I also tell them that the secrets are gonna cause you to go out and use and be rearrested; and in this environment, you cannot be rearrested. So with that premise and then I just tell them to just start telling me your history. You don’t have to tell me who, what, when, but just basically a summation of who you are. And I think I have like an intuition about the women also that just lets them kind of know that they, I mean I want them to talk. I want to start the interview out with them talking. The woman that just came in, she just popped up because someone had, she saw the guy who had bitten her. But she didn’t tell me when I first met her that she’s bitten. . . . So this was a week ago I met her for the first time and we just talked about everything, about her life, her children. She has eight children, they were all taken from her. Just her whole history—how she prostituted, what type of acts did you do in prostitution. Did you sleep with women? Did you sleep with men? Did you sleep with both? I mean we just, and they’re amazed—I really wanna know, did you do this? And so it’s like that. And then today she came back to tell me that she saw the guy that had bitten her, and she has a severe bite mark on her arm. I couldn’t believe it, I was, “Oh my goodness.” Like she actually has someone’s teeth print.
These revelations give Jan opportunities to provide support—in this case she examined whether the client intended to file a complaint, and it allowed the program staff to offer empathy and acknowledge the harms that participants routinely face. Echoing Jan’s belief that her intrusive questions and extensive personal involvement were beneficial to clients, nearly all participants in the existing programs indicate that they find the “intrusions” helpful—many even told us that these programs “saved my life.” All of the seven women who work with Jan spoke very highly of her.

Similarly, Leon observed a caseworker caressing a prostitute woman’s face and hands during a focus group, then noting her bleeding fingers and meticulously bandaging her. Participants who worked with Jan held her in high regard despite the fact that she was responsible for rearresting or setting back many of them in their program progress. What caused them to interpret her intrusions and apparently punitive responses as caring was her apparent investment in their success. They described how she continued to work with them throughout, including visiting them in prison, staying in touch with their families, and retaining them in the program, sometimes after multiple breaches.

Prostitute women at times perceive intrusions as interest and care because they come with concrete assistance and provide an open space for women to tell their stories. They also perceive this as recognition of their humanity. This is different from their prior experience with criminal justice personnel who are uninterested in their lives more generally (Corrigan & Shdaimah, 2012). The balancing of intrusion and care is part of the double edge of penal therapy (Caughlan 2005; Hannah-Moffat 2005).

Blending Therapy and Coercion

Increased surveillance is often justified by the insertion of therapy into the criminal justice process that is so common to alternative criminal justice models. In fact, increased surveillance was part of the appeal of the proposed program in Peterson County to professional stakeholders. Discussion of the planned program included ways in which to identify prostitute women to offer diversion but also to “capture” them for public health purposes, for example by “doing STD tests for everyone that comes in” to the prison system. The Corrections Department was particularly interested in using their medical staff as a referral point for prostitute diversion, because an official stated that “those women cost us a lot of money for medical care.” Service providers also described the value for them of working in diversion programs since their official presence at the court house and at the prisons also served as “recruiting opportunities.”

Therapeutic professionals also recognized that the strong arm of the state made their jobs easier. As Danielle, a service provider, noted
court can also be a good tool for getting the women's real info; they are somewhat intimidated at court and may reveal their names and addresses, enabling case management follow up which is something that is hard for community organizations to do without; many clients won't disclose name and address to community outreach programs, but they may reveal it to the court.

Another professional similarly noted that “court can be a useful tool to get women into treatment, but we must be careful not to keep people in court system too long under the auspices of helping them.” Increased oversight of women’s behavior (by expanding what state agents looked for and by bringing in service providers to collect more data for the state) was often justified by expressions of concern.

The blurring of boundaries between therapy and justice (Caughlan, 2005, p. 15), which is a feature of neoliberalism, was noted by nearly all of our respondents. This was viewed as a welcome development for respondents who viewed this blurring as a corrective to the perceived inefficiencies or unfairness of the traditional criminal justice processes. Program staff and participants are aware of the tradeoff that women make in accepting supervision to access assistance (and avoid incarceration) but do have to remind each other and themselves that the court is not primarily a therapeutic setting and expressed concern about inserting a punitive element into a therapeutic process. Brigit, a Baltimore program staff member, told us:

I tell everybody “I'm not your therapist.” I may be a therapist but I'm not your therapist. I say at the end of 90 days, no matter how good I am or how much you like me, or how much I help you, you don't want to come back to the basement of North Avenue courthouse [laughs], you don't want to do that [laughs]. And I know that, and they look at me like “Yeah, you're right I don't wanna do that.”

At the other end of the spectrum, Project Dawn team member Ronny was concerned about inserting too many therapeutic elements into the criminal process. Ronny believed that certain activities and attitudes had their place in their respective settings, and a blurring of roles that inserted too much of a therapeutic response might reduce the effectiveness of penal tools, for the individual and for other program participants.

They might have homework that they have to produce the following week. They go over offense cycle, they go over victimology. I mean these are all things that are touched on in treatment. So if someone didn't do their homework, which should of happened at that point; [they should] not write an essay. Maybe they [should] have to report weekly to probation, or every other day to probation, or probation's gonna be at their house more, or some type of punishment that the rest of the
girls could see. It’s basically a slap on the wrist, but it’s a hardship in the sense that she has to haul her ass into Center City once a week, take a urine, sit out in our waiting room, and then report back to the judge what happened.

Ronny sought a different kind of consequence than the consequence that women get from their treatment saying that an appropriate court response would be “one that they feel a little bit more of the inconvenience, and [is] public.” This again underscores the performative and deterrent role that punishment plays, which is different from therapy designed to help the individual. Problem-solving courts often work by providing examples to a group of other participants or offenders. This includes using consequences to individuals as a deterrent, as well as using successes and praise as an inspiration (Miller & Johnson, 2009).

In Peterson County, stakeholders debated for months over whether prostitute women “needed” to be coerced into accepting help for their own good, a view that was bolstered by comments from prostitute women involved in other programs. A group of judges particularly debated the role of the courts and of punishment in terms of motivating women to participate in treatment or access services. One bemoaned the lack of adequate punishment incentives because loitering is usually settled with a fine, and prostitution itself only merits a 6-month sentence, described as “too short a time to actually help them.” Another respondent emphasized voluntariness and capitalizing on the individuals’ personal motivation to seek help. One judge emphasized the need to avoid assuming prostitution is an identity or permanent status, “It is rare to find career prostitutes, most will take advantage of the opportunity to get out of that lifestyle. These women are NOT prostitutes; they are kids who need help.”

In Peterson County, stakeholders unanimously emphasized that the location of services needs to be convenient for the women. Many suggested that it works best to piggyback on another service the women are already using such as probation or parole, work release, or court-mandated treatment for addiction or other issues. Although this met the needs of the organizations by providing access to the potential clients, it also allowed the state to streamline services, collect more information, and require more of prostitute women. For women, if multiple services are mandated, then centralizing them in one place should reduce burdens. Data were not available as to whether this streamlining actually made life easier for women, or if it legitimated the multiplied expectations of them.

Alongside the recognition of poor women’s overburdening with state obligations, some professionals expressed views of prostitute women that portrayed them in very negative terms. As Jessica, a provider, stated “This is a hard group to case manage . . . the numerous, multiple sites where women must go is part of the problem: easily confused women don’t know where
to go, and manipulative women play case managers off each other.” This
discursive construction of clients, as either confused or calculating, supported
a court-based diversion program that would use threats to bring women into
case management.

System Reform, Not Structural Change

The final feature of neoliberal governance that emerged from our data
showed the tendency to compartmentalize structural factors related to pros-
titution when planning assistance. Prostitute women and the professionals
who work with them were aware of the gaps in available programs and ser-
tices that might assist them. Both groups knew that these gaps, combined
with bureaucratic problems and restrictive state policies, hinder prostitute
women from successfully exiting or from otherwise improving their lives.
They described existing programs with limited resources, including lack of
housing and wraparound care, and much more demonstrated need than
available program spots could fill. As one woman explained:

If you gotta make that motel rent that is your first priority, so housing
is first and foremost. You have to have a place where you can get your
8 hours of sleep, get your body clean, look in the mirror and face the
world on life terms. You know what I mean? You can’t just, you know,
just keep going without a place to stay. You don’t know how hard that is.
I did that last [inaudible] for a good minute. That’s hard. Like, keep paying
that rent everyday day, five years in a motel—1000 dollars a month—you
know what a quality of life you could have for that of money if you
got good credit? You could have good quality of life. If you ain’t got no
credit, you ain’t going nowhere except right to the “mote.”

The majority called for cross-training for law enforcement and correc-
tions regarding the needs and behaviors of people with mental health
and addiction issues. They also promoted training for service organizations
about public safety and collaboration with law enforcement and corrections.
In response to a question that asked about the biggest obstacles for women
leaving prostitution, most focused on the lack of interest in, and understand-
ing about, the kinds of problems people engaged in prostitution face, and
the lack of resources available to ameliorate them.

As prostitute women pointed out to us, though others are given the ben-
efit of the doubt for making their own choices, they believe others assume
they are ignorant. Delaney, a prostitute woman, recounted an anecdote that
emphasizes the kind of calculations people make with regard to sex work
compared to entry-level work.

They asked the question on one of the radio shows. They asked a whole
bunch of these white-middle class suburban girls if they were ready to
work at KFC for 40 hours a week for 300, or “do” Colonel Sanders for 10 minutes and make 300. You'd have been surprised at the response—how many of them said they would rather “do” Colonel Sanders than work at KFC.

Thus, though views supporting coercion to influence behavior change existed among the professionals and the prostitute women, both groups also acknowledged that prostitute women act within a framework of extremely limited alternatives.

Many professionals also appreciated that prostitute women, and poor women generally, must balance numerous competing responsibilities and interests. The risk that the new program in Peterson County could increase these burdens was anticipated by prostitute women and by some of the professionals as well. Public defenders in Peterson County, for example, were anxious that the proposed diversion program offered real short-term benefits for clients, to serve their interests and because their clients would reasonably refuse any programs that did not demonstrate they would be worth the costs compared to fines or time served. During a focus group, a provider named Alice noted:

Women must often prioritize their many responsibilities after leaving prison (probation, NA, AA, therapy, etc.). Going to therapy can be just another thing they have to juggle. Many women need assistance managing their appointments. They are not used to keeping appointments because their lives were probably chaotic even before they were incarcerated. It’s asking a lot to assume they will maintain all appointments after incarceration. Many of them have very good intentions when they leave prison, but then they get overwhelmed.

Although for some this balancing requires assistance because of perceived weaknesses of the prostitute women, other professionals more explicitly recognized that prostitute women express agency and make reasonable choices.

Sara, a woman in her forties participating in Project Dawn Court, indicated that not all of the women were ready and able to take advantage of the program services to make changes. For them, the programs were temporary and those who opted into them without a real commitment to long-term change did so only in contrast to their perceived bleak alternatives.

And you know I don’t judge and I don’t put them down. I would always go up and hug them and if they needed anything I would be there for them because I was there. You know? They’re just not ready yet. And who knows if they’ll ever be ready? You know? But like I said that’s that—the chance they had to start over. They took it only because they see no way out. They didn’t want to take it to see a whole lifetime out. You know?
Like many of the participants we interviewed, Sara discerned a combination of individual readiness and the presence of assistance with the need to be able to see a means to survival beyond the program. Many of the people we interviewed in Baltimore and Philadelphia at the end of, or just after program completion, despite their progress and commitment to change, seemed in precarious economic and emotional situations, with work, job, and housing choices that were less than optimal for continued desistance.

Knowledge of the formidable hurdles that women face are in tension with the neoliberal practices and goals that program staff intentionally or inadvertently employ with prostitute women. Indeed, we found a great deal of awareness of the structural issues that foster prostitution and inhibit exiting. In one of the more explicit examples of criticism about punitive and individualized approaches to prostitution, Brigit told us:

I don’t think we are going to stop prostitution. Ok. That doesn’t seem to be [chuckle] on the agenda anywhere. But I think what we have to do is to reduce the need for it. Yeah, now, if you want to do something about the Johns, that’s fine too, but until we are doing something on the other side, the Johns at least are paying, keeping these people in rent [chuckles] I mean. [sigh] . . . So, I don’t want to get rid of the Johns until we have an alternative for the gals and guys.

This realism and empathetic awareness also came through in Peterson County, where Leon gathered a group of approximately 50 professionals in behavioral health, law, and corrections during a single day. After presenting the possibility of a prostitution diversion program, the group split up into discussion groups, loosely organized by professional affiliations (i.e., health workers, court personnel, and corrections). Focus group questions included bureaucratic issues, such as points of contact for possible participants, and questions about identified needs such as addiction counseling or employment services. Each group responded differently, with most choosing to dwell on a few questions. In spite of this variation in questions selected, all groups described concerns that called for systemic rather than individual redress of the severe paucity of transportation, housing, space in residential treatment, and medical insurance. It was unanimous.

The defense counsel group (public defenders, psycho-forensic evaluators, and legal aid) focused on prevention, based on their experience interviewing clients about their backgrounds. For example, an attorney named Maggie said “Create programs in school for students who are victims of abuse since this is the beginning of the snowball effect that usually leads to women being involved in sex work.” At the back end, after women involved in prostitution reenter society after incarceration, this group advocated for treatment and follow-up services, including peer support and individual trauma counseling such as the currently existing sex abuse treatment
program that has limited resources and tends to receive referrals from police at the front end, rather than the back end of the criminal justice system.

A respondent in the judicial group noted that some women struggled with homelessness, living alone, or with their children in the woods and beneath underpasses. Therefore the group’s wish list included a safe house that would involve wraparound services including child care. They also suggested a peer support system that included paid case managers. One of the provider groups asked for ways to promote the “stability of the individual during the therapeutic process, prostitutes are the most unstable as it relates to housing and financial, they have the lowest set of resources and are not eligible for SSI.” Other respondents highlighted trauma experiences and the stigma and shame that women involved in prostitution experience in the criminal justice and social services systems. This group also recognized the complexity of migration and legal status in the provision of services.

Although front line workers and state-level administrators recognized structural problems, documented needs never translated into policy imperatives. Front-line workers’ understandings of the women’s experiences seemed to be neatly compartmentalized, based on considerations of their current behaviors. In Peterson County, state workers who were asked about how to plan a program for prostitute women alternated between empathy for the women they knew and sharp frustration at their perceived unwillingness to take help. As Beth, an attorney, insisted, “We must consider how to get buy in from clients, since we need to understand why the path of least resistance (paying a fine, serving a short sentence of incarceration) is so appealing.” Cathy, a judge, complained that her recent offers of treatment placement were refused by several defendants, even when prison time was a likely sanction. This baffled the judge and reinforced her sense that coercion is an important component of help. She and many others firmly believe in the need of a “stick” (criminal sanctions) to accompany the treatment that they viewed as a “carrot” that ideally would be enough on its own to obtain treatment compliance. Unsurprisingly, public defenders were more likely to view judicial offers of treatment as inherently coercive, given the court’s authority to punish if the “offer” is rejected, while judges viewed the refusals as unreasonable rejections of well-intentioned help. In contrast to workers’ and administrators’ individualization of responsibility despite their awareness of structural problems, prostitutes in Peterson County called for radical reform such as decriminalization, when asked about solutions. Although we coded the data for any kind of reform, looking for mention of any other proposed system reform aimed at any program or law, we found no other instance of this among study participants. Such discussion was similarly absent from the data in Philadelphia and Baltimore. Pollack (2000) asserted that the state has typically regulated poor women by punishing them for strategies they pursue for self-preservation; our research affirms this, as women who are trying to survive through prostitution are penalized
for doing so. This is despite the belief that Brigit expressed and was shared by some other providers and women that until some alternative is put in place, “Johns pay the rent.”

DISCUSSION: THE LIGHTER SIDE OF NEOLIBERALISM?

State-level bureaucrats and front-line workers revealed awareness of the structural inequalities and holes in the social welfare net that contributed to prostitution. When asked, they listed nearly the same needs as the women themselves. Why then, were their proposed solutions so narrowly constructed? In Peterson County, Corinne, a judge, explained that “it is much ‘cleaner’ for the judicial side if the defendants take a plea . . . it’s familiar to stakeholders already.” Familiarity and bureaucratic considerations together predispose state workers to favor intervention through a court program that is modeled on ones they know, and which consolidates their authority. Maggie echoed this sentiment, “I would like to be able to set a condition of bail that the person meet with a [prostitution diversion] program representative to determine if they are eligible to participate.” Although this is often framed as the most effective way of meeting the needs of the prostitute women (of providing the stick alongside the carrot), at times state workers also explain that their program preferences are driven by their constrained capacities in a large bureaucracy.

The professional stakeholders who created these programs often bemoan a system that penalizes and incarcerates those engaged in prostitution while providing them little assistance. But they have not acted to change the laws or the criminalization of prostitution; rather, they have carved out a space within the existing system to offer help. Prosecutors, judges, and other state-level bureaucrats are all conditioned to accept a decentering of power: they assume they cannot change the larger context in which prostitute women struggle, so they focus interventions narrowly on what they feel empowered to do. The criminal justice system determines outcomes for individuals based on to a single act or set of acts, and with a strictly limited set of factors for consideration (Fuller, 1978; Leon, 2007). State agencies work within clear jurisdictional boundaries, so a person’s criminal conduct, addiction, and housing instability are considered under the respective (and separate) authorities of the state’s offices of Justice, Substance Abuse, and Social Services, and in some cases the Veteran’s Administration. Thus, professionals in criminal justice are accustomed to addressing only the aspect or problem of the client that is within their official purview.

Against and despite neoliberal tendencies, our data reveal profound compassion for prostitute women on the part of professionals. Program staff often indicated empathy for people engaged in prostitution whom they view as making rational (if not always good) choices within a landscape of
extremely limited opportunities and structural constraints. They welcomed a softening of the penal process, or the addition of supports, to help rather than harm women (Foucault, 1977). Professionals were cognizant of the dire circumstances in which women live and equally aware of the state’s inability to provide needed services; nearly all recognized that women accepted the therapeutic interventions because of a virtual lack of any other alternatives for survival.

In Phoenix’s (2007) exploration of U.K. prostitution policy, she described how the coercive state interacts with nonprofits with rehabilitative goals. As the state has used more coercive means, and nonprofits have worked with the state to influence the existing (criticized) state mechanisms, concerns have been raised about what is lost or co-opted in this model. Phoenix painted a nuanced picture that warns those who are concerned with empowerment or improvement for prostitute women of the dangers of these approaches, while also noting some of its potential advantages. In this study of alternative criminal justice responses to prostitution in three different states, we have a similarly nuanced picture of these neoliberal policies. These include a “softening” of traditional coercive criminal justice apparatus and the provision of helpful, and not just harmful, services. Our data confirm that there are actors within the criminal justice system who have rehabilitative sensibilities, especially among those who directly interact with people engaged in survival prostitution. This is a phenomenon noted by Maynard-Moody and Musheno (2003) who examined what happens when both the dictates of law and agency mandates, which they call “law abidance,” contradict agency workers’ “moral abidance,” which include personal and professional ethics and perspectives. Workers often resolve these by acting within the rules to further the dictates of moral abidance with varying degrees of success and will generally do so in response to the needs of particular clients in particular situations, which is where workers most often activate institutional and personal moral judgments (Hasenfeld, 2010). It is often face-to-face interactions and relationships that convey caring with and to clients that motivate them to action. Prostitution diversion programs, like other forms of problem-solving mechanisms, can also be understood as more institutionalized adaptations of attempts to bring existing laws and penal policy in line with moral and practical sensibilities.

Like Phoenix (2007), Hannah-Moffat (2005) found that examinations of criminal risks and needs are not mutually exclusive (see also Mirchandani, 2005). Hannah-Moffat found that ostensibly objective approaches are overlaid with profoundly subjective determinations of risk. Similar to Phoenix and Hannah-Moffat, we find that programs and intentions for poor women involved in prostitution evoke the penology of risk assessment and management but with genuine and sometimes successful efforts to meet offenders’ needs: care and coercion are simultaneously perceived by workers and participants, and often viewed as a necessary combination. Perceived caring
of diversion program staff was a distinguishing feature of their relationship compared to encounters with other criminal justice personnel, which was described by a participant in another study as a “rubber glove conversation” (Shdaimah & Wiechelt, 2012). Genuine positive regard is the heart of any counseling relationship (Rogers, 1965). Social work practice recognizes that intimacy and rapport may have to be performed before they exist, but if they come with real caring and a desire to help, they may in fact create such intimacy.

There is danger in allowing the mutual good intentions and relationships of program staff and participants to blind us to the darker sides of programming that remains nested in criminal justice frameworks, and that have neither the intention nor the capacity to bring about larger structural change. The very real assistance provided to those in need obscures the vagaries of limited resource provision and the accompanying coercive practices of these organizations, stunting potential systems-level critiques. When scholars ignore these concerns, the dangers of neoliberalism are compounded.

Criminologists have the capacity to inform the public about the true fiscal and human costs of neo-liberal economics and neo-conservative crime control. Yet subversive stories of poverty, violence, and racism are noticeably absent, and academics are less politically engaged. Just as neo-liberalism would have it. (Balfour, 2006, p. 746)

Our work illuminates the potential benefits and dangers of neoliberal prostitution diversion efforts by discussing how program workers and participants experience this blending, which may be ominous or appealing, depending on one’s view of due process and separation of powers. Yet our data show that workers intend, and prostitute women experience, genuine care with real benefits. All of our work with program participants points to the importance of the perceived genuineness of the efforts as crucial in keeping them engaged and feeling like they are being treated as human beings. Risks and needs frameworks, the approach that dominates case management and particularly the oversight of criminal groups with mental health, addiction, and other identified needs (Hannah-Moffat, 2005; Nolan, 2010), are also aimed at the individual. As such, they fit very much into a neoliberal paradigm of deflecting responsibility from the state and hyperresponsibilizing individuals.

CONCLUSION

Attention to how prostitution diversion programs work and how they are experienced demonstrates the higher costs women may pay under this incarnation of the neoliberal state. Nevertheless, many workers carry out
this surveillance and coercion with empathy and care. Prostitute women recognize this care and may respond to it, even crediting it with their lives' improvement. The reality is that these programs are appreciated because the alternative is so untenable and potentially life threatening. Future research must examine whether this care is best delivered within the constricted structures of court processes. Regardless, neoliberal policies that have withdrawn welfare assistance and which therefore facilitate rather than address the problems of prostitute women remain unchanged by the care of devoted workers within these programs. Tweaking criminal justice interventions fails to address the bigger picture. Finally, we must listen to what prostitute women themselves tell us about their lives and to credit their accounts rather than act as though professionals always know best.

NOTES

1. Respondents in this program asked not to be identified and therefore Peterson County is a pseudonym.
2. Survey of programs circa 2010 conducted by a Peterson County diversion program worker; on file with the authors.
3. We use the term prostitute women or people involved in prostitution to avoid the indication of a master status suggested by prostitute. Although sympathizing with the intentions of scholars who use sex workers and sex work, we choose to avoid the imposition of language onto our participants who are people engaged in prostitution for basic survival and used the term for the most part to describe what they did (rather than as a profession) and, rarely, their identities.
4. Philadelphia’s Project Dawn accepts only women, whereas Baltimore’s SPD serves people of all genders.
5. All of the prostitute focus groups conducted in Peterson County also called for true primary prevention at some point in the discussions, usually when asked “what would you do if you had a big pot of money?” For them, primary prevention meant outreach to adolescent girls that provided opportunities to discuss their sexuality, report any exploitation, and identify career goals and opportunities.

REFERENCES

Anderson, L. (2007, June 18). Prostitutes could find help, not jail time; City group wants court to reach out. *The Baltimore Sun*, p. 1A


