

PROTEST BY OTHER MEANS? SEX WORKERS, SOCIAL MOVEMENT
EVOLUTION AND THE POLITICAL POSSIBILITIES OF NONPROFIT SERVICE
PROVISION

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Is it possible for service organizations formed from protest movements to maintain their radical commitments, even when they partner with state agencies? Engaging with the social movements, civic engagement, and nonprofit sector literatures, I focus on the American prostitutes' rights movement and the emergence from it of the California Prevention and Education Project (CAL-PEP) and the St James Infirmary (SJI) in the San Francisco Bay Area. As flagship nonprofit health service organizations, the SJI and CAL-PEP illustrate how a social movement's radical impulses and claims-making capacities are both maintained and restricted when they are institutionalized into service provision organizations that seek to work with state agencies in an era of neo-liberal politics. Based on participant-observational, interview-based and archival research, I contend that CAL-PEP and the SJI express their radical impulses *within* their organizations by maintaining prostitution as a legitimate occupational choice and involving sex workers in service provision and management. Granting agreements encouraging local, community-based health service provision and an emphasis on professional, credentialed service provision permit this expression of their radical impulses, even as charitable nonprofit tax status and granting agency requirements for data collection constrain their capacities to advocate for sex workers' rights *beyond* their organizations.

BIOGRAPHICAL SKETCH

Samantha Majic hails from Port Hope, Ontario Canada. She majored in political science and economics at the University of Toronto (Trinity College), graduating in 2001, and spent the following year as an intern with the Ontario Legislature Internship Program. From 2002 to 2003 she completed her Master's Degree at York University, Toronto, where her research examined public education campaigns and domestic violence in Ontario. In 2003 she entered the PhD Program in the Department of Government at Cornell University, and completed her dissertation in August 2009. She is married to John Rasmussen, a film and television editor.

For my parents, Sam & Charlotte Majic

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LIST OF ABBREVIATIONS

AB	Aid to the Blind
ACE	Alameda County Exchange
ACT-UP	AIDS Coalition to Unleash Power
ACDPH	Alameda County Department of Public Health
ADC	Aid to Dependent Children
AFDC	Aid to Families with Dependent Children
AWARE	Association for Women's AIDS Research and Education
BDSM	Bondage, domination, sadism and masochism
CAL-PEP	California Prevention and Education Project
CARE Act	Ryan White Care Act
CATW	Coalition Against Trafficking in Women
CAPP	Crimes Against Prostitutes Program
CBO	Community-based organization
CDC	Centers for Disease Control
CETA	Comprehensive Employment Training Act
CHAMP	Community HIV/AIDS Mobilization Project
CIF	Counseling Information Form (for the CA State Office of AIDS)
CLPI	Center for Lobbying in the Public Interest
CNPO	Charitable nonprofit organization
COYOTE	Call Off Your Old Tired Ethics
DA	District Attorney
DESIREE	Desiree Alliance
DHAP	Division of HIV/AIDS Prevention (of the CDC)
DHHS	Department of Health and Human Services
DOJ	Department of Justice
DTP	Day Treatment Program
EDA	Exotic Dancers' Alliance
FOPP	First Offender Prostitution Program
GA	General Assistance
GMHC	Gay Men's Health Crisis
G-SPOT	Growth Spot
HPP	HIV Prevention Point Syringe Exchange
ICPC	Intra-Agency Children's Policy Council
IDU	Intravenous drug user
IRC	Internal Revenue Code
IRS	Internal Revenue Service
KS	Kaposi's sarcoma
LGBT	Lesbian, Gay, Bisexual, Transgendered
MSM	Men who have sex with men
NGO	Nongovernmental Organization
NIDA	National Institutes of Drug Abuse
NIH	National Institutes of Health

NMAC	National Minority AIDS Coalition
NOW	National Organization for Women
OAA	Old Age Assistance
OMB	Office of Management and Budget
OPD	Oakland Police Department
PCP	Pneumocytis carinii pneumonia
PERB	Prevention Education and Research Branch (of the CDC)
PEMS	Program Evaluation and Monitoring System
PONY	Prostitutes of New York
POS	Politics opportunity structure
RFP	Request for proposals
RMT	Research Mobilization Theory
SAGE	Standing Against Global Exploitation
SAMHSA	Substance Abuse and Mental Health Services Administration
SEM	Sexually exploited minor
SFAF	San Francisco AIDS Foundation
SFDPH	San Francisco Department of Public Health
SFPD	San Francisco Police Department
SISTA	Sisters Inform Sisters about Topics on AIDS
SJI	St. James Infirmary
SMO	Social movement organization
SOAP	Stay Out of Area Probation
SOEI	Semi-structured open-ended interview
SSDI	Supplemental Security Disability Income
SSI	Supplemental Security Income
STI	Sexually transmitted infection
SWEAT	Sex Work Environment Assessment Team
SWOP	Sex Workers' Outreach Project
TANF	Temporary Assistance to Needy Families
TVPA	Trafficking Victims Protection Act
UCSF	University of California San Francisco
WHC	Women's Health Clinics
WHO	Whores, Housewives and Other

CHAPTER 1

COYOTE's DAUGHTERS: UNDERSTANDING MOVEMENT EVOLUTION, ORGANIZATIONAL FORMATION AND ENGAGEMENT WITH THE STATE

Throughout American history prostitutes have been cast as either fallen and immoral women or, more recently, as victims “trafficked” into commercial sexual slavery¹. This thesis tells a lesser-known story: in defiance of their social marginalization prostitutes have organized on their own behalf to assert their selfhood, to gain recognition of prostitution as work, freely chosen, and acknowledged as such under law. In the process, they have confronted extraordinarily complicated strategic situations involving complex compromises with authority. Detailing this process traces the unusual path that has led to sex-worker activism and tells the story of how such organizing engages with state and societal practices that have for centuries treated prostitution as immoral, illegal, and increasingly as criminal.

Beginning in the 1970s, a San Francisco organization known as COYOTE -- Call Off Your Old Tired Ethics-- made the radical claim that prostitution was neither immoral nor criminal but simply a legitimate occupation, like any other. COYOTE was, at the time and in subsequent years, the subject of both academic and more general attention. But its story trailed off. The following chapters pick up the trail, describing the efforts of sex worker self-organizing in these current times of neo-liberalism's devolution of welfare responsibility onto a network of privatized social service non-profit organizations (Banaszak, Beckwith, & Rucht, 2003).

¹ Throughout this thesis I will use the term “prostitute/prostitution” interchangeably with the broader term “sex work”. The latter term refers to the exchange of commercial sexual services for material compensation and covers a wide range of activities—some of which are legal in the United States—such as dancing, pornography and phone sex. While these legal forms of sex work are certainly of interest to me, I am mainly interested in organizational efforts around prostitution, which is *illegal* in most of the United States.

What has evolved from the earlier radical efforts to assert the legitimacy of prostitution? What are the organizational choices that advocates of this radical challenge now confront? Can a radical politics be incorporated into the institutional environment of nonprofit service organizations? These are the questions that have shaped the story of COYOTE's daughters.

Studies of social movement organizing and social change typically predict two possible outcomes of the protest cycle of the 1960s and 1970s: either protest falls into abeyance, to be reignited in a future protest cycle (see for example Rupp & Taylor, 1987; Tarrow, 1989), or the protest becomes institutionalized within the constrictions of organizational normality. Frances Fox Piven and Richard Cloward (1977), in their study of protest movements that erupted among lower-income groups, presciently predicted that once-radical protest movements of the 1960s would shift their focus to the creation of formal organizations, and that in the 1970s and 1980s much of the protest element would disappear. Extrapolating further, it might be predicted that formal organizations-- including those providing health and human services in last two decades-- would become preoccupied with providing social services no longer offered by the state and with seeking grants and contracts to sustain their existence, at the expense of pursuing broader social goals.

The narrative here points to a third path. The organizational subjects of this study, the St. James Infirmary (SJI), and the California Prevention and Education Project (CAL-PEP), represent neither protest in abeyance nor organizational stasis. Rather, these two small prostitute-run health service nonprofit organizations suggest a political evolution that I will describe as radical institutionalization. Even as the goals of the movement are incorporated into the practices of these two formal organizations, and even as they are funded primarily by federal, state and local health authorities, the SJI and CAL-PEP have institutionalized a practice of health service delivery at direct

odds with the moral regime that regulates the practice of prostitution in America. Studying these organizations, then, explores the constraints on maintaining the once-radical goals of a protest movement when they are institutionalized through service provision organizations, and the conditions under which they might circumvent these constraints in an era of neo-liberal politics.

To introduce this study, this chapter first sketches the broad political landscape in which CAL-PEP and the SJI currently operate, defined by neo-liberalism and the HIV/AIDS epidemic. Next, it provides an overview of CAL-PEP and the SJI's emergence and outlines the current state of prostitutes' rights organizing by describing COYOTE's daughters. This chapter turns, then, to a conceptual discussion of both the constraints and opportunities that shape the environment of nonprofits, looking specifically at two examples of organizations, Gay Men's Health Crisis and the Women's Health Clinics. These organizations have confronted similar challenges to those faced by both CAL-PEP and the SJI, and provide an important analytical guide to the terrain that nonprofits endeavoring to challenge existing politics must face. The chapter concludes with a discussion of research methods and an outline of future chapters.

Part I: Setting the Stage: Neo-liberalism, the HIV/AIDS epidemic

The neo-liberal environment in which nonprofits operate has been shaped by a broad set of eighteenth and nineteenth century liberal principles that stress individual autonomy; the market as the mechanism to allocate goods and solve social problems; and the state as an impediment to both individual autonomy and market efficiency (Hackworth, 2005). Neo-liberalism as a term denotes new forms of political-economic governance premised on the extension of market relationships. In concrete policy terms, this has been marked by a shift from Keynesian welfarism towards an agenda favoring unfettered markets and the globalization of capital, where the government

focuses on implementing measures (such as social program retrenchment) to insure international competitiveness and economic efficiency (Larner, 2000).

Neo-liberalism in America has been marked by a decline of the welfare state and liberal social movements, alongside an increased role for nonprofit organizations in health and social service delivery. Welfare state minimization has occurred more dramatically in the United States than in other industrialized nations because unlike other industrialized nations, the persistent American preoccupation with celebrating market forces and relative absence of restraints on private initiatives facilitated the development of a system of social welfare policy mandates that developed slowly and late and remain narrow, contentious and incomplete (Gronbjerg, 2001a, 2001b). It was not until the Great Depression brought about massive unemployment and poverty that Congress was forced to provide emergency relief for all sectors of the economy (Abramovitz, 2000). Initially, this relief was to be temporary, but the length and severity of the economic crisis forced Congress to acknowledge that the market economy and local charities could not provide for everyone, and if there was to be a modicum of political and economic stability in American society, the government would have to intervene (Abramovitz, 2000; Lowi, 1979). As a result, after considerable debate, Congress passed the *Social Security Act* in 1935, converting responsibility for social welfare to a federal program that replaced the sporadic system of highly varied relief programs (Abramovitz, 2000; Mink, 1998). The development of welfare programs continued into the 1950s (Smith, 2001), and as Jill Quadagno (1994) writes, President Johnson's War on Poverty emerged as the upshot of a well-intentioned (but poorly executed) effort to ameliorate these exclusions².

² As a result, programs such as Medicaid and Medicare were added to the Social Security program in 1965, and in 1974 OAA, AB and APTD were combined into a federalized income support program, entitled "Supplemental Security Income" (SSI) (Abramovitz, 2000).

However, by 1980, welfare state expansion slowed with the rise of neo-liberal politics³. The decline of social movement activism in of the 1960s and 1970s alongside the rise of the New Right facilitated Ronald Reagan's election on a platform advocating a major retreat from government intervention in social policy and the economy, and an ideological opposition to social spending (Abramovitz, 2000; Eisenstein, 1994). Welfare policies across the board came under intense scrutiny to determine whether they should be reduced or replaced with private service providers (Pierson, 1994), followed by a steady decentralization of government support for social services as categorical grants from the federal government to states were replaced by block grants, which allowed the states and local governments to decide where the money should be spent (O'Neill, 2002). Reagan anticipated that with cuts to federal spending, state and local governments and private charities would pick up the slack.

To the Reagan Administration and others on the Right who decried government involvement in the economy, nonprofit organizations offered flexibility and new ideas for delivering services, and they also were a means for bringing unaddressed problems to public attention (Berry & Arons, 2003; Salamon, 2003). But the role of nonprofits in welfare state service delivery was not unique to the Reagan Era: the War on Poverty also created community empowerment programs that incorporated local groups into the administration and development of anti-poverty programs⁴. But despite the Reagan administration's rhetorical support for private initiatives and the non-profit provision of social services, during this Administration

³ This was due to numerous factors, such as their maturation (social programs became an increasingly large portion of GNP); the slow economic growth that diminished revenues available to combat growing unemployment through social programs; and the oil shock of 1973 (Pierson, 1994, 2001).

⁴ Many new nonprofit agencies that emerged were funded by grants from the WOP's Office of Economic Opportunity. Soon, as Morgen writes, the nonprofit sector became the "theatre of operations for the enlarged welfare state" (2002, p.161) as the 1967 Social Security Act (Title IV-A) encouraged states to enter contracts with private agencies to provide services.

federal funds were never adequate to allow nonprofits to maximally provide services (Dobkin-Hall, 2001).

Yet even with the contraction of the welfare state, from 1974 to 1995 federal support to nonprofits actually *increased* from \$23 billion to \$175 billion (Marwell, 2004, p.269), and nonprofits became major players in the social welfare system (Rathgeb-Smith & Lipsky, 1993, 2001), finding themselves in direct competition for funds with public agencies like Medicare and Medicaid (Gronbjerg, 2001a, 2001b). Today the non-profit sector is a \$500 billion per year industry, employs nearly 8.6 million paid persons full-time and 7.2 million volunteers, and out-distances the employment in the largest private businesses in the country by a ratio of 12 to 1 (Sokolowski & Salamon, 1999, pp.262-263). Non-profits include one-half of the nation's colleges and hospitals, nearly two-thirds of all social service agencies, most civic associations, and almost all symphony orchestras (Sokolowski & Salamon, 1999, p.261) and they account for a range of organizations and a sizable portion of the nation's economic activity. There are 1.8 million registered non-profit organizations with a combined annual revenue of \$1 trillion, holding \$2 trillion in assets (O'Neill, 2002, p.xvii).

As a result of state retrenchment and the subsequent shifting of social service delivery to the nonprofit sector, many marginalized and vulnerable populations have become dependent on nonprofits: as Jeffrey Berry & David Arons note in their study of the nonprofit sector, although not all nonprofits carry out functions of critical importance to government, a surprising number deliver services many ordinary Americans depend on, with 48 percent delivering health and human services (Berry & Arons, 2003, p.5). Since many of these nonprofits are highly dependent on state funding-- on average, 30.5 percent of nonprofits' revenue is from government

(Sokolowski & Salamon, 1999, p.273)-- all of this raises questions whether nonprofits serving these populations might mobilize and advocate for them.

This question is particularly important in light of data about the changing roles of organizations in political life. As scholars such as Robert Putnam (1995) have noted, although Americans have high rates of civic engagement, this has declined with memberships in civic organizations such as the Elks Lodge and the Kiwanis Clubs. And while scholars such as Theda Skocpol (1996) argue that Putnam does not adequately consider many other forms of activity that foster civic engagement (such as taking part in feminist activism or being involved with professional organizations), Skocpol (2003) also documents a decline in recent years of large, membership-based voluntary organizations that engage in more broad-based advocacy, and their replacement by a proliferation of professionalized organizations that focus on specific slices of the population and are less likely to facilitate participation. It is against this backdrop of the declining role of civic and mass-based organization and the proliferation of nonprofit service organizations that this thesis addresses the vital question of how nonprofits fulfill their role as service providers and how this role shapes their engagement in the political process.

The HIV/AIDS epidemic and the neo-liberal era

CAL-PEP and the SJI-- the nonprofit organizational subjects of this thesis-- receive the majority of their funding for HIV/AIDS prevention, which has relied heavily on nonprofit service provision since the beginning of the HIV/AIDS epidemic. The AIDS virus came to the Center's for Disease Control's (CDC) attention in 1981 when CDC officials began receiving requests for pentamidine from doctors in Los Angeles and New York who were treating gay male patients with pneumocystis carinii pneumonia (PCP), even though none of these patients had organ transplants, the major cause of PCP (Etheridge, 1992). The CDC soon began a surveillance program, asking health

departments to report cases of PCP and Kaposi's Sarcoma (KS), a rare cancer also found commonly among AIDS patients, to the CDC. By 1982, when KS was detected in hemophiliacs and Haitian immigrants, it became clear that this virus (soon be known as HIV/AIDS) was not specific to the gay population.

However, government agencies at the federal, state and local levels were slow to respond to the mounting prevention and care needs of those affected because, unlike other communicable diseases among urban populations, HIV/AIDS was seen as a disease of social pariahs that was associated with immoral conduct (Armstrong, 2002; I. Cohen & Elder, 1989; Penner, 1995). And so while the CDC labored to produce brochures and other educational material about the disease, they found their efforts constantly rebuffed by the Reagan Administration, which did not want to appear to be "encouraging" unmarried or homosexual sex in its appeals to the religious right (Silverman, 1992).

Funding for federal health and social service agencies like the CDC was declining (Moore, 1998): the Omnibus Budget Reconciliation Act of 1981 forced the CDC to cut its funding and staffing levels drastically (D'Emilio & Freedman, 1997; Moore, 1998). As a result, from June 1981 to June 1982, the CDC spent a mere \$1 million on AIDS research and prevention (compared with \$9 million response to the much smaller problem of Legionnaires' disease) (Rimmerman, 1998, p.93). And in late 1982, while Congress allocated \$2.6 million for the CDC's HIV/AIDS research, the Reagan administration claimed that the CDC did not need this money and opposed any congressional supplemental appropriations designed to fund the federal government's AIDS policy efforts (Rimmerman, 1998, p.93).

Although the social movements of the 1960s and early 1970s were long-over, activism initiated by the gay community convinced various governmental bodies to devote more resources to HIV/AIDS prevention activities to be undertaken by

nonprofit organizations. At the time-- in keeping with the broader trend implemented by Ronald Reagan to minimize and contract health and social service provision to nonprofits-- the CDC was interested in utilizing community-based responses to AIDS because they appeared to provide access to populations (such as intravenous drug users (IDU) and prostitutes) the CDC assumed were at highest risk for HIV/AIDS. As a result, when various levels of government began paying attention to HIV/AIDS, in the spirit of neo-liberal politics they relied initially on these local, grassroots organizations for service delivery because they appeared inexpensive and offered flexibility and new ideas for delivering information and services to persons with HIV (Berry & Arons, 2003; Salamon, 2003). And, as indirect measures seemed to indicate, these community-based efforts were beginning to successfully discourage unsafe sexual behaviors ⁵(M. Bailey, 1991; Wolitski, 2006). Consequently, by the mid-1980s, the relationship between community organizations and the CDC was largely reciprocal: the community organizations became laboratories, in a sense, for the CDC to observe and learn about different HIV prevention interventions ⁶(M. Bailey, 1991). By 1988, the CDC was delivering the bulk of their HIV/AIDS prevention services

⁵ Of course, this approach was not unique to HIV/AIDS prevention: collaboration between government agencies and community-based organizations (CBO) with access to hard-to-reach or stigmatized populations has been a public health tradition in the United States. Indeed, as early as 1937 then Surgeon General for the public Health Service declared that the best hope for eradicating syphilis lay in community-based voluntary organizations, and so federal and state leaders must offer concrete help to these organizations to help them with their efforts (M. Bailey, 1991). And since the 1970s, community-level interventions have been useful in addressing other health issues, such as smoking cessation and control and prevention of coronary heart disease (CDC AIDS Community Demonstration Research Group, 1999).

⁶ Initially most CDC-funded programs served white gay men, but in 1987 HIV/AIDS rates were increasing in Black and Hispanic populations, which led the CDC to allocate funds (\$7.4 million) to local health departments to support CBOs representative of and working with racial minority populations. However, a lack of understanding of the real costs of providing services on the part of CBOs, combined with delays on the part of state and local governments, delayed the funding for many CBOs. Frustrated by these delays, minority organizations demanded direct funding from the CDC, and so avoid duplication and determine which minority CBOs would receive funding, eligible applicants were those in areas most effected by AIDS and whose governing body was comprised of more than 50 percent racial and ethnic minority group members (M. Bailey, 1991).

through local, community-based nonprofit organizations⁷. Today, according to the CDC (2002), its Division of HIV/AIDS Prevention (DHAP) is in charge of reducing incidences of HIV infection and HIV-related illnesses and deaths, in collaboration with community, state and national partners⁸. Ten percent of the CDC's \$6 billion budget is for HIV/AIDS prevention, nearly 80 percent of which is distributed externally through cooperative agreements, grants, and contracts primarily to state and local agencies (CDC, 2008, see Detail Table p.1). The largest portion of these grants fund state, local and territorial health departments that often, in turn, subcontract service provision to nonprofit community organizations.

Part II: COYOTE's daughters and the prostitutes' rights movement in the neo-liberal era

CAL-PEP and the SJI, formed in 1984 and 1999, respectively, incorporated as nonprofits and sought funds from various government agencies that considered community-based nonprofits the best vehicle for delivering HIV/AIDS prevention services. However, CAL-PEP and the SJI were also formed by sex workers active in COYOTE, illustrating the movement of activists from protest to nonprofit service provision, and raising questions whether and how they might maintain their commitment to more radical goals in the era of neo-liberal politics and the HIV/AIDS epidemic.

⁷ Today, the CDC has packaged these Demonstration Projects as evidence-based interventions, and the required materials and CBO training about how to use them are available through the CDC's "Diffusion of Effective Behavioral Interventions" (DEBI) Project (Wolitski, 2006). Two DEBIs reflect the early HIV prevention efforts of sex workers, through Project AWARE (described below), to conduct peer outreach, namely SISTA (Sisters Informing Sisters on Topics about AIDS), which targets Black women and uses small group interventions to prevent HIV risk behavior by through culturally relevant activities, including group discussions, videos, and role-playing; and RAPP (Real AIDS Prevention Project), which targets women at risk, with activities including using peer networks for community outreach and engaging individuals in safer sex discussions.

⁸ The Division of HIV/AIDS Prevention falls under the jurisdiction of the National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention, which is one of four National Centers administered by the Coordinating Center for Infectious Diseases.

Formed in 1973 by Margo St. James, a former prostitute, COYOTE's mission was to decrease the stigma associated with prostitution and remove it from the purview of criminal laws. As a protest organization emerging on the tail end of the women's and gay liberation movements, COYOTE was arguably poised to succeed with its own claims-making activities. COYOTE had difficulty recruiting members, raising financial resources and forming allies with other movements, and the advent of the AIDS epidemic in 1980 altered COYOTE's political opportunities. When the disease was detected in the heterosexual population, medical authorities (namely the CDC) assumed prostitutes were a natural bridge for the disease and began to investigate. COYOTE members Gloria Lockett and Priscilla Alexander quickly recognized the organizational opportunities and health service exigencies the HIV/AIDS virus presented: to minimize the impact of HIV/AIDS on prostitutes' physical health *and* their stigmatization, they would have to educate their peers about HIV/AIDS prevention. To do this, COYOTE members began to hand out condoms and information about HIV/AIDS prevention on the strolls. This grassroots effort was also political, demonstrating COYOTE's belief that prostitutes were *not* sources of infection for the general population and, as workers, took responsibility for their own health and wellbeing.

Soon COYOTE's grassroots effort came to the attention of the mainstream health establishment. In 1984, Dr. Judith Cohen, who was leading the CDC's San Francisco site study of AIDS transmission and prostitution through the Association for Women's AIDS Research and Education (Project AWARE), approached COYOTE and asked them to participate in the study.

The CDC realized that the clandestine nature of most prostitution made the population (like others initially impacted by the disease) difficult to reach by traditional public health channels, and so to gain this community's trust and convince

them to engage in prevention activities, they would need to hire (technically) former prostitutes to act as outreach workers (Stoller, 1998, p.87). Since COYOTE had been visible in the region and was knowledgeable about issues prostitutes faced, Cohen hoped COYOTE would help Project AWARE gain access to the prostitute population for the study. As the only group working to help prostitutes prevent HIV/AIDS, COYOTE was also eager to reach a larger segment of this population, and so Priscilla Alexander and Gloria Lockett agreed to join forces with Cohen and Project AWARE.

The birth of CAL-PEP and the SJI

Together, COYOTE and Project AWARE created the California Prostitutes' Education Project (CAL-PEP's original moniker), the first of this thesis' case studies, which effectively formalized a grassroots response to a crisis (AIDS) by a radical protest group, and moved COYOTE's politics—through CAL-PEP—into the growing and highly contested realm of private, nonprofit health service provision. By hiring sex workers from COYOTE's active membership and training them about HIV/AIDS transmission and risk reduction, initially CAL-PEP was to be a one-time partnership between COYOTE and Project AWARE/CDC to help sex workers prevent HIV/AIDS. But the HIV/AIDS epidemic (and the sex worker community's need for services) did not end with the CDC's study⁹(J. Cohen, Derish, & Dorfman, 1994). Following its completion, CAL-PEP began to grow as an independent organization, obtaining its first grant from the City of San Francisco to continue its peer-to-peer HIV prevention work, and Lockett became the executive director.

⁹ In the end, Project AWARE found that due to distrust of public health or other officials who might be associated with government or law enforcement, persons indigenous to the community studied (i.e. prostitutes) were able to gain access more readily to other sex workers, establish a rapport, and became role models for positive behavior change (Dorfman, 1992; Dorfman, Hennessy, Lev, & Reilly, 1988). This study contributed to the CDC study's broader finding that HIV/AIDS infection rates for prostitutes were *lower* than for other risk groups. Overall, intravenous drug use was the major risk factor: HIV/AIDS infection in non-drug using prostitutes was either low or absent.

As the demand for AIDS services increased, there was more space for sex workers to be involved in nonprofit health service provision (even if this was mainly regarding AIDS prevention and not prostitutes' rights). Consequently, CAL-PEP continued to grow as an organization, independent of COYOTE, as many COYOTE members shifted their efforts to CAL-PEP's work. As Nancy Stoller (1998) writes (and future chapters demonstrate), CAL-PEP's growing prominence within the AIDS establishment soon diminished COYOTE's viability as an independent, claims-making organization focused mainly on achieving legal reforms, such as the decriminalization of prostitution.

However, COYOTE's ideals did not succumb to the fading of radical politics in the 1980s, and were maintained through the network of activists who remained supportive of prostitutes' rights, even if they were no longer meeting regularly through COYOTE¹⁰. When the San Francisco Task Force on Prostitution was created in 1995 to address concerns about street prostitution in neighborhoods such as the Tenderloin and the Mission (which were beginning to gentrify), numerous COYOTE affiliates, including Alexander, Leigh and Lockett, testified before the Taskforce. Indeed, after years of working for prostitutes' rights and health and safety in the city, they had an impact, albeit a limited one: the Taskforce ultimately recommended that prostitution be made a low enforcement priority for the police, and that prostitute and community interests would be better served by the provision of more adequate health and social services in the city.

¹⁰ Today, Carol Leigh's Prostitute Education Network site, www.bayswan.org, lists a phone number and post office box address for the organization in San Francisco. However, this incarnation of COYOTE is primarily run by Leigh and exists mainly in name, no longer publishing newsletters, meeting on a regular basis or holding fundraising or membership drives. A COYOTE chapter in Los Angeles also has a website (http://www.coyotela.org/what_is.html) but it states that they no longer hold meetings, as "Previous support meetings were suspended when all the responsibility for meeting organization and member contacting fell on one individual and the other members did not contribute time or money to keep the meetings going."

The Taskforce's findings indicated to sex worker activists that the struggle for prostitutes' rights would be better fought for and implemented in the realm of nonprofit health service provision, which ultimately contributed to the emergence of the St. James Infirmary (SJI) in 1999, the second organizational case study for this thesis. Although the Taskforce's recommendation that prostitution become a low enforcement priority was never implemented, the Taskforce did attune city officials-- particularly in the San Francisco Department of Public Health (SFPDH)-- to more comprehensive means of dealing with sex worker health and safety. All of this made it increasingly clear to sex worker activists that there were potentially more opportunities to challenge the status quo and improve the conditions under which they lived and worked in the realm of health promotion rather than in legal reform. Consequently, in 1999, when COYOTE activists discovered sex workers were having their blood drawn illegally in jails for syphilis testing, they mobilized quickly, deciding to work with the public health department as a route to eventually decriminalizing prostitution (Alexander, 1995a). Priscilla Alexander, Carol Leigh and Carol Stuart (another COYOTE member) presented Dr. Jeffrey Klausner, the newly appointed head of the SFPDH's department of STI Prevention and Control (also known as City Clinic), with a plan developed by Alexander and her COYOTE/CAL-PEP colleagues for a clinic that would provide much needed services to the sex worker community *and* provide a site from which prostitution research would be conducted and disseminated.

The St. James Infirmary opened on June 2, 1999, offering services after hours in the City Clinic offices (it moved to its own office space in 2002), and, like CAL-PEP, has maintained COYOTE's stance that sex workers are engaged in legitimate work, and are responsible for their own health and safety and that of their community. Although medical service providers (the medical director, on-staff doctor and nurses) without sex work histories worked (and continue to work) at the SJI, the clinic was

and continues to be staffed mainly by sex workers trained to offer medical services ranging from HIV/STI testing to holistic services (such as reiki and acupuncture). The majority of the SJI's board of directors are current, former and transitioning sex workers.

COYOTE's Daughters

With the ascendance of CAL-PEP and the SJI, then, have COYOTE's protest politics been eclipsed by contemporary neo-liberal politics encouraging service provision over protest? This question is of particular importance in light of the fact that COYOTE spawned a number of different organizations, some of which elected paths of protest, explicitly eschewing service provision, while others made the choice to provide services both with and without a commitment to COYOTE's original validation of sex work as legitimate work. As Table 1.1, "COYOTE's Progeny" shows, COYOTE's daughters can be categorized in a two-fold manner: by whether they maintained their commitment to COYOTE's ideal of prostitutes' rights, and by the activities they have engaged in.

Table 1.1 "COYOTE's Progeny"

		Commitment to prostitutes' rights	
(COYOTE's ideal)		Accept prostitutes' rights	Reject prostitutes' rights
Activities	Service provision	CAL-PEP (1984) SJI (1999)	SAGE (1992)
	Advocacy for or against prostitutes' rights	SWOP (2003) PONY (1993) DESIREE (2002)	CATW ((1988)

Within the realm of service provision, some organizational descendents of COYOTE have outright rejected its ideals, holding to and implementing the (status quo) notion that prostitutes are victims of exploitation in need of rescue. Standing Against Global Exploitation (SAGE) is the most prominent of these organizations, and is devoted to helping women, men and transgendered individuals leave the commercial sex industry. SAGE was founded in 1992 by the late Norma Hotaling (Interview, 29 May 2006), a former heroin addict and homeless street prostitute, who worked for COYOTE/CAL-PEP but left after working with a therapist who helped her understand issues of drug use, depression, post-traumatic stress, and suicidality¹¹. As well, while working at CALPEP, she came across materials connecting participation in prostitution to sexual abuse, poverty, trauma and mental health issues¹². Because she felt prostitutes should be aware of this information, she founded SAGE, which was and is largely a countermovement to the COYOTE-oriented prostitutes' rights movement. SAGE is peer-run, hiring former sex workers to provide trauma recovery services, substance abuse treatment, vocational training, housing assistance and legal advocacy to other sex workers. Although Hotaling has stated (Interview, 29 May 2006) that SAGE provides services to anyone in the sex industry-- regardless of whether they plan to leave-- they do not encourage or support prostitution as a legitimate occupational choice. SAGE is constantly active in anti-trafficking efforts at the state, local and federal levels, and because of this issues popularity with various state and federal administrations, they have generated extensive financial support for

¹¹ Norma Hotaling passed away in December 2008 from pancreatic cancer.

¹² This was mainly the work led by Melissa Farley, PhD, a research and clinical psychologist and CATW member. She established the Prostitution Research and Education (PRE) in 1995, which, according to its website (<http://www.prostitutionresearch.com/about.html>), is "a 501(c) 3 nonprofit organization that conducts research on prostitution, pornography and trafficking, and offers education and consultation ... PRE's goal is to abolish the institution of prostitution while at the same time advocating for alternatives to trafficking and prostitution..."

their efforts. According to a SAGE representative (Interview, 18 May 2006), SAGE's budget for 2007 was \$2.1 million, eighty six percent of which is from government sources such as the local health department, and the federal Department of Justice.

The emergence of Prostitutes of New York (PONY), the Desiree Alliance (DESIREE) and the Sex Workers Outreach Project (SWOP)-- which are most similar to COYOTE—demonstrate that protest politics were not abandoned with the ascendance of CAL-PEP and the SJI. Formed from the mid-1980s onward in different regions of the United States to advocate for sex workers' rights, the largest, best know, and most "like" COYOTE of these organizations is SWOP, "a multi-state network of sex workers and advocates [that] address[es] locally and nationally the violence that sex workers experience because of their criminal status" (SWOP, 2007, p.1).

According to their website (swopusa.org), SWOP's first major action was to organize the first annual International Day to End Violence against Sex Workers in 2003 with a memorial for the victims of convicted prostitute murderer Gary Leon Ridgeway. In 2004, SWOP's most visible effort (which received coverage in the New York Times) was to spearheaded a ballot initiative (Measure Q) to decriminalize prostitution in Berkeley, CA by making it a low enforcement priority for the police (Marshall, 2004). Although Measure Q was defeated, in August 2008 SWOP was a key player in a coalition of activists who qualified to place a similar measure on the San Francisco ballot in November 2008 (which also failed).

However, protest organizations have also arisen in COYOTE's wake to actively oppose its ideals. The Coalition Against Trafficking in Women (CATW), which was founded in 1988 by activists, academics and others who largely opposed COYOTE. By testifying before national congresses, parliaments, law reform commissions, and various United Nations bodies, the CATW's goal is to promote women's human rights and, according to their website

(<http://www.catwinternational.org/>) “combat sexual exploitation in all its forms, especially prostitution and trafficking in women and children”. The CATW is arguably one of the most influential abolitionist (in that it seeks to eradicate prostitution altogether) organizations in the United States. CATW members have testified and provided research to numerous governmental officials arguing that all prostitution *in and of itself* is harmful to women; sex trafficking, from their perspective, is the worst patriarchal oppression. CATW was a major lobbying force behind the federal Trafficking Victims Protection Act (TVPA), first passed in 2000 and now in its fourth reauthorization (discussed in more detail in later chapters).

The SJI and CAL-PEP are different from their “siblings” in two different ways. Unlike CATW and PONY, both the SJI and CAL-PEP focus on service provision in partnership with state and local health agencies. And unlike SAGE, they are in principle committed to maintaining COYOTE’s support for the choice to do sex work as work. It is both these differences that make the study of the St. James Infirmary and CAL-PEP so critical: Can such organizations both continue the commitment to this radical position on sex work even while taking on the service and “welfare work” that has been required of many nonprofit organizations in this neo-liberal era?

This has incurred criticism from other counterpart organizations. SWOP prostitutes’ rights activist Robyn Few argues that the SJI and CAL-PEP have surrendered their radicalism in service of securing the money necessary for organizational survival:

“The SJI has so much potential but has never reached it out of fear of losing money... CALPEP is an organization that’s run by a black woman who has the same views as I do [about decriminalizing prostitution], but has a staff that probably thinks she is an abolitionist because this is what you have to do to work the system... [the SJI & CAL-PEP] shifted from activism to service provision because there was more money here, especially with AIDS. It’s all about money!... In short, we need to organize for law reform: fuck this service goddamn bullshit!” (Interview, Robyn Few, Founder of the Sex workers Outreach Project [SWOP], 20 October 2006)

Indeed, Few's point is well-taken: health service provision can never fully mitigate against the effects of criminalization on sex workers' health and safety. However, the SJI and CAL-PEP have managed to institutionalize COYOTE's radical commitment to prostitutes' rights *and* expose thousands of sex workers to this message through service provision. Indeed, this conjoining of service provision with radical political statements presents the key puzzle for this thesis: how is it that the adoption of a service-provision mission seems not to have eclipsed the radical agenda CAL-PEP and the SJI inherited from COYOTE, their parent organization, whose lifespan coincided with more radical times? The goal of this thesis is therefore to explore how CAL-PEP and the SJI's focus on service, in relationship with the state, *constrains* their radical impulses, *and* detail the conditions under which they also *circumvent* these restrictions.

Part II. Theorizing the implications: marginalized groups, organizations and state engagement

Francis Fox Piven and Richard Cloward's *Poor People's Movements* (1977) provides a useful starting-point for considering how the radical goals of a protest movement are maintained and constrained when they become institutionalized into formal (service provision) organizations and receive funding from state sources. In their study of low-income groups (the unemployed, industrial workers, civil rights and welfare rights movements), Piven and Cloward examine the evolution of radical protest movements, evaluating the transition many made towards the creation of formal, structured organizations. They argue that while it is assumed these organizations are a vehicle to power (because they permit the intelligent and strategic use of resources in political conflict and ensure the continuity of mobilization over time), in reality creating formal organizations *hinders* the power of the movement to compel concessions from elites.

To explain, they note that when large numbers of poor people are roused, developing and sustaining large organizations seems possible to organizers. Elites, when sensing this popular insurgency, often offer concessions to the organizations and even solicit their views and encourage them to air their grievances to formal bodies of the state. Although this may appear to be a victory for the insurgents (and their organizations), in reality the elites are not responding to the organizations and their demands but to the underlying force of *insurgency*. Since insurgency is short-lived, many of the organizations soon fade away; those that remain do so because they have become more useful to the elites controlling the resources their organizations depend on than they have to lower class groups they claim to represent. While they stress that efforts to build organizations are not always futile, Piven and Cloward conclude, “organizations endure by abandoning their oppositional politics” (1977, p.xxi).

Piven and Cloward seem to predict a somewhat binary model of protest evolution: it either remains on “the streets” or moves towards formalized organizational structures. Table 1.1, above, however, seems to call for a more nuanced consideration of how movements evolve and the impacts of this evolution on their radical goals and ideological positioning. Indeed, in line with Piven and Cloward’s observations, COYOTE’s progeny moved to create formal organizations, but these were in no way unified in their commitment to COYOTE’s goals. Of these, CAL-PEP and the SJI, however, *have* maintained their commitment to COYOTE’s ideals, but they express this through their method of service provision, not street protest, and they have compelled resources from elites (state agencies) to do this. Piven and Cloward’s analysis raises questions whether CAL-PEP and the SJI’s focus has become maintaining the organization (which often depends on compelling concessions from the very elites the group’s members originally challenged) at the expense of making oppositional claims.

For those nonprofits with radical social movement roots (such as CAL-PEP and the SJI), does this engagement with the state inhibit or compromise their radical impulses? As Sandra Morgen (1990; , 2002) cautions, even when state resources could be mobilized to further the goals of a movement, there is always a risk that a direct relationship with the state—as a funder, regulator or legal protector—could lead to “cooptation of the transformative change orientation and activities that energized social movement organizations” (2002, p.154). However, Morgen (2002, p.166) notes that cooptation is not always a fixed, linear process, and so she refers instead to the “dynamics of cooptation” whereby direct and indirect pressures by powerful state forces meet with accommodation and resistance by those seeking to maintain their oppositional organizations.

Understanding co-optation as a dynamic process involving both accommodation and resistance provides a useful frame for exploring how COTOTE’s radical goals have been maintained and constrained through formal (service provision) organizations, even as they receive funding from state sources. In the neo-liberal era, it is easy to assume that as the welfare state has contracted, decentralized and shifted service provision to nonprofits (in many cases), even those nonprofits with radical roots would succumb to “not biting the hand that feeds them”. And indeed, there are powerful mechanisms at work constraining their radical impulses, and these merit specification; however, the analysis cannot end here. Specifying the conditions under which organizations might also *circumvent* cooptation and express their radical commitments allows for a more nuanced understanding of the political implications for nonprofits with radical roots when they intersect and engage with the state in the neo-liberal era.

Vectors of Political Constraint

In this project, I identify two specific mechanisms—which will be termed vectors of political constraint—that have engaged CAL-PEP and the SJI in these dynamics of cooptation: (1) incorporation as charitable nonprofit organizations under section 501c3 of the Internal Revenue Code (IRC), and (2) granting agency requirements for data collection and administration (these vectors will be discussed in more detail in Chapter 5). Given the growing role of charitable nonprofits in the welfare state (particularly in their work with marginalized populations), many in the health and human services field have come to resemble government agencies, providing a link between the government and those too poor, unskilled, or overwhelmed with problems of their own to organize and act politically (Berry & Arons, 2003). For sex workers—arguably one of the most marginalized populations—charitable nonprofits like CAL-PEP and the SJI could provide this critical link. However, as Berry and Arons (2003) write, there is little information about how charitable nonprofits succeed or fail to represent their constituents in the political process, and whether and how this is influenced by the laws and regulations governing nonprofits (Berry & Arons, 2003; Marwell, 2004). Understanding this is important because charitable nonprofits are the only type of “interest group” in America with a strong disincentive to lobby, as section 501c3 of the IRC severely restricts their ability to lobby or participate in political campaigns in exchange for their tax-exempt status (Berry & Arons, 2003).

Not all charitable nonprofits encounter this vector of political constraint in the same way: larger, well-funded organizations are able to evade this restriction by, for example, registering under IRC section 501c4 and creating separate advocacy organizations. Although the nuances and details of how section 501c3 makes more traditional political action difficult will be discussed in more detail, it must be noted here that smaller organizations like CAL-PEP and the SJI, which have more difficulty

garnering support for their efforts and thus raising the funds for advocacy work, are far less able to resist this constraint. All of this raises questions about whether laws restricting lobbying (and other political activities) can depoliticize charitable nonprofits by severely diminishing the amount of lobbying and campaign work they might do.

A second vector of political constraint CAL-PEP and the SJI confront is granting agency requirements for data collection. Although this constraint is (like charitable nonprofit status) not unique to CAL-PEP and the SJI, as organizations funded primarily for delivering AIDS prevention services, they face increased scrutiny by the CDC (and state and local health departments, by extension), particularly since the arrival of the Bush Administration in 2001. Consequently, as grant-seeking and compliance requirements have grown more complex, service provision and organizational management practices are often challenged. With respect to service provision, because the SJI and CAL-PEP work with populations in frequent contact with law enforcement, increased questioning for data collection might decrease their trust of CAL-PEP/the SJI and propensity to access services. And with regards to organizational management, as grant-writing and data collection requirements become more burdensome and complex, these organizations also face pressures to professionalize their staffs and devote more resources to these activities at the expense of service delivery and advocacy work that might help their constituency help themselves.

Conditions of Circumvention

These vectors of political constraint have potentially strong, co-optive effects on the radical impulses of CAL-PEP and the SJI. However, the experiences of feminist health clinics formed in the early 1970s and gay men's organizations formed to serve victims of HIV/AIDS in the 1980s indicate that organizations developed by marginalized

people and offering services in a radical way can circumvent many of the pressures to avoid political work and even expand their radical commitments. Before explicating these conditions, it is important to note how feminist clinics and gay men's HIV/AIDS prevention efforts represent provide a useful comparison to CAL-PEP and the SJI. Both have incorporated as nonprofits and obtained grants from state agencies, which has altered their original organizational structures, missions, and abilities to make claims on the state, and also detracted them from the broader struggles (for women's reproductive rights, for example) from which they were born. Yet their stories are not ones of co-optation. By providing innovative and nonjudgmental health services, and involving populations considered incapable and/or unworthy of these in their organizational operations and service delivery (all the while using state money to do this), these organizations put into practice broader commitments to equality and empowerment, which is arguably a radical endeavor in and of itself.

Various conditions created opportunities for these organizations to maintain their radical commitments, and two-- termed "localism" and "professionalism"— are of particular importance. "Localism" refers broadly to how the decentralized nature of the American (welfare) state has fostered the provision of social services by state and local-level agencies, particularly since the 1980s in the field of HIV/AIDS prevention. Indeed, as noted earlier, the American welfare state has centralized and expanded over time, but in comparison to other nations, the ideal of localized social service delivery has been reinforced, particularly within the neo-liberal era (Pierson, 2001). Various scholars of federalism (see for some examples Peterson, 1995; Volden, 2003) have discussed the costs and benefits of decentralized policy development and implementation (or "localism", as described here). On the one hand, the costs of this method of policy development and delivery have been high, including (but not limited to) regional inequalities and inefficiency in the delivery and administration of

programs (Peterson, 1995). On the other hand, the benefits have included greater responsiveness to citizen needs, the ability to respond to heterogeneous preferences, and the possibility of learning from other jurisdictions (Volden, 2003). As well, and most relevant to this thesis, is that this has created opportunities for local innovation, particularly by under-served groups.

The opportunities for local innovation are particularly apparent in the field of health service delivery, particularly with regards to HIV/AIDS. As noted above, the devolution of the welfare state has meant health and social service provision is increasingly funded by federal block grants to state and local governments, which in turn subcontract to local community-based organizations (CBO). Certainly, this has meant health service delivery in the United States has, overall (in comparison to other nations), been incomplete, regionally varied, and precariously funded; however, it has also provided opportunities for marginalized groups to create health service projects that meet their own community's needs in ways state agencies may never be able to *and*, by extension, created a condition under which more radical projects could be continued.

Alongside localism, "professionalism" has created conditions under which marginalized groups can develop and maintain radical service projects, despite receiving funding for this from state sources. For the purposes of this discussion, professionalism is broadly defined, particularly in the medical services field, as the possession of a qualification or credential demonstrating the possession of a special form of knowledge used to serve others (Cruess, Cruess, & Johnston, 2000). Professionalism also can be understood administratively, as the demonstration of an individual and/or organizational ability to deliver services efficiently and effectively. In health service delivery, professionalism has been increasingly required of provider organizations for liability reasons (to ensure services are delivered safely and

consistently) and because (as noted above) the applications for and administration of grant agreements has become more complex.

Initially, requirements for professionalism do not appear conducive to fostering the maintenance of radical commitments by an organization, as this often constrains organizational flexibility and creativity in service delivery, while also requiring a focus on more bureaucratic and administration-related activities. Moreover, as various scholars demonstrate, professionalism, particularly in the medical field, has long served as a mechanism of *exclusion*. Scholars such as Linda Gordon (2002), for example, document how midwives were often discredited and ignored by doctors for their lack of professional (medical school) training. The women's health movement, as discussed below, was a response by women to such exclusions in an effort to seek control of and empowerment in their own health care (Ruzek & Becker, 1999).

Professionalism, however, does not only foster exclusions: for stigmatized and marginalized groups, such as persons with AIDS and sex workers who have traditionally been ignored or spoken for by mainstream health institutions, it has in fact created conditions under which they might be involved in their own care. As subsequent chapters demonstrate, through contracts for HIV/AIDS prevention work, often all that is required by the granting agency for service delivery is a proper credential, such as a phlebotomist certificate for drawing blood for HIV/STI testing. This credential, ideally, supersedes value judgments about what the individual providing the service does in his or her spare time, therefore potentially allowing organizations serving (so-called) morally despised populations (like sex workers) to engage in the more radical project of involving them in service delivery.

Feminist Health Clinics

The emergence of feminist health clinics illustrates how localism (fostered by grants from state agencies to local organizations) has been able to create opportunities for

groups to not only maintain services, but also to avoid having to prioritize funding overall radical commitments. In the case of feminist health clinics, described below, a community's need for women's health services facilitated the creation of a unique health service *and*, through a grant from the state, an opportunity for a group to *expand* its commitment to feminist politics. Like CAL-PEP and the SJI, feminist clinics were grassroots service organizations that emerged from a radical social movement, namely the women's health movement in the 1970s, where women organized for abortion rights, reproductive freedom, and equitable and comprehensive access to health care (Ruzek & Becker, 1999). By 1973 there were over 1,000 women's health projects in the United States, among them some 200 women-controlled feminist health clinics (Morgen, 1995, pp.236-237). Unlike mainstream health clinics, Morgen (1995) writes, these were established to empower and educate women about their bodies and their health care options, thereby challenging the historical precedent of (male) doctor-asserted control over women's bodies. The clinics emphasized lay involvement in care, offered accessible, affordable women-centered services, and operated often as consensus-oriented collectives.

Sandra Morgen's study (1995, 2002) of the Women's Health Center (WHC), located in the northeastern United States, provides an instructive case of how engagement with the state challenges the capacity of grassroots service organizations to maintain their radical, community-based impulses¹³. The WHC opened in 1972 and quickly grew by 1977 from a small volunteer health information and referral center housed in a church basement to an organization that employed six paid staff, hosted family planning and gynecology clinics, and offered counseling and referral services. The WHC stressed a feminist commitment to empowering women in their own health care, and it made decisions as a consensus-oriented collective. Initially, the WHC was

¹³ WHC is a pseudonym Morgen used to protect the privacy of participants.

funded by a combination of fees for services, income from small-scale community fundraising events, and a few small subcontracts from the local Department of Social Services. However, as demand for services grew, and to attract a more working class and women of color to the staff, the WHC sought larger and more stable funding sources. As Morgen writes, a decision was made to “go for state money” (1995, p.172) and within the next two years, the WHC developed a closer and expanded relationship with various state agencies. However, this decision was not taken lightly (at the WHC or elsewhere): many of those involved with the WHC had been engaged in struggles for civil rights and women’s equality, and viewed the state as an agent of control over women. They knew there would be strings attached to this money, but it would allow them to provide expanded and diversified services (Morgen, 1990, 1995).

Indeed, as Morgen documents, accepting state money also served as a mechanism of cooptation, constraining the WHC’s capacity to act as radical claims-makers in a number of ways. In one example, it channeled their activities towards direct service provision and away from advocacy, organizing and community outreach by, for example, reimbursing the WHC on the basis of individual contacts, which pushed the WHC to prioritize individual counseling over self-help empowerment. In another example, the series of small grants they received required separate proposals, budgets, billings and other forms of administration, which gradually institutionalized a division of labor among the staff and gave the director a more privileged relationship with the funding agencies. As well, the funding weakened the WHC’s oppositional character when, in 1978, the well-financed anti-abortion lobby in the state passed a bill that required organizations receiving money from the state to obtain a clinic license. After a long and costly battle, the WHC did obtain its license, but this also created a strong faction within the staff that “who believed it was best for the [WHC] not to take

public, political stands-- for abortion or for other issues that might 'get them into trouble'" (1995, p.173).

However, the WHC case also demonstrates that localism fosters conditions under which grassroots organizations might also use state funding for service provision *and* for revitalizing their radical commitments. As Morgen (1995, 2002) writes, in the WCH's case state funding also (unintentionally) provided an opportunity for the organization to reinvigorate and redefine its feminist work. Morgen provides the example of a grant from the state Department of Labor's Comprehensive Employment Training Act (CETA) in the late 1970s, which provided funds to local agencies to run training projects for low-income women. The WHC successfully secured a \$100,000 CETA grant to fund an ambitious survey project about the health needs and attitudes of low-income women in the community. Hiring for the project tripled the WHC's staff and changed its composition to predominantly working class women, and one-third women of color, but it also nearly led to the organization's demise by exposing the racism and class prejudice of the white and middle class staff. In response, however, women of color and working class women came together to raise their concerns, while the collective as a whole became charged about the growing concentration of power held by the director. In dealing with these issues, questions also arose as to whether and how external grants and funding (particularly to re-hire the CETA staff after the project) might compromise the WHC's ideology and practice. All of this increased the political sophistication of the WHC staff, and in the end, they wrote and obtained grants, which allowed them to hire back most of the CETA staff.

For the WHC, then, their strategy was (in hindsight) to take advantage of the flexibility and opportunity for innovation afforded by the state funding they received to both expand staffing and programming *and* counter cooptation by implementing a

redefined feminist commitment that incorporated an understanding of race and class differences among women. As Morgen (1995) concludes, although accepting state funds did compromise the WHC's radical impulses to varying degrees (while also ensuring many of the women relied on the state for their livelihoods), the CETA funds "helped to shape the conflict and political struggle within the staff, and brought to the [WHC] strong proponents of an activist orientation, and a conception of feminism grounded in the experiences of women of color and poor women" (p.180). In so doing, the state resources underwrote the women's efforts to revitalize and redefine feminism within their organization, making clear that the impact of state policies on gender practice and ideology cannot be assumed, and that "the contest over resources, meaning, and political power is more complicated than meets the eye" (1995, p.181).

Gay Men's Health Crisis

The formation and growth of Gay Men's Health Crisis (GMHC) illustrates how (requirements for) professionalism also create conditions under which historically excluded and stigmatized groups might develop and maintain radical projects, such as developing innovative HIV/AIDS/STI prevention programs for marginalized communities that are more likely wary of mainstream public health officials, while also engaging in the more radical project of involving these communities in the creation and delivery of their own health care. Similar to the women who formed the WHC and sex workers forming the SJI and CAL-PEP, gay men were also on the margins of the major health institutions of the United States, especially when it came to AIDS. As Suzanne Ouelette-Kobasa (1990) writes, in 1980 gay men began to feel powerless to fend off a seemingly disparate-yet-related array of illnesses in their midst¹⁴.

¹⁴ By 1982 health and government officials named this "acquired immune deficiency syndrome" (AIDS) (Armstrong, 2002), and by 1983 AIDS's viral cause, human immunodeficiency virus (HIV)

Gay men—particularly in the nation’s major city’s-- quickly realized that the only help for AIDS patients would come from their own community (I. Cohen & Elder, 1989). However, a localized group’s capacity to respond to a crisis on behalf of itself is often shaped by their access to resources, and unlike many women and/or sex workers, gay men had access to far more private resources. Although this did not preclude them from seeking state funds to enhance their local initiatives eventually, it did allow them to develop a highly innovative and largely independent service program. As Susan Chambre (1991) writes, GMHC’s founders were white, affluent and part of a social network of gay men with considerable financial means, business and organizational skills, who also had the ability to influence other gay men (and women) to get involved in their response to AIDS. Consequently, in New York in 1981, when eight men gathered in writer Larry Kramer’s apartment to address the so-called “gay cancer”, forming GMHC (the first and only public, private or volunteer organization to provide AIDS education and counseling to gay men in the city), they raised \$6,000 that night and grew rapidly in the first three months as existing hospitals, welfare and social institutions initially failed to meet the needs of gay men with AIDS (Perrow & Guillen, 1990). By October 1982 they used their considerable resources to marshal a volunteer force of over 300 individuals and were training 50 volunteers per month (Chambre, 1995; Perrow & Guillen, 1990). In 1983 they sold out 17,000 seats at Madison Square Garden for a Ringling Brothers Circus fundraiser that raised \$250,000 for GMHC and was the largest gay fundraising event at the time, in history (Shilts, 1988).

These resources contributed to the development of a truly radical organization, where (similar to the SJI and CAL-PEP) gay men with AIDS were treated not as

was also identified, and soon HIV/AIDS was identified among injection drug users (IDUs), female sex partners of IDU males and later infants born to infected women (Penner, 1995).

irresponsible individuals but non-judgmentally as individuals dealing with ongoing health issues. But like the WHC, GMHC also found its radical potential limited as it began to consider the degree and manner in which it would engage with various government agencies. Unlike the WHC, GMHC's founders had little or no experience with overt discrimination, and were not the gay activists of the prior decade, having also few ideological suppositions or opinions about how organizations should be run¹⁵(Chambre, 1991; Ouelette-Kobasa, 1990); the exception here, however, was Larry Kramer, the only GMHC founder with an activist background who emerged as the divergent voice on GMHC (Shilts, 1988). By 1982, GMHC was providing virtually all of the services to persons with AIDS city public health organizations would normally provide to a population with any other disease, and Kramer encouraged GMHC to demand more services from the city. The majority of GMHC, however, disagreed with Kramer and sided with Paul Popham (GMHC's first president), who believed GMHC needed to instead create a network of services for gay men during the epidemic. Kramer accused the GMHC board of being too timid with a city government that had yet to acknowledge the disease was an emergency (Shilts, 1988). He was dismissed from GMHC's board in 1983, and charging that GMHC devoted most of its energies to service provision at the expense of political activism, he went on to form the AIDS Coalition to Unleash Power (ACT-UP), which was devoted solely to political action (P. Cohen, 1998).

To fund their service network more extensively, GMHC began to seek funding from state agencies, and demonstrating professionalism in this pursuit was a key part

¹⁵ This was because, for the most part, gay men in New York were also far less open about their sexual orientation than men in San Francisco, where the gay community was able to associate, come out and establish itself as stakeholders in the city's social and political life, and so in the face of the HIV/AIDS crisis, it was able to draw from this political base to develop and disseminate a model of community-based service provision—in partnership with government-- that would meet the needs of the community in a non-judgmental manner.

of their strategy here. GMHC had to establish its credibility this way because it sought funds to involve and serve a stigmatized population confronting a disease no mainstream health officials cared to acknowledge or take seriously. Consequently, GMHC had to prove they were not the radical, disruptive group Kramer envisioned, but instead a professional group. This strategy was made especially apparent when GMHC representatives made a presentation to the US Conference of Mayors to obtain state funding for service provision. Here, influenced and assisted by their members with experience in business and management, they made an impressive presentation about HIV/AIDS and GMHC's work with the epidemic, and their organizational goals (to establish seven new directorships). The presentation-- complete with flowcharts and neatly collated documents-- established that GMHC was highly professional organization committed to service provision, all of which showed conference attendees that GMHC had "the stuff of a sound organization" (Perrow & Guillen, 1991, p.109).

Creating an impression of professionalism allowed GMHC to successfully obtain state funding, which was used to expand their radical methods of health service delivery to members of the gay community struggling with HIV/AIDS. By 1984, government grants were one-third of the GMHC budget, and when New York State established the AIDS Institute to coordinate AIDS funding and programming, its first director was from GMHC. Today, GMHC has its own building on West 24th Street, in New York, and in 2007, GMHC reported \$30,201,607 in support and revenue, \$13.2 million of which was from government contracts (its largest source) (GMHC, 2007, p.17). As a result, to meet immediate needs and keep pace with a burgeoning epidemic, expanding their budget (particularly with government sources) has helped GMHC broaden its mandate, providing services for a range of affected communities beyond gay (white) men, including on-site walk-in crisis intervention services;

services for women and families living with AIDS; legal services and client advocacy; substance abuse education; the Lesbian AIDS project, which provides peer support for lesbians and their families living with HIV/AIDS; and public policy advocacy and research for HIV/AIDS related issues.

Accepting state funding and focusing predominantly on service provision has also meant that, over time, GMHC has grown to resemble less a grassroots service organization than, like the WHC, a professionalized and bureaucratic one as the numbers of clients, volunteers, grants and administrative requirements increased¹⁶. Volunteers were and are no longer expected to have direct contact with GMHC staff but instead communicate to those running GMHC through their team leaders (Ouelette-Kobasa, 1990). Therefore, like the WHC, GMHC has stood accused (Kramer, 1995) of abandoning its radical potential by focusing on service provision and relying on volunteer labor, detracting their energies from activism and relieving the government of its obligation to provide services (Ouelette-Kobasa, 1990) and find better treatments and even a cure (P. Cohen, 1998).

Creating a more professionalized organization did not, however, preclude GMHC from making radical statements and challenging accepted norms of treatment by the mainstream health bureaucracy. In fact, the pursuit of a more radical project was *enhanced* by GMHC's provision of space for and inclusion of a marginalized community, GMHC has been able to take resources from an entity (various government agencies) that once stigmatized (and arguably continues to stigmatize) a sexual minority and use these resources to gather and empower this very community. As Philip Kayal (1993) writes, by focusing on service provision when no other

¹⁶ And it has done so to such a successful degree that it has even been written about in publications such as *Management Review* (Jacobs, 1990), which praised GMHC for its strong fiscal and employee management operations and high degrees of commitment and satisfaction amongst its employees and volunteers.

mainstream organization or agency was willing to do anything, GMHC created and fostered a “liberated zone” (1993, p.83) in which the work of nurturing and healing takes place. While Kayal acknowledges that GMHC’s focus on service provision has taken away from its work advocating for a treatment and cure, GMHC’s focus on service provision and the creation of a safe space for this was (and is) fundamentally political and radical, fostering human connections among a stigmatized, marginalized community endangered by a disease and empowering them through their involvement in the provision of services.

Outside of the organization, GMHC has also continued to engage in claims-making activities with various state agencies, even though these agencies fund them. Most notably, GMHC has maintained its commitment to advocacy through its Policy Department, which, according to their website (<http://www.gmhc.org/policy.html>) “is an aggressive advocate, at the city, state, and federal levels, for fair and effective HIV and AIDS-related policies.” Although they are also a charitable nonprofit, unlike WHC, their extensive resources have given them the capacity to create a separate advocacy organization under section 501c4 of the IRC, through which they have registered lobbyists who work at the state, local and federal levels to improve HIV prevention policies and funding, among other issues. They have also created a number of community action groups, such as the Women of Color Research Group, which provides information about how various AIDS policies have affected women of color; and the Prison Health Action Group, which discusses how various HIV/AIDS policies impact the lives of those recently released from or placed in incarceration facilities. And as such a large organization with a long track record in the prevention field, they have been quite influential: for example, in 2004 GMHC and HIV advocates in New York State were able to stop the Governor’s proposed elimination from Medicaid of the coverage of enteral supplements, the nutritional supports (known by their brand

names as Ensure, for example) that help persons with advanced HIV maintain health body weights (GMHC, 2004).

Part IV. CAL-PEP, the SJI & radical possibilities

As the experiences of feminist health clinics and GMHC indicate, engagement with the state often leads grassroots organizations to professionalize, shift their focus to service provision maintenance, and dampen their willingness to criticize elites and other power-holders. All of this, in turn, potentially diverts their efforts from broader struggles against sexism, homophobia, and welfare state devolution, which would, arguably, be of more benefit to their communities in the long run. However, to describe organizational engagement with the state as merely co-optive is too reductive. As GMHC and the WHC's experiences also indicate, state engagement is in fact a dynamic process, whereby localism and professionalism create conditions under which grassroots organizations circumvent cooptation and allow the maintenance of radical commitments through a form of service provision that provides space for marginalized, stigmatized populations.

Methods

To examine how CAL-PEP and the SJI have experienced the dynamics of cooptation, and how this has maintained and constrained their radical impulses, the arguments made in this chapter (and throughout the remaining chapters) are based on 6 months of multi-method qualitative research with the SJI and CAL-PEP. The pages below outline my methods of interviewee recruitment, interviewing, and archival research. Overall, the majority of my information was drawn from 121 semi-structured, open-ended interviews (SOEI) with the staff and sex worker clients at the SJI and CAL-PEP¹⁷, city government and other public officials, and activists engaged with sex

¹⁷ Unless otherwise specified, throughout the remainder of this dissertation "clients" are the sex workers who use the services at the SJI and CAL-PEP, and not the paying clients of the sex workers),

worker issues from a variety of perspectives. As I will discuss in more detail below, I also conducted archival research (at the SJI and CAL-PEP, and at the city archives in both San Francisco and Oakland) and participatory/observational research (at the SJI and CAL-PEP) to gain a broader understanding of the contexts in which these groups operate, as well as their organizational strategies and methods of service delivery.

Interviewee recruitment took many forms. For SJI and CAL-PEP staff interviews, I mainly requested interviews in person or through the phone or email. For interviews with public officials and activists, I also used mainly phone and email to request interviews. In both cases, though, I employed “snowball sampling,” where I asked those I interviewed to recommend others I might be interested in speaking with. Recruitment of SJI and CAL-PEP clients took a different form. Because many of these individuals were engaged in criminal activities (prostitution, as well as the use of illegal substances), establishing trust and confidentiality (described in more detail below) was paramount. I therefore took guidance from staff at each organization about how to recruit their clients. In both cases, clients had to be over 18 years of age and have exchanged sexual services for cash or other trade, and have used the services at either CAL-PEP or the SJI. As well, staff at both organizations recommended clients be compensated for their time, and so I offered CALPEP clients \$20 in cash and SJI clients a \$20 gift card from Walgreens (a drug and general store located throughout the city of San Francisco Bay Area).

I interviewed twenty clients from each organization (40 in total)-- a number picked based on what my budget would allow. At the SJI, I posted a flier soliciting interviewees that gave my phone number and email address so clients could contact me to arrange an interview time¹⁸. Most interviews took place in a private room at the

city government and other public officials, and activists engaged with sex worker issues from a variety of perspectives.

¹⁸ See Appendix 1 for samples of recruitment fliers and consent forms.

SJI, while others took place in conference rooms at the public library or in coffee shops. While the SJI serves a fairly socio-economically diverse clientele of sex workers, the \$20 incentive tended to attract more poor and disadvantaged sex workers (over one-half were transgendered), and therefore I cannot claim my sample is representative of the SJI's clientele.

At CAL-PEP recruitment took on a number of forms because many of CAL-PEP's services are offered out in the community as opposed to in-house, like at the SJI. I recruited CAL-PEP clients through the organization's caseworkers and outreach workers (who would refer qualified clients to me). These interviews took place at the CAL-PEP offices. I was also fortunate to join CAL-PEP's outreach staff to recruit interviewees through their Mobile Outreach for Ex-Offenders (MORE) project. In this instance, we visited a particular area of Oakland, where CAL-PEP staff offered free HIV testing and education services to residents of the area through encounters on the street. When CAL-PEP staff had recruited enough clients for their HIV education lunch session, I was permitted to ask those at the lunch if they were interested in completing an interview. In these cases, interviews took place in the MORE program house or in the mobile outreach testing van. For all of my CAL-PEP client interviews, my interviewees were extremely disenfranchised African Americans, which is representative of the population CAL-PEP targets.

In all interviews, I used SOEI techniques. According to Shulamit Reinharz (1992), SOEI uses loosely structured questions that permit more than "yes/no" answers, which allows for an exploration of people's views of reality while permitting the researcher to generate theory by maximizing discovery and description through the production of non-standardized information.

SOEI suited my project for a number of reasons. First, sex workers—especially prostitutes—are difficult research subjects to access due to the illegal nature of their

work. As a result, there is little data on their work and experiences in general, especially in the quantitative arena. Here, most quantitative demographic data (including that from the Bureau of Justice Statistics) has been criticized by scholars as being unrepresentative, as it is often based on information given by arrested/jailed prostitutes (Norton-Hawk, 2001). This group is comprised mainly of street workers, who represent less than 20 percent of working prostitutes, and are more likely to be women of color, have less education, and face the highest risks for abuse, such as exploitation by pimps and law enforcement officials, and drug and health-related problems (Weitzer, 1999).

Therefore qualitative interviews were more useful when interviewing sex workers about their experiences with the SJI/CAL-PEP because they allow for a richer conversation, something not usually possible to do through basic social research survey methods (Reinharz, 1992). Although using SOEIs did not require long-term involvement in the research subjects' lives, they were often one or two hours in length, and since I was often around the SJI and CAL-PEP, if needed I could revisit the research subjects to clarify anything they might have said. However, SOEIs with SJI and CAL-PEP were supplemented with the collection of basic data on clients' demographic information, including their age, length of time in the sex industry, racial/ethnic identification, etc which was conducive to immediate quantification and is used to present a basic impression of the SJI and CAL-PEP clients I interviewed. Since I never asked for clients' real names, they provided a pseudonym for me to use instead.

Second, SEOI was also useful for decreasing power differentials between the interviewer and interviewee. A common concern raised about SOEI is that the research subjects can feel intimidated by the researcher, and mutual distrust can arise on the part of both parties regarding each others' motives. Recognizing this potential

issue was important for this project, where interviews were conducted by a white, heterosexual woman with a post-graduate education. Although I had many interviews with others “like me” (government officials, academics, etc), clients I interviewed from each organization were, for the most part, poor, had little formal education, were persons of color, and were often sexual minorities who were doing (or had done) illegal work. However, because I was doing interviews through CAL-PEP and the SJI, where the clients interviewed obtained services, I was able to gain their trust more easily. And in all the interviews, clearly explaining the goals of the research and helped assure interviewees their confidentiality was protected. Interviewees were encouraged at any point to question me and refuse to answer certain questions. These steps helped to diminish power differentials that existed while also clarifying the motives for research. Moreover, the questions asked and the clarifications provided by the interviewees were also instructive, providing insight into their lives the decisions they have made.

As noted above, I also used archival research to gather primary sources about the organizations and the state/local contexts in which they operated. This archival research in each city archive and through each organization-- combined with SOEI interviews with staff and other public officials and activists-- was essential because it located CAL-PEP and the SJI’s history and operations in their broader political-economic contexts. I also volunteered with each organization, which constituted the participatory component of my research. With the SJI I completed an archiving project and helped them write a grant for a new computer through the National Minority AIDS Coalition. At CAL-PEP I also volunteered (and continue to do so) as a grant writer. While I will elaborate more on these experiences in the following chapters, I mention them now because they were an essential part of my research methods. First, it was important to me that I give something back to the communities that have been

so generous with me. And second, this allowed me to observe how these organizations operate and gain access to their archives as well.

Chapter Outline

The findings for this thesis are presented in the following five chapters. Chapter 2, “Setting the Context: prostitution laws and the political opportunity structure” draws from the social movements literature to analyze the political and legal context sex workers (activist and otherwise) live and work in today. Focusing on prostitution laws in the state of California and federally, and on their enforcement at the local level, this chapter demonstrates that political opportunities for COYOTE’s daughter’s *opposing* prostitutes’ rights have increased as prostitution laws have become more punitive, thus illuminating the oppositional statement CAL-PEP and the SJI are making by offering nonjudgmental services to sex workers. Chapter 3 “Or we’d be next: sex workers, innovation and compromise in the fight against HIV/AIDS,” turns to look specifically at CAL-PEP, and Chapter 4, “A Place of Our Own? Exploring the radical possibilities and political potential of the St. James Infirmary,” looks at the SJI. Drawing from six months of multi-method qualitative fieldwork described above, these chapters illustrate how these organizations’ encounters with the vectors of political constraint and conditions of circumvention have led them to engage in complex compromises with authorities in order to provide services to a marginalized community from a radically different perspective, while also struggling to maintain their commitment to sex worker rights. Chapter 5, “To serve and to advocate? Tax status, data collection and political advocacy by nonprofits in the AIDS services sector” draws from the literature regarding the relationship of civic organizations (particularly nonprofits) to the state to discuss broadly how the vectors of political constraint potentially limit nonprofits’ political capacities by restricting their lobbying and campaign activities, and detracting resources (particularly time and money) from their organizations, and

professionalizing their staffs. However, building on the notion (described above) that engagement with the state is dynamic and need not preclude political activity, this chapter also discusses the various strategies organizations like CAL-PEP and the SJI might employ to circumvent these constraints. Chapter 6, “Radical Institutionalization and the Future of Prostitutes’ Rights” returns to questions regarding political organizing and the maintenance of radical commitments when activists move from protest to service provision in the neo-liberal era. Re-stating the importance of radical institutionalization here, this chapter sketches guidelines for future study. Indeed, this is not a definitive model and/or check list, but it provides a suggestive frame for studying small, activist nonprofit organizations and their potential to engage in political life.

CHAPTER 2

SETTING THE CONTEXT: PROSTITUTION LAWS AND THE POLITICAL OPPORTUNITY STRUCTURE

The California Prevention and Education Project (CAL-PEP) and the St. James Infirmary (SJI) emerged from the COYOTE-led prostitutes' rights movement in the United States and provide services to sex workers, by sex workers, in partnership with state agencies. CAL-PEP and the SJI, as noted in Chapter One, present a puzzle about how this focus on service, in partnership with the state, has not eclipsed the radical agenda inherited from their foremother, COYOTE. To see how this is possible, this dissertation will focus on CAL-PEP and the SJI's *internal* environments, considering the strategies and activities they use to maintain their commitment to prostitutes' rights within their organizations. However, discussing the broader prostitution policy context in which CAL-PEP and the SJI operate is important for clarifying in later chapters the oppositional statement they are making through their internal operations. Therefore, this chapter takes a step back to analyze the broader *external* environment in which COYOTE's daughter's work and act politically today, focusing on prostitution policy in the United States, and California's San Francisco Bay Area in particular.

If one considers policy "an officially expressed intention backed by sanction" (Lowi, 1998, p.xiii), this chapter argues broadly that throughout American history prostitution policy in California (and nationally) has variously expressed anti-prostitution sentiments and aimed to suppress (if not occasionally contain) prostitution. Yet even as prostitution policy enforcement has fluctuated over time and failed to eliminate prostitution (or the demand for it), groups espousing prostitutes' rights have been unable to gain sufficient support for legal reforms, while groups opposing this have expanded their gains. This has even been the case in the neo-liberal

era, where one might expect prostitution to be viewed as an economic choice that might promote individual self-sufficiency.

To elaborate this political-legal landscape, this chapter begins by tracing the evolution of prostitution policy in America to demonstrate how state and societal efforts to suppress prostitution have shaped the political environment for sex workers, particularly in California, where anti-prostitution sentiments were officially codified in the state's Model Penal Code in 1961. This chapter continues by discussing how, with the ascent of neo-liberal politics alongside a social conservative emphasis hyper-punitiveness in the late 1970s, state (and federal) prostitution policies were amended to increase and expand criminal penalties related to prostitution.

Noting, however, that the letter of the law often differs from its enforcement, this chapter proceeds to demonstrate that as it “actually exists” (Hackworth, 2005, p.29), the enforcement of prostitution laws in the Bay Area has varied with local urban revitalization plans, changes in the location of prostitution, and as local officials have shifted their efforts to “end demand” for prostitution. Despite this variation in enforcement, however, the anti-prostitution sentiment remains strong in the neo-liberal era, favoring COYOTE's daughters opposing prostitutes' rights, while COYOTE's daughters supporting this are constrained.

Part I. The Political Opportunity Structure (POS): A Brief Overview

Literature regarding the political opportunity structure (POS) provides a useful framework for understanding the broader political environment in which sex workers work and act politically. Defined broadly as the “consistent but not necessarily formal, permanent, or national dimensions of the political struggle that encourage people to engage in contentious politics” (Tarrow, 1998p. 19), conceptualizing the POS is useful for considering how the contexts in which social movements are situated influence their emergence, development and mobilization and possibilities for influence (on

policy or other factors). In essence, the POS concept's basic premise is "that exogenous factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy" (Meyer & Minkoff, 2004, p.1457). And so, as Meyer (2004) writes, unlike past approaches to the study of social movements that considered them largely dysfunctional and irrational, or as a product of rationally motivated resource mobilization, the broader POS approach emphasizes that activists do not choose goals, strategies and tactics in a vacuum: *agency* can only be understood and evaluated by looking at the political context and the rules of the games in which those choices are made (that is, *structure*).

Classic studies that brought the POS approach to light appeared first with Peter Eisinger (1973), who explained that some American cities experienced large amounts of rioting during late 1960s because of the "openness" of urban governments to more conventional means of making claims. Building on this, Charles Tilly (1978) traced the development of popular political movements in relation to state institutions to offer a more comprehensive theory and suggesting national comparisons by recognizing changes in opportunity over time. Tilly argued that opportunities would explain the more general process of choosing tactics from a spectrum of possibilities within a repertoire of contention¹⁹. However, it was Doug McAdam's (1982) work on the American civil rights movement that became the exemplar of the POS approach.

Examining broad factors that affect activists' prospects for mobilizing a social

¹⁹Tilly's *Popular Contention in Great Britain: 1758-1834* describes how a range of factors, including demographic and economic shifts, and the opening of political institutions, led to a shift from local, direct and particularistic political contention to toward longer term, national and routinized forms of politics to understand the ways protest enabled and then was channeled into less disruptive politics (Tilly, 1995).

movement, he showed that changes in demography, repression, migration and political economy created a political climate where African Americans could organize and claims about racial justice would be more readily received by at least some governmental institutions. McAdam therefore contended that activism by African Americans only emerged forcefully when external circumstances (such as the Supreme Court's decision in *Brown v. Board of Education*) provided sufficient openness to allow for mobilization.

Indeed, the POS framework has been applied to a variety of social movements, but, as many authors have written, it must also be used with caution. Most notably, Gamson and Meyer (1996) write that the concept of the POS is at risk of becoming “the sponge that soaks up every aspect of a social movement's political environment” (p.275), meaning there is no shortage of conceptual statements about what factors, exactly, constitute and provide political opportunities. The result is that analysts identify different factors as political opportunities depending on the sort of movement they address and questions they ask, accreting new variables they judge as significant to the case under study (Meyer 2004). Therefore the challenge for researchers is to identify which aspects of the external world affect the development of which social movements, and how (Meyer, 2004). Doing this, analysts argue, would provide a more careful, explicit conceptualization and specification of POS variables and models, and for a broader and more nuanced understanding of the relationships among institutional politics, protest and policy. Regardless, if one heeds these cautions, the POS framework, as Tarrow (1998) notes, remains very useful for answering questions such as why contentious politics seems to develop only in particular periods of history and why movements take different forms in different political environments.

Prostitutes and the POS

The emergence of the American prostitutes rights movement tells a broader story about how movements of marginalized people have emerged within the last forty years to assert their legitimacy, challenge stigma, and evolve organizationally in the face of changing political opportunities²⁰. As discussed variously below, the key features of the POS shaping the emergence and development of the prostitutes' rights movement in the early 1970s included the presence and successes of other claims-making minorities, stigma, access to allies and resources, and the advent of the AIDS epidemic.

In the 1960s, as collective action developed around expanding definitions of civil and human rights (for example, the women's and civil rights movements), groups outside of the purview of the major social movements of the era, comprised of "individuals who have been culturally defined and categorized, stigmatized, morally degraded and socially segregated by institutionally sanctioned exclusions..." (Kitsuse, 1980 p.3) engaged in claims-making activities to gain state and societal recognition. These so-called "deviant groups" included gays and lesbians, prisoners and prostitutes, among others. Call Off Your Old Tired Ethics (COYOTE) was the world's first and best-known prostitutes' rights group (Jenness, 1993), emerging in the United States at the at the tail-end of the women's and civil rights movements in San Francisco (a city that was increasingly responsive to claims from women and sexual minority groups such as gay men) to challenge local law enforcement practices towards prostitutes.

²⁰ Scholars have observed that we are increasingly living in a "movement society" where, since the 1960s, social activism and organizing has become a very common part of the political process as a growing variety of groups engage in "social movements", characterized as sustained challenges to power-holders by a disadvantaged population who live under the jurisdiction and influence of these power-holders (Tarrow, 1996, 1998; Tilly, 2004). Social movements theories have thus arisen to explain the emergence and activities of these movements.

COYOTE was founded in 1973 by Margo St. James. St. James became acutely aware of the stigma prostitutes faced in 1962, while living in San Francisco and working at an after-hours club (Interview, 25 October 2006). Her home on Grant Street became a gathering place when the club closed, and one night the police arrested her on the suspicion that she was operating a house of prostitution (Lutnick, 2006). She was released on bail, took her college equivalency test, and enrolled at Lincoln Law School, successfully appealing her charge. However, lacking financial assistance, she left law school after one year and became a call girl, which is how she supported herself for the next four years (Interview, St. James, 26 October 2006). As Valerie Jenness writes (1993), by the early 1970s, St. James had moved on to other economic pursuits. At that time, she became involved with a small organization named Whores, Housewives and Others (WHO) (where “others” referred to lesbian and bisexual women), which was formed to provide community services to women and prostitutes. As a self-proclaimed “ex prostitute”, St. James obtained a \$5,000 grant through WHO, from the Point Foundation at San Francisco’s Glide Memorial Church, to organize San Francisco’s first prostitutes’ union. Here St. James named and formed COYOTE. Shortly after, *Playboy* magazine contributed \$1,000 to support COYOTE’s efforts. COYOTE’s mission was to reshape society’s understanding of prostitution from an immoral, criminal activity to a form of legitimate work, and ultimately to decriminalize prostitution. In so doing, it offered “a radical critique of popular views of prostitution by substituting a new ethic [that] affirm[ed] prostitutes’ behavior as sensible and moral” (Jenness, 1993, 4).

Stigma and marginalization proved to be formidable, but not insurmountable, barriers to prostitutes’ organization and mobilization for legitimacy. St. James became “the main recruiter and coalition builder for COYOTE” (Jenness, 1993, p.43). Recruitment, as Jenness (1993) notes, was always difficult for COYOTE because by

associating with each other, prostitutes can be seen as conspiring or “pimping” and are vulnerable to arrest and prosecution. Despite such challenges, though, prostitutes, johns, and other interested parties were invited to join for a small membership fee, and key organizers came to the organization through involvement in feminist advocacy groups and personal experiences with prostitution. Among the most prominent, visible and active of these members were Carol Leigh, Priscilla Alexander and Gloria Lockett, who were also influential in forming the California Prevention and Education Project and the St. James Infirmary. Carol Leigh (Interview, 12 October 2006), an artist, sex worker and feminist activist in the San Francisco Bay Area, had worked in a massage parlor in the city, where she realized—contrary to what she had always understood through the media and her discussions with fellow social activists-- that prostitution was not an occupation only for the downtrodden. She went to a National Organization for Women (NOW) meeting in San Francisco with a paper bag on her head to demonstrate her impression of prostitutes’ place in the women’s movement and society at the time, where she met Margo St James and joined COYOTE. Priscilla Alexander (Interview, 18 July 2006), who was never a sex worker, also met Margo St James through friends in a feminist group. Alexander found her calling in COYOTE, editing their newspaper “COYOTE Howls”. Her research and writing skills would later prove invaluable for writing the grant applications that established CAL-PEP with Gloria Lockett, (Interview, 18 July 2006) who worked as a prostitute throughout California, Alaska and Nevada. When she and her co-workers were arrested for prostitution and conspiracy to promote prostitution, Lockett called Margo St. James—the only person she had ever heard speak positively of prostitution. St. James went to court with them every day, and Lockett won her case and joined COYOTE (Interview, Gloria Lockett, 18 July 2006).

Despite barriers to organization, COYOTE managed to represent a marginalized and excluded constituency, making radical claims and waging sustained challenges to prevailing social mores. Valerie Jenness studied COYOTE from a framing/social-constructionist perspective²¹(1990; , 1993). Her work demonstrates how COYOTE operated as a social movement vying to determine the definition of a social problem associated with deviance and social control by capitalizing on the tactics, networks and political spaces created by other social movements, namely the gay and lesbian movement and the women's movement (Jenness, 1993). They employed a repertoire of actions including public awareness campaigns, demonstrations and fundraising events, among other activities described below, that aimed to reshape the symbolic landscape of prostitution as a social problem by constructing it as a legitimate women's and civil rights issue. These legitimization tactics included creating and promoting the term "sex work" (Leigh, 1997) to better emphasize that work in the sex industry was labor like any other, and a frank and well-written newsletter, "COYOTE Howls" provided a simple and inexpensive way to communicate with their membership and the public, and made COYOTE the "information center of the world" about prostitution (Interview, Margo St James, 26 October 2006). COYOTE was also visible through protests and the media. Using slogans in their publications and demonstrations such as "Hookers Unite: You have nothing to lose but cop harassment" and "My ass is mine" (cited in Jenness, 1993, p.49), COYOTE followed the lead of the gay community in the city, who had years earlier successfully organized to protest police harassment and the right to participate

²¹ Theories in the social constructionist school (see for some pioneering examples Gusfield, 1989; Kitsuse, 1980; Spector & Kitsuse, 1973) hold that social problems are largely definitional and constructed by human actors. Here social movements emerge and evolve *not* primarily as a function of their ability to mobilize resources, but as a function of their ability to fashion shared understandings of their world and themselves to legitimate and motivate collection action. Therefore social movements are efforts to control the direction of social change by largely controlling society's symbols and self-understanding of social problems and conditions.

in private consensual sex. With slogans such as “The Trick is Not Getting Caught” (cited in Jenness, 1993, p.52), they demonstrated against the police practice of arresting prostitutes far more frequently than johns. COYOTE’s local actions soon came to the attention of the national news media, and St. James was a guest on such shows as “The Donahue Show”, where she spoke of the need to legitimize prostitution as work in order to end the stigma against women in the sex industry.

COYOTE’s claims-making activities to reconstruct societal understandings of prostitution were affirmed and implemented to a degree by different political and professional groups (albeit mainly in the Bay Area). By the late 1970s, COYOTE’s campaigns had succeeded on many fronts. The San Francisco Barrister’s Club invited St. James to speak about prostitution law reform, and for COYOTE’s annual “Hooker’s Ball” (the organization’s major fundraising event from 1973 to 1979), they gained the solidarity and support of other workers in the city when, as Margo St. James (Interview, 26 October 2006) stated, “Even the fire department helped us hang banners” (Interview, 26 October). Other COYOTE achievements included improving arrest conditions for prostitutes and enhancing training and education for public defenders working for prostitutes (Jenness, 1993). COYOTE also provided crisis counseling, support groups, legal counseling, and testimony at government hearings; served as expert witnesses in trials; helped the police investigate crimes against prostitutes; and provided sensitivity training to government and other non-profit agencies who serve prostitutes (COYOTE, 2003).

Despite being on the tail end of the liberal social movements of the era, COYOTE’s failure to make more substantive gains beyond the Bay Area (i.e. legal reform) indicated the limited success of their protest efforts, due in part to the fact that they were largely resource-poor. Scholars considering COYOTE’s emergence and achievements from the resource mobilization theoretical (RMT) perspective argue that

although COYOTE did work to reshape public understandings of prostitution (in the Bay Area, at least), their lack of moral, material and human resources impeded their achievement of any significant legal reforms ²²(Mathieu, 2003; Weitzer, 1991; West, 2000). Regarding human resources, COYOTE largely failed to gain the support of mainstream and influential feminist groups due to divisions among them about whether prostitution furthered women's experiences of sexual violence and subordination. As a result, there was never the same broad feminist organization and mobilization regarding American prostitution law reform as there was around access to abortion and birth control ²³(Hobson, 1987). And compared to the gay community (particularly white gay men), COYOTE's lack of financial resources (and sympathetic allies) contributed to their fragility over time (Mathieu, 2003).

Furthermore, as discussed in Chapter 1, the advent of the AIDS epidemic not only heightened the stigma of prostitutes (thereby diminishing public support for prostitutes' rights), but resulted in the government's creation of incentives for community-based nonprofit AIDS service provision, all of which led to the birth of COYOTE's progeny, including CAL-PEP and the SJI. But the goal of this chapter is not to discuss the aspects of the POS influencing the prostitutes' rights movement's emergence and mobilization. Instead, this chapter will consider how broader social, political and economic factors shape the context in which COYOTE's daughters work today, and in so doing hold to the key insight of the POS literature: namely that activists' prospects for advancing particular claims, mobilizing supporters, and

²² RMT (for the pioneering example, see Zald & McCarthy, 1977) holds that while there have always been discontented people in society, what has changed over time are the resources to mobilize and sustain movement politics (in industrial societies). Social movements (especially in the post-1960s era) thus consist increasingly of formalized organizations because as society has become wealthier, more resources are available to movements, and the movement organizations most able to sustain themselves are those best able to access resources.

²³ This is not necessarily surprising, given, as some authors have noted, the failure of the American feminist movement to advocate for the privacy (and other) rights of poor women (see for example Mink, 1998; Mink, 1999 on poor women and welfare reform)

affecting influence are context-dependent (Meyer, 2004). And so this chapter specifies and describes two key features of the broader POS-- the criminalization of prostitution and the rise of neo-liberal politics—and how they interact to constrain political opportunities for those advocating for and supporting sex workers' rights.

PART II. Suppressing prostitution: a long-standing feature of the POS

Suppression and/or containment has long defined state and societal responses to prostitution in the United States, shaping the political environment in which sex workers live, work and act politically. Before prostitution grew more visible with the expansion of the nation's economy and urban areas, David Pivar (1973) writes that during the colonial period the nation lacked any large, federal administrative and regulatory capacity, and so prostitution was policed locally, usually by the churches. Formal legal attention was not paid to prostitution until later in the industrial era when politicians and social reformers grew more concerned that it threatened families and the broader social order. Therefore, as Rosen (1982) writes, the gradual growth of prostitution was integrally linked to the broader societal changes in women's lives and in the family as the deeply agrarian and religious colonies became more commercialized and secular, and the population grew and became more mobile. Yet even as prostitution became more visible throughout America, Barbara Meil-Hobson (1987) writes that early, localized responses to prostitution laid the groundwork for later responses to it as an immoral crime: by casting prostitutes simultaneously as victims, seducers and sinners, these responses constructed prostitution not simply as a form of labor, but as an activity that determined one's status in life, meriting both punishment and rescue of the individual involved.

The dominance of anti-prostitution perspectives is exemplified by the short-lived political and public tolerance for prostitution in California, particularly in San Francisco. Stimulated by the Gold Rush, prostitution was long a part of the San

Francisco Bay Area's history. Although madams and prostitutes took an active part in the city's early social life at this time, this golden age of prostitution came to an end in the mid 1850s when gold-seekers deciding to stay in California sent for their families, increasing the number of "respectable women" in the city. Consequently, tolerance of prostitution diminished, beginning a long period where growing concerns about declining (female) morality, disease, property values and crime were associated with prostitution (Leigh, 1996; Mullen, 1993). The first evidence of this suppression appeared in the 1860s and 1870s, when local jurisdictions created special laws aimed at Chinese prostitutes and brothel owners (Meil-Hobson, 1987). At this time, as Asian immigration to the city increased, prostitution districts were often designated based on growing racism. The first wave of legislation addressing prostitution came from a committee meeting to discuss moving Chinese prostitutes to uninhabited streets, resulting in Ordinance 546 "To Suppress Houses of Ill Fame Within City Limits" (1854), and later, in 1866, the "Order to Remove Chinese Women of Ill Fame from Certain Limits of the City" (Leigh, 1996).

At this time, however, many city leaders also conceded that it would be impossible to eradicate prostitution, and, for pragmatic reasons, a brief moment when policies to contain prostitution were developed and employed. In 1870 the city designated special "red light" districts subject to revision by city officials (Leigh, 1996), which would make it easier to supervise and monitor the prostitutes; however, this moment of regulatory containment was short-lived. In response to concerns from middle class women's groups and other social reformers, the state of California soon passed laws that would make it difficult to operate the red light districts: sections 266h and 266i were added to the California Penal Code in 1872 banning pimping and pandering, respectively. Section 315 of the California Penal Code, which prohibited "keeping a house of ill fame," was enacted in 1892.

By 1900, Americans began to exhibit the most widespread concern about prostitution as immigration increased and the nation grew more urban and industrialized. In response to the social and economic changes of the era, Americans employed the state for the first time for, among other things, “trust busting” growing American business interests, regulating and rationalizing an increasingly racially and ethnically pluralistic nation, and for legislating morality (Luker, 1998). At this time the social purity movement began to grow, mounting vigorous campaigns for legal reform that would enforce a single standard of moral purity for men and women (Abramson, Pinkerton, & Huppin, 2003; Morse, 1997). As a result, from 1900 to 1920, the most broad and coherent effort to eliminate prostitution in American history was waged: new laws were written by social reformers to eradicate prostitution and institutionalized through an array of enforcement mechanisms (the closing of red-light districts in almost every major American city, special courts, and new penal institutions for women, among others). Fearing immigrant vulnerability to and perpetuation of the prostitution industry, reformers also focused on providing various social services to young, working class/immigrant women to prevent them from entering (and furthering) the prostitution industry. Progressive reformers’ zeal also sparked federal interest in prostitution for the first time, specifically regarding the “white slave trade,” which (allegedly) involved the rampant movement of women across state lines for the purposes of prostitution. This federal interest culminated in 1911 with the passage of the *Mann Act* by Congress, which forbid the transportation of women across state lines for immoral purposes (Brandt, 1987). Taken together, these local and federal reform measures served to firmly cast prostitution in America as an immoral, criminal activity that was largely responsible for the spread of disease and broken families, and one that also victimized women by forcing them into the (sex) slave trade (Connelly, 1980; Meil-Hobson, 1987).

National efforts to suppress prostitution were clearly reflected in California, particularly in the San Francisco Bay area. Here, similar to the rest of the nation, a brief window of toleration was over-shadowed by political favor for suppressing prostitution. In response to the demands of the prominent physician Dr. Julius Rosenstirn, who advocated a supervisory approach to prostitution, the San Francisco Board of Health opened a clinic in 1911, which effectively legalized prostitution in the city by forcing all prostitutes to confine themselves to a district and submit to regular medical exams (Rosenstirn, 1913; Shumsky & Springer, 1981). But political opportunities for expanding this legal regulation of prostitution were brief (Kerr, 1994; Shumsky & Springer, 1981, 82). The clinic system soon came under strong attack by doctors who did not believe it lessened the spread of venereal diseases; by social reformers and religious leaders, who saw the system as encouraging immorality; and, most significantly, by businessmen eager to rebuild the city after the 1906 earthquake and bring the Panama Pacific International Exposition to the city in 1915. Bowing to these pressures, the mayor ordered the removal of the officers who detailed the clinic, which essentially ended its operation. This event was paralleled by the state's passage of the *Red Light Abatement Act* (1913), which declared brothels a public nuisance and allowed citizens to sue owners for maintaining them²⁴. Although the law was challenged by property owners, the state supreme court upheld the law in 1917 (Kerr, 1994).

Despite a general sense of optimism in the nation and the expansion of rights for various minorities nation-wide, political opportunities for implementing tolerant

²⁴ Historically, the participation in and regulation of prostitution in Oakland followed very similar patterns to that in San Francisco. Up until 1890, prostitutes were part of city life and were generally appreciated, until more women began to follow their husbands to Oakland and a modified Victorian culture influenced the city, leading to the creation of segregated districts for prostitutes until 1914, when they were shut down by the passage of the *Red Light Abatement Act*.

approaches to prostitution did not increase during the post-war era²⁵. Instead, for the first time anti-prostitution sentiments were codified in California officially in 1961 under the rubric of disorderly conduct laws (Section 647 of the California Model Penal Code) (Jennings, 1976; Meil-Hobson, 1987). As enacted in 1961, Section 647 read “Every person who commits any of the following acts is guilty of a misdemeanor”, stating in subsection (b) that these acts include “solicit[ing] or engag[ing] in prostitution”. As Anne Jennings (1976) writes, contemporary commentaries on the enactment of section 647(b) offer little guidance about the legislative purposes behind the criminalization of prostitution and solicitation, especially since the state of California removed all criminal penalties from adult consensual sexual behavior in a non-commercial context shortly before section 647(b) was enacted. However, the drafters of the Model Penal Code advanced several reasons for retaining criminal penalties for prostitution and solicitation. They believed this would prevent the spread of venereal disease; prevent crimes associated with prostitution; decrease official corruption; and protect family and society from the deleterious effects of commercialized sex ²⁶(Jennings, 1976).

By the late 1960s, the political context changed, becoming more open to claims by marginalized groups. Sexual liberalism becoming the dominant ethos of the era and advances were made regarding women’s (and other groups’) rights nationwide. But according to Meil-Hobson (1987), feminists at this time were deeply divided between those who viewed prostitution as reinforcing the (sexual) subordination of women in society (see for example Mackinnon, 1983, 1987;

²⁵ In San Francisco, for example, although toleration policies were explored after World War II by incumbent mayor Elmer Robinson, he was defeated by a candidate appealing to female voters with an anti-prostitution stance (Leigh, 1997).

²⁶ In 1965, likely in response to growing concerns about the emerging gay rights movements in the state, section 647 was amended and subdivision (b) inserted a sentence reading, “As used in this subdivision, ‘prostitution’ includes any lewd act by persons of the same sex for money or other consideration” (Westlaw), but the words “of the same sex” were removed in 1969.

Mackinnon, 1989), and those who argued that prostitution was a legitimate sexual and work choice, especially given the limited range of economic options for women (see for example Thompson, 2000).

Despite the open political context of the 1960s and 1970s, prostitution remained firmly in the jurisdiction of criminal law, reflecting the nation's long-standing anti-prostitution perspective. In California in 1971, the only known attempt to repeal section 647(b) was initiated by state Assemblyman Leroy Greene of Sacramento, who introduced a bill to legalize prostitution. Although the majority of Greene's legislative activity during his 36 years in office dealt with education and school facilities, he introduced this bill when a poll showed there was support for it: in a representative sample of the state's residents by the California Poll, 50 percent of respondents thought this proposal was a "good idea", and in another poll (albeit one conducted by Greene), 69 percent said they favored his proposal (Jennings, 1976, p.1250). However, his bill never passed, and instead, various amendments to section 647 (b) and other prostitution-related statutes occurred during this era (mainly through court decisions, discussed below).

Reflecting the broader social desires of era for civil rights and equality, the first of these amendments stipulated prostitution laws be gender neutral; however, they ultimately *expanded* criminalization (at least on paper) by applying prostitution laws to males and pimps. In 1969 the state's law against pimping (Section 266, described above) was amended to include both men and women. According to Westlaw²⁷, a 1969 amendment made Section 266 apply to "Any person," instead of "Any male person;"

²⁷ Much of this discussion will draw from the texts of the laws and historical notes provided by Westlaw, the online legal research service for legal and law related materials, which provides the texts of the law, as well as information about their amendments, relevant court cases, and historical information.

referred to "another person," instead of "a female person;" substituted "such person" for "her," and omitted a paragraph which read:

"Any female person referred to in this section is a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or as to any conversation with the accused or by him with another person or persons in her presence, notwithstanding her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution."

Regarding pandering, nearly identical amendments were made to subsection 266i: a 1969 amendment substituted "another person" where the section read "a female person". Amendments were also made to increase and specify the severity of sentences for a pandering conviction.

Section 315 of the CA Penal code, which prohibits keeping a house of ill fame, was challenged next in 1974 on the grounds that it was not gender neutral (but to date remains one of the few prostitution-related statutes that is not gender neutral). Although Section 315 refers to every "person who keeps a house of ill-fame" in its prohibition, the case of *People v. Municipal Court, City and County of San Francisco* (1974) established that the character of the house and those in it is determined by the conduct of the *women* therein²⁸. In 1976 and 1977, two other cases also came before the state Supreme Court that, while keeping prostitution criminalized, also clarified the law was gender neutral. In *Leffel v. Municipal Court of Fresno (1976)*, the authoring judge reiterated the suppressive and moralistic motivation behind the law, stating the

²⁸ In this case the defendants were charged for violating various Penal Code sections relating to prostitution. They filed a pretrial motion to dismiss the charges, alleging their trial or conviction would be the result of discriminatory enforcement of the law, based on information they had that the San Francisco DA enforced prostitution statutes against women but not against adult male homosexuals for similar violations in bathhouses or male escort services. The appeals court affirmed that the trial court was correct in requiring the prosecution to release statistical information regarding number of arrests, prosecutions or investigations of bathhouses and escort services and any statements of interdepartmental memoranda which might exist regarding enforcement policy. However, reflecting the strength of gay men's political organizing San Francisco, the text of the law has never been changed to consider that *men* (gay or otherwise) might also occupy a house in such a way to give it a reputation as a house of prostitution.

“Legislative purpose in proscribing soliciting for prostitution is to eliminate prostitution and its intended evils; hence, subjecting the customer to prosecution will further the legislative purpose”. However, the judge did clarify that the law applied to clients (men) as well as prostitutes:

“Interpreting subd. (b) of this section defining disorderly conduct as including every person who solicits any act of prostitution to apply to the customer as well as the prostitute did not deprive defendant customer of due process since not only does this section itself give fair notice that customers are included but judicial interpretation of this section to include the customer was reasonably foreseeable.” (“Leffel v. Municipal Court of Fresno County”, 1976)

Gender neutrality in the law was reinforced again in *People v. Superior Court of Alameda County* (1977), where the decision stated “This section providing that ‘Every person who solicits or who engages in any act of prostitution’ is guilty of disorderly conduct, was fair on its face and impartial in appearance and was clearly designed to punish specific acts without reference to sex of perpetrator” (“People v. Superior Court of Alameda County”, 1977). With gender neutrality, however, also came the clarification that a female’s presence in a certain area (or simply being out alone at night) did not indicate intent to commit prostitution: *In re White* (1979) found that “Mere presence at a particular place, without more, does not amount to solicitation; nor, without more, is waving to a passing vehicle, nodding to a passing stranger, or standing on a street corner in a miniskirt” (“In re White”, 1979). By 1986, reflecting these case law developments, section 647 (b) was amended by Statutes 1986, c. 1276 to read that anyone is guilty of a misdemeanor

“b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.”

This wording remains to the same to this day. While the prohibition of prostitution is now stated in gender-neutral terms, Section 647(b) continues to communicate that prostitution is not legitimate work but an immoral activity that merits criminal punishment.

Part III. Neo-liberalism and prostitution policy

The political climate in which prostitutes work and act politically began to change in the 1980s with the rise of neo-liberal politics: at this time, as discussed below, despite the neo-liberal emphasis on individual self-sufficiency and minimal state involvement in society and the economy, prostitution laws were amended to be *more* punitive (although enforcement varied), reflecting the continued presence of social conservatism in this era. Before discussing this evolution nationally and in the state of California, however, this section first discusses neo-liberalism (defined in Chapter One) and its relation to crime policy in the United States (Chapter 5 focuses in more depth on the neo-liberal trends towards social service provision by private/nonprofit entities).

Neo-liberal politics gained momentum in the early 1970s, escalating when Ronald Regan was elected on a platform that advocated major retreat from government activism and intervention in social policy and the economy. However, as Hackworth (2005) argues, neo-liberal retrenchment has been a highly contingent process tending toward destruction but also creation. The so-called “destructive” aspect is exemplified by how welfare policies across the board came under intense scrutiny to determine whether they should be cut as much as possible or replaced with private service providers (Pierson, 1994), particularly those in the nonprofit sector (Salamon, 2001a). Changes in welfare programming in the United States provide one of the most telling examples of this retrenchment. Welfare, via Aid to Dependent

Children, has never been universal and adequate, but instead has been means-tested and crisis-interventionary, serving as a check on the growing demands for these welfare measures and services (L. Gordon, 1995; Mink, 1998; Ursel, 1992). In 1996, welfare was minimized further when President Bill Clinton signed the *Personal Responsibility and Work Opportunity Reconciliation Act*, changing welfare in the United States from a federal, statutory entitlement to a state-administered, needs-demonstrated program called “Temporary Assistance to Needy Families” (TANF). TANF was discussed in gender-neutral terms as a program that would “end welfare as we know it” by imposing strict time limits and work requirements on welfare recipients. But as numerous authors (Abramovitz, 2000; Mink, 1998; Smith, 2002) have noted, welfare cuts primarily impact women. Since the passage of TANF, welfare programs in many US states have grown more coercive and invasive of women’s privacy, and even moreso they fail to offer monetary benefits meet their needs and those of their children. Overall, the result has been that as social programs have been cut, services once available to the poor or those who fell on hard times became the private responsibilities of individuals and/or nonprofit service providers (Cossman, 2002).

However, what one might call the destruction of the welfare apparatus has happened alongside the “creation” of an increasingly punitive (indeed, “hyper-punitive”) approach to crime, demonstrating, as Larner argues (2002), that the neo-liberal emphasis on less government has not meant there is less *governance*. Here, while neo-liberalism problematizes the state and is concerned with limiting it by invoking individual choice, it also involves the state by strengthening its coercive powers to enforce the individualization of social responsibility (Brodie, 1997). In many cases, as the following pages demonstrate, this has resulted in the heightened policing of individuals, particularly those living and working on the streets. Therefore,

as Herbert and Brown (2006) argue, one must view the neo-liberal state as *different* rather than smaller, as state power is restructured through an expansion of the criminal justice apparatus (as opposed to the social welfare system).

To illustrate, until the 1970s, when welfare state development was peaking, authors such as Marc Mauer (1999) and later Henry Ruth & Kevin Reitz (2003) wrote that the stronger economy, combined with the increased desire for social change, created a political climate receptive to less punitive solutions to poverty and crime, hence the focus on rehabilitation-oriented programs during this period. However, the economic downturn and resulting strains on the welfare state that made the public so receptive to Reagan's conservative agenda also increased favor for his similarly socially conservative approach to crime. As a result, similar to income support programs, rehabilitative programs were similarly characterized as drains on resources. In their place, more punitive approaches such as the "War on Drugs" and mandatory sentencing, combined with cuts to legal services for the poor, became the favored means of dealing with poverty and crime, all of which increased incarceration rates in the United States to record levels (Beckett, 1997; Wacquant, 2002).

Prostitution laws under neo-liberalism

The remainder of this section will demonstrate that prostitution has remained in the jurisdiction of criminal law with the rise of neo-liberal politics, although the enforcement of these laws has fluctuated. Given the neo-liberal emphasis on individual responsibility, one might argue that women engaged in the exchange of sexual services for cash or other trade be considered rational economic agents who should not be criminalized for their efforts at self-sufficiency, especially since the reduction in welfare programming under neo-liberalism might provide an impetus to enter prostitution. Various authors (Edin & Lein, 1997) have written that since any income earned along with welfare benefits can reduce the total TANF payout, many

women must turn to the informal economy to meet their needs and those of their child/ren. In Chapter 6, entitled “Survival Strategies”, they demonstrate in a number of their case studies that women have exchanged sex for cash, food or other necessities in the face of restricted welfare benefits, risking criminal penalties, physical harm, and further stigmatization.

Yet despite the potential for recognizing prostitution as legitimate work in the law under neo-liberalism, prostitution laws have been passed at the state *and* federal levels that further marginalize prostitute identity by linking it to both victimization and criminality. At the state level, the advent of HIV/AIDS in the 1980s rapidly accelerated the criminalization of prostitution. Similar to the disease panics of the Progressive Era, women working as prostitutes became an easy and obvious target for the spread of this newly discovered disease. Across the United States, in the spirit of neo-liberalism—emphasizing individual punishment as opposed to broader social solutions (like comprehensive health care for sex workers and job training, for example)-- legislators passed numerous laws that targeted prostitutes as transmitters of HIV. As Zita Lazzarini (2004, pp.181-182) writes, between 1988 and 1996, twenty four states passed legislation criminalizing HIV transmission generally or through some form of specific behavior, including spitting, donating blood, or sexual intercourse. But she adds that fifteen states also passed statutes concerning acts that are already crimes (such as prostitution, rape, and assaulting a peace officer), which punish the perpetrator separately or more severely when the perpetrator knows he or she is HIV-positive. Specifically, Pennsylvania, Ohio, Kentucky, Georgia, Utah, Florida, Tennessee, Colorado, Oklahoma, South Carolina and California enacted enhancement statutes that would increase the severity of charges against prostitutes from a misdemeanor to a felony if the prostitute knows she has (or is known to have)

HIV (Wolf & Vezina, 2004, p.856). Yet in spite of this “moral panic”²⁹, it appears as if these felony prostitution laws are rarely enforced, with the exception of California, where, as John Mitchell (2002, p.3) writes, has had 216 prosecutions under its law.

Along with the passage of the AIDS-related prostitution laws nationwide, in California state prostitution laws were re-written to be more punitive. A 1982 amendment to Section 266i (pandering) increased the sentence for a pandering conviction from 2 to 4 years to 3 to 6 years, and where the victim of pandering was under the age of 16, the 1982 amendment provided a sentence of up to eight years. The possibility for parole (in cases of both pimping and pandering) was removed in 1983. Two cases-- *People v. Almodovar* (1987) and *People v. Dell* (1991)-- challenged the validity of the state’s pimping and pandering laws, but the decisions here upheld and reinforced the punishments for these crimes, broadening the scope of prostitution laws by showing that words-- without the actual act of prostitution-- can be construed to prove the occurrence of pimping and pandering³⁰. Indeed, the outcomes in both *Almodovar* and *Dell* reflected public sentiments that, in the age of AIDS, prostitution should be further criminalized

²⁹ A moral panic occurs when “[a] condition, episode, person or group of persons emerges to become defined as a threat to societal values and its interests... sometimes the panic passes over and is forgotten... at other times, it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy...”(S. Cohen, 2002, p.1)

³⁰ In *Almodovar*, the defendant (Norma Jean Almodovar), a former civilian traffic officer for the Los Angeles Police Department (LAPD), wrote a book "From Cop to Call Girl," describing her exploits with the police department and further escapades as a prostitute. Her friend (another LAPD traffic cop, Judy Isgro), alleged that Almodovar asked Isgro to work as an escort when she told her about the book. Isgro informed a superior at the LAPD of the situation and assisted the detectives in an investigation of Almodovar. Although the actual physical acts of pimping and pandering never took place, Isgro’s conversations with Almodovar (some of which were wire-tapped) were used as evidence to convict Almodovar of pandering, for which she served 72 days in custody. *Dell* further expanded the definition of pimping and pandering. In this case, women working for an escort service told undercover officers what services they would perform and what they would cost. Although they never performed the services, the appellant—the agency owner—was convicted of one count of pimping and two counts of pandering. On appeal, the appellant contended that the testimony of the police officers regarding the escorts’ statements about the sex acts they would perform for the fee was inadmissible hearsay. The court concluded, however, that the testimony of police officers was not "hearsay," and was admissible in prosecution for pimping and pandering as evidence of "verbal acts" or "operative facts" of crime of prostitution

Prostitution laws were also amended by the California state legislature to *increase* penalties for sex workers on the streets. One major example here was Section 653.22 of the Penal Code, to which Section 4 was added by statute in 1995 to prohibit loitering for the purposes of prostitution³¹. Property concerns drove the addition of this section to the Penal Code: the historical notes in Westlaw state "Section 4 of this act is enacted for the purpose of assisting local law enforcement in controlling prostitution-related activities and to minimize the adverse effect these activities have upon local communities." The statute proceeds to list 5 circumstances that constitute evidence of loitering³²; however, these activities are not all that define what constitutes loitering. The statute states further that

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. *Any other relevant circumstances may be considered in determining whether a person has the requisite intent* (italics added). Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case

Although five specific actions are outlined in subsection (b), the non-exclusivity of this list, as well as the statement in subdivision (c), above, clearly indicate that the major goal of the law was to enhance the capacity of law enforcement officials to

³¹ This section states that (a) "It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution."

³² Stating in subsection (b) "Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person: (1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution. (2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution. (3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section. (4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution. (5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity."

arrest street-based sex workers. To little avail, sex workers in San Francisco did protest loitering bylaws in the city, but no other California cities have witnessed similar protests.

Even though Section 653.22 broadens the definition of loitering, which potentially encroaches on freedom of association, there has only been one challenge to the law, and it was unsuccessful. In *People v. Pulliam* (1998), the jury found Sherrie Lynn Pulliam (Pulliam) guilty of loitering in a public place with intent to commit an act of prostitution in violation of Penal Code section 653.22. Pulliam's sole contention on appeal was that section 653.22 was unconstitutional because it is vague and overbroad. The court determined, however, that First Amendment (free speech) protections did not apply because the conduct is reasonably prohibited³³. As a result, Section 653.23, which prohibits supervising or otherwise aiding a prostitute, was added by statute in 1998 to reinforce section 653.22, stating

(a) It is unlawful for any person to do either of the following: (1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647 or subdivision (a) of Section 653.22. (2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

Like Section 653.22, it then lists nine possible (but not exclusive) actions that might constitute supervising or aiding. To date, there have not been any cases that challenge this law on any grounds (namely that it limits one's freedom of association), nor have there been any legislative amendments.

³³ The court stated that "Criminal laws penalize conduct. If the conduct is permissibly prohibited under the state and federal Constitutions, the fact that the conduct may peripherally involve speech or association does not cloak it with constitutional protections that invalidate the criminal statute prohibiting the conduct...Because section 653.22 criminalizes the conduct of loitering with intent to commit prostitution, which may constitutionally be prohibited, and does not on its face prohibit "a substantial amount of constitutionally protected conduct," section 653.22 is not overbroad." ("People v. Pulliam", 1998)

Federal laws

Alongside these state-level developments, federal interest in prostitution (particularly regarding human trafficking) has increased, further reinforcing anti-prostitution sentiments. Of course, federal interest in prostitution and human trafficking is not a recent phenomenon: as noted above, Congress passed the *Mann Act* in 1911 forbidding the transportation of women across state lines for immoral purposes (Brandt, 1987). More recent attention to the issue emerged in the 1970s when feminists began to express concerns about the social impacts of reconstruction and development in the Southeast Asia region in the aftermath of the Vietnam War. Sex tourism, mail order brides, militarized prostitution, and coercions and violence in the movement and employment of women to more affluent regions for work in the leisure and sex industries were the major focus of study under the rubric of sex trafficking at the time (Kempadoo, 2005). Attention to sex trafficking intensified in the mid-1980s as media attention to the plight of trafficked victims told stories of Latin American and Asian women illegally trafficked to work in brothels in Western Europe, among others (Gozdziak & Collett, 2005; Sonderlund, 2005). By 1985, the issue was integral to the international women's movement, becoming part of the United Nation's *Fora on Women*, and a key interest of women's organizations and networks world-wide (Kempadoo, 2005).

Similar to the prostitution debates of the 1960s and 1970s (described above), perspectives on how to combat trafficking have in no way been unified, particularly among a number of COYOTE's daughters discussed in Chapter One. On one side are the abolitionists, led mainly by scholars and activists (for some prominent examples, see K. Barry, 1984; K. Barry, 1996; Farley et al., 2003; Hughes & Raymond, 2001; Jeffreys, 1997, 1999) who argue that all prostitution *in and of itself* is harmful to women and a result of male domination, and therefore sex trafficking is the worst

patriarchal oppression of women. The most influential abolitionist organization in the United States is COYOTE's daughter, the Coalition Against Trafficking in Women (CATW)³⁴. Other prominent abolitionist organizations include Equality Now, the Protection Project, and (as noted briefly in the previous chapter) Standing Against Globalization (SAGE) (Weitzer, 2005, 2007).

On the other side of the debate are sex worker rights advocates who more closely resemble COYOTE and include scholars, activists and sex workers (many from the global south) who advocate that prostitution is another form of work. They believe that although many women are indeed coerced and violated in the sex trade, their situations vary according ethnic, racial, social and economic contexts. From this perspective, the sex industry is just one of many labor sites requiring unskilled or semi-skilled labor; what distinguishes trafficking from prostitution (or any other form of labor) is *coercion* and the conditions under which women (and men) enter into labor. As opposed to condemning prostitution as an economic option, they advocate sex worker empowerment through harm reduction via the provision of condoms, counseling and other support services (Gozdziak & Collett, 2005; Weitzer, 2007). Groups adhering to this view include the Network of Sex Work Projects (NSWP), a coalition of forty international groups, the Sex Workers Outreach Project (SWOP, discussed in Chapter One), the Global Alliance Against Trafficking in Women, and the Sex Workers Project in New York.

³⁴ According to their website, "The Coalition Against Trafficking in Women (CATW) is a non-governmental organization that promotes women's human rights. It works internationally to combat sexual exploitation in all its forms, especially prostitution and trafficking in women and children, in particular girls. CATW ... serves as an umbrella that coordinates and takes direction from its regional organizations and networks in its work against sexual exploitation and in support of women's human rights ... bring[ing] international attention to all forms of sexual exploitation, including prostitution, pornography, sex tourism, and mail order bride selling...[by] training teachers, professionals, police, governmental authorities and the public about the harm of sexual exploitation and ways to resist and combat it... and testify[ing] before national congresses, parliaments, law reform commissions, regional and UN committees and commissions, and hold[ing] Category II Consultative Status with the United Nations Economic and Social Council (ECOSOC)." (<http://www.catwinternational.org/>)

Abolitionists and sex worker rights advocates have never been equally positioned to influence public and governmental understandings of sex trafficking and prostitution, and political opportunities for abolitionists anti-prostitution advocates have increased since the George W. Bush Administration adopted anti-trafficking as a key humanitarian initiative in the post 9/11 period (Sonderlund, 2005). By joining forces with religious and social conservatives (who already had the ear of the Bush Administration on many other issues), they were able to convince Congress to pass the federal *Trafficking Victims Protection Act* (TVPA) in 2000 ("Victims of Trafficking and Violence Protection Act of 2000", 2000), which was reauthorized in 2003, 2005 and 2007.

Reflecting neo-liberal trends towards hyper-punitiveness, the TVPA focused on combating trafficking by expanding police powers, despite the existence of laws prohibiting kidnapping, peonage and other forms of forced labor. As stated in Section 102: Purposes and Findings,

“(14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.”

To mete out these harsher punishments, Sec.111 “Actions against significant traffickers in persons” and Sec.112 “Strengthening prosecution and punishment of traffickers” amends Chapter 77 of Title 18, United States Code, to increase penalties for a person found guilty (of trafficking resulting in forced labor, peonage, slavery, involuntary servitude, sex trafficking of children or unlawful conduct with respect to documents in furtherance of trafficking) from 10 years in prison to 20 years-to-life in prison.

Because the 2000 TVPA (and its subsequent re-authorizations) gave law enforcement primary jurisdiction over determining who qualifies as a victim, it kept sex trafficking (and issues of prostitution more generally) in the realm of the criminal justice system (as opposed to treating it as social welfare or economic issue). This is most apparent in the TVPA's provisions for non-US citizens. Under Section 1513 (a)(2), the TVPA (2000) "create[s] a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens". However, according to Sec 107 (b)(E), to qualify for a visa (called the "T-visa") individuals defined as victims of severe trafficking must cooperate with law enforcement³⁵. As a result, unless law enforcement determines that those apprehended are victims of trafficking *and* are willing to work with law enforcement, they are not eligible for status or services. This has been criticized by many (Chapkis, 2005; Kempadoo, 2005) for putting women at risk for experiencing criminal penalties if they do not cooperate with law enforcement for fear of encountering their trafficker. Moreover, although Section 107c1C states protections should be provided to the women and their families, this assistance and protection is obtained while the women are in *custody*, therefore reinforcing that victims of (sex)

³⁵“(i) IN GENERAL- Subject to clause (ii), the certification referred to in subparagraph (C) [which defines victims of severe trafficking] is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II)— (I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and (II)(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act, as added by subsection (e), that has not been denied; or (bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons. (ii) PERIOD OF EFFECTIVENESS- A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.”

trafficking are both victims and criminals³⁶. Overall, while forcing individuals into labor of any sort is morally reprehensible, as critics have noted the approach to human trafficking under neo-liberalism focuses too heavily on *individuals* at the expense of minimizing the social and economic conditions (poverty, lack of employment, etc) that often create incentives for women to encounter traffickers and become engaged in forced labor, sexual or otherwise (Sonderlund, 2005)

Alongside the TVPA, the creation of federal anti-prostitution initiatives has been plentiful (despite the trend towards social program devolution in the past decade). Overall, since 2001, the Bush Administration spent an average of \$100 million per year to fight trafficking domestically and internationally (Sonderlund, 2005, p.67), providing more than \$295 million to support anti-trafficking programs in more than 120 countries (U.S Department of State, 2005, p.1). However, the 2003 TVPA made clear that none of these funds will be used to promote the legalization or practice of prostitution, or to implement any program through any organization that has not stated in a grant application or agreement that it does not promote or support prostitution³⁷. The effect of these actions has been to conflate all forms of prostitution

³⁶ According to SEC. 107 PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING (c) TRAFFICKING VICTIM REGULATIONS- Not later than 180 days after the date of the enactment of this Act, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) PROTECTIONS WHILE IN CUSTODY- Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall--
(A) not be detained in facilities inappropriate to their status as crime victims;
(B) receive necessary medical care and other assistance; and
(C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including--
(i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and
(ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.
(2) ACCESS TO INFORMATION- Victims of severe forms of trafficking shall have access to information about their rights and translation services.

³⁷ This is apparent in Section 7 “Authorization of Appropriations; Related Matters” in the 2003 TVPA, which added the following new subsection to the 2000 Act:

“(g) LIMITATION ON USE OF FUNDS-

with sex trafficking by emphasizing that any support for legal or decriminalized prostitution is as morally reprehensible as supporting sex trafficking.

Yet despite the attention paid to sex trafficking, the actual implementation of federal prostitution and trafficking policies has been another matter: to date, the federal government has only identified 1,362 victims of human trafficking (brought into the US) since 2000, causing Steven Wagner, the former head of the Department of Health and Human Services anti-trafficking program (which distributes a portion of the anti-trafficking funds to community groups assisting victims) to declare that “those funds were wasted. Many of the organizations that received grants didn’t really have to do anything. They were available to help victims. There weren’t any victims” (cited in Markon, 2007, p.1).

Despite these outcomes, federal anti-trafficking efforts have expanded political opportunities for anti-prostitution activists, who have managed to embed themselves in the federal policy process and further reinforce the anti-prostitution status quo. Sex worker rights activists critical of the Bush Administration’s approach (or supportive of non-criminalizing approaches to prostitution in general), however, are further marginalized and branded by abolitionists (see for example Hughes, 2003) as rejecting victims’ experiences in prostitution and being tacit accomplices, more broadly, in the exploitation of women.

(1) RESTRICTION ON PROGRAMS- No funds made available to carry out this division, or any amendment made by this division, may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to promote the purposes of this Act by ameliorating the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked”

Part IV: Political opportunities for prostitutes in California and the San Francisco Bay Area

Given the development of state and federal anti-prostitution policies in the neo-liberal era, this chapter turns now to consider their actual enforcement at the local level, specifically in the San Francisco Bay Area cities of Oakland and San Francisco, where CAL-PEP and the SJI, respectively, are located. This consideration is important because, as Theodore & Brenner (2002a) write, local areas are increasingly viewed as key institutional arenas for a wide range of policy experiments and political strategies. Therefore, they advocate for an analysis of neo-liberalism as “actually existing” to emphasize its contextual embeddedness insofar as it has been produced within historical, national, regional and local contexts. Such a consideration is important because the retrenchment of national welfare regimes and national intergovernmental systems has imposed new fiscal constraints on cities and their suburbs. Consequently, as Hubbard (2004) writes, as urban governors have sought to revitalize cities in face of deindustrialization and the flight of high income earners from their cores, cities have become institutional laboratories for a variety of neo-liberal experiments such as workfare and property redevelopment, but also social control, policing and surveillance (Brenner & Theodore, 2002a, 2002b) to remove, in a sense, the populations left behind by deindustrialization. Specifically regarding prostitution, as Hubbard (2004) writes, the desire to purify urban spaces for capitalist growth has meant prostitutes have faced removal from these spaces by local governments aiming to attract more “respectable” populations, hence the emergence of punitive policies designed to exclude sex workers from gentrifying city centers³⁸.

³⁸ One of the most highly publicized examples here (albeit one that was not employed in the Bay Area) is the “broken windows” strategy, employed under the Giuliani Administration in New York City. Based on the argument that neighborhoods that fail to fix broken windows display a lack of informal

Therefore, considering the evolution and implementation of prostitution policies through this lens of actually existing neo-liberalism provides a useful frame for discussing how prostitution policies have evolved and been enforced in the Bay Area. The following pages demonstrate that although the enforcement of prostitution laws has fluctuated here with urban redevelopment efforts, changes in the location of prostitution, and efforts to end demand for prostitution, even the nation's supposedly most sexually liberal region remains largely hostile to non-criminalizing approaches to prostitution. Moreover, these pages demonstrate the despite changes to the state's prostitutions laws, described previously, that aim to make them gender neutral, their enforcement has been highly gendered, whereby that women continue to be arrested more frequently than men.

Oakland

Similar to other regions in the nation, the state of California—and the Bay Area in particular-- underwent an economic transition in the 1970s that increased favor for neo-liberal politics and policy. Most notably, in 1978 voters in suburban areas such as Alameda County (in the Bay Area) grew increasingly hostile to the increases in property taxes spent on social services in less wealthy (urban) parts of the region, such as Oakland. By taking advantage of the newly built freeways and lower taxes in outlying areas in the late 1960s, numerous industries left Oakland, leading to a severe economic downturn. With anti-tax sentiment increasing throughout the state, voters passed Proposition 13, further limiting the capacity of city governments to raise taxes and causing cuts to services and layoffs in many city jobs (Self, 2003b). In the 1980s, defense base closings also had a negative impact on the Bay Area, contributing to a loss of 12,000 military jobs and 6,000 civilian jobs (Rhomborg, 2004, p.188). Because

social control, and thereby unwittingly invite criminals into their midst, the policy was used to justify aggressive policing in NYC in 1990s, particularly in Times Square and among poor communities of color (Herbert & Brown, 2006).

of increasing poverty in the region, participation in the street-based economy—namely in the drug and sex trades—increased, and as Bowser and Hill show, crime rates in the city exploded: by 1972 Oakland had 28,712 serious crimes (more than double that in the past five years), growing to 44,678 by 1983 (Bowser & Hill, 2007, p.133).

During this time, the policing of street prostitution also increased. According to an officer with the Oakland Police Department's (OPD) vice-squad (Interview, 22 November 2006), although the vice-squad is “pro-active” about prostitution (conducting under-cover operations to arrest prostitutes’ and johns, for example), prostitution-related activity by the police has largely been “complaint-driven”, meaning the police will respond to complaints from residents about prostitutes loitering in front of a business, for example. This has been the case since the late 1970s when news coverage of the issue focused on how citizens in East and West Oakland were beginning to patrol the neighborhoods themselves to remove prostitutes from the area, claiming the police would not let prostitutes loiter in the nicer (and whiter) areas like Lake Merritt. These complaints lead to a police crackdown on prostitution in these areas of Oakland ("City Plans Prostitution Crackdown", 1978; Hogan, 1978; , "Ired citizens ask hookers be sent off", 1978)

Since then, as the following Figure 2.1, “Prostitution Arrests in Oakland, 1980-2007” illustrates, prostitution arrests in Oakland have fluctuated over time³⁹ (Nance,

³⁹ Figures 1 and 2 (below) are based on data obtained from the California State Department of Justice. Through it's Office of the Attorney General website (<http://ag.ca.gov/cjsc/pubs.php>), the State of California allows the public to search for various crime data statewide and in specific counties and cities. For prostitution, the State collects and publishes here the total reported misdemeanor (CA Penal Code Section 647(b)) arrests, noting that these are under-reported, often by 30 percent. This is because the state relies on reports from the local police departments, which often only report the arrest as one for prostitution if it is the only charge *or* the most serious charge in an arrest for multiple offences. Since the Attorney General's website only publishes this data back to the 1998, Linda Nance, in the Special Request Unit of the state's Criminal Justice Statistics Center, compiled data for me back to 1980 (which is as far back as they go) for prostitution arrests in California (statewide), Oakland, and San Francisco. This data was also broken down by age, sex, and race/ethnicity. Please note that the information was sent to me in a series of charts, and I have compiled it to create Figures 1 and 2. For questions about this data, and to request other data, please also contact Linda Nance at DOJ.SJSC@doj.ca.gov or 916-227-3509.

2009), and, as discussed below, this has mainly been in response to resident and/or re-development concerns.

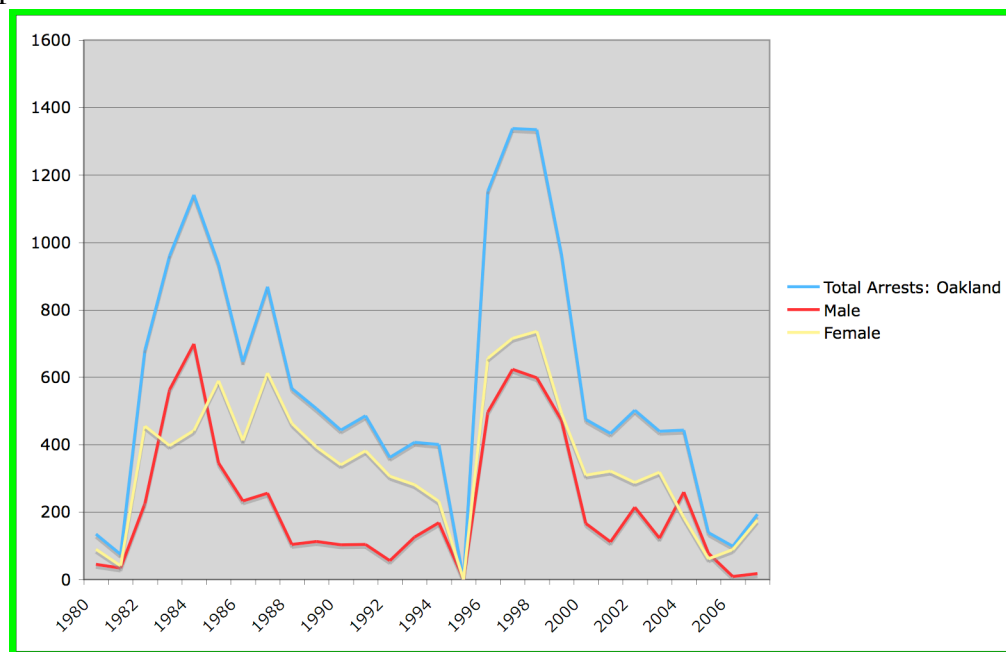


Figure 2.1: Prostitution Arrests in Oakland, CA: 1980-2007

Source: Linda Nance, California State Department of Justice 2009

As Figure 2.1 demonstrates, prostitution arrests rose from 135 in 1980, to 1,141 in 1984. Although arrest numbers fluctuated in the following years, between 1985 and 1995, there were an average of 511 prostitution arrests per year, and these arrests were highly gendered: the ratio of females (prostitutes) arrested to males (clients) averaging two-to-one (Nance, 2009, see macro tables 1985-1995)

This increase in arrests in the 1990s is explained in part by the “economic tidal wave” in the Bay Area that began in the early 1990s, originating in Silicon Valley and affecting all parts of this massive and varied metropolitan area (Kennedy & Leonard, 2001, p.42). In an effort to attract capital, the region became home to a variety of neo-liberal experiments such as property redevelopment and policing (Brenner & Theodore, 2002a, 2002b). With the War on Poverty long over, local governments in

Oakland aimed to revive their inner cores by attracting private investment through a combination of incentives and increased policing. Consequently, in Oakland, spending on police services increased from \$70.28 million in 1986 to \$194 million in 2006, while the city's budget for human services (public health, social programs, etc) increased from \$6.83 million to only \$50.9 million in the same time period (City of Oakland, 2007, p.1).

As Figure 2.1 shows, the largest increase in prostitution arrests occurred between 1996 and 2000, when efforts to redevelop Oakland by attracting private capital were also peaking. To attract developers, Oakland's downtown core needed to be free of street-based populations, and so policing increased. As Figure 2.1, above, demonstrates, prostitution arrests in Oakland spiked sharply during this period to an average of 1,197 arrests between 1996 and 1999. These arrests were fuelled in part by the 1998 election of Edmund Brown, who was elected as mayor on a platform that would further this redevelopment agenda through his "10 K Program", which aspired to increase Oakland's downtown population by 10,000 by bringing people from the suburbs (Brookings Institute, 2003, p.47).

However, the results of these economic development efforts have been mixed. According to Oakland's Community and Economic Development Agency (CEDA, 2003), Bay Area poverty remains concentrated in Oakland. The city spends 55 percent of Alameda County's assisted housing budget because, according to Rick Edwards (Email correspondence, 9 June 2007), an official with the Alameda County Social Services Agency, Oakland also has 40 percent of the city's public assistance cases⁴⁰. Furthermore, although the downtown core acquired a convention center and hotel,

⁴⁰ This includes California Work Opportunity and Responsibility to Kids (CalWORKs, formerly AFDC), Refugee Cash Assistance, Food Stamps, Medi-Cal, In-Home Supportive Services, Adoptions, Foster Care, Employment Programs, and General Assistance/General Relief, all of which are processed by the local county welfare department⁴⁰. Oakland public schools have been inadequately funded to serve the increasingly poor, immigrant and non-white populations in the city.

high crime and unemployment rates did not ease private capital's reluctance to locate in the city: Jack London Square, which was meant to be a dining and entertainment district, had difficulty attracting investors, and the Oakland Raiders left for LA in the 1990s, despite the construction of a new coliseum for the team. However, numerous condominium developments have arisen in the downtown core, which—while not exactly bustling—lacks much of the visible prostitution that existed before the sweeps of the 1990s.

Consequently, prostitution arrest patterns have changed in recent years: as Figure 2.1 demonstrates, prostitution arrests have declined from their peak of 1,338 in 1997 to a low of 194 in 2008. As the following pages discuss, this can be attributed to law enforcement shifting their efforts towards “end demand” initiatives and efforts to connect prostitutes to social services. The “end demand” policies seek to suppress prostitution through a by-law that allows the police to seize the vehicles of those suspected of dealing drugs or soliciting prostitutes from cars (Staff reporter, 2000), and the use of billboards to shame men who have solicited prostitutes (Herron-Zemora, 2005; Staff reporter, 2005). However, according to the OPD vice officer (Interview, 22 November 2006), these policies to target johns have not been put into practice very often because “they have come under attack as being too punitive and are currently being challenged, so the police are not doing this sort of sting” as often. Consequently, as Figure 2.1 demonstrates, although the numbers have declined, the number of prostitutes (females) arrested continues to out-number those of men.

The decline in arrests can also be explained by the growing view among the OPD that prostitutes are victims: prostitutes are not punished to the full extent of the law, and are often connected to programs that help them exit prostitution. The OPD vice officer stated (Interview, 22 November 2006) “prostitutes usually don't serve jail time”. Instead, when a prostitute is arrested and then cited for a misdemeanor

(meaning she has to appear in court), she will often “plead out” to a lesser charge and is given “SOAP”—Stay Out of Area Probation—which is specifically for prostitutes and requires them to agree with their parole office that they will stay out of certain high prostitution areas. If they violate their SOAP, they can be arrested again for this violation. Furthermore, he added that the Oakland police Department has developed partnerships with a multi-layered network of advocacy groups that work with women experiencing abuse (such as Bay Area Women Against Rape, Scotlan House, and C-Care,) who they have on call and on site when prostitutes are arrested. According to the officer (Interview, 22 November 2006), “the theory here is that immediate intervention—especially if it’s a first time arrest—is more likely to be taken [by the prostitute] if it’s offered right there on site.” However, in the spirit of neo-liberal hyper-punitiveness, it is important to note that access to these services is through *arrest*, with the goal being to help women *exit* the trade, as opposed to work more safely. All of this demonstrates that efforts to suppress prostitution continue in the neo-liberal era, even if this no longer done solely by placing prostitutes in jail.

San Francisco

With its reputation as a wealthy and progressive city, one might think San Francisco has been somewhat immune to these “actually existing” neo-liberal crime and economic policy trends: with an annual budget of \$6 billion per year and a population of only 750,000 (City and County of San Francisco, 2007, p.10), the city exceeds even New York City in per capita spending with an annual budget of \$59.0 billion and population of 8 million (Budget, 2008, p.1). Along with a progressive reputation for service provision, San Francisco’s history of gay, lesbian and prostitutes’ rights activism has enhanced its reputation as the nation’s most (sexually) liberal city (DeLeon, 1992, 2002). And unlike Oakland, whose inner core has long been depleted by de-industrialization and increased crime rates, San Francisco has never faced

similar pressures to re-develop: property here has always been in demand owing to the city's physical beauty and overall quality of life (Kennedy & Leonard, 2001).

Indeed, with its liberal, urban political orientation, San Francisco has also attempted to implement less punitive approaches to prostitution, but despite this, the gendered enforcement of prostitution laws has continued. In 1977, the San Francisco Police Department (SFPD) tried a policy of non-enforcement in 1977, which was recommended in 1971 by a the San Francisco Crime Commission report suggesting discreet, off-street prostitution be permitted so officers could devote time to more serious crimes (Leigh, 1996); however, this policy was short-lived. According to a long-time vice officer with the SFPD (Interview, 20 July 2006), non-enforcement resulted in the streets (especially in the Union Square and Tenderloin areas, where many of the hotels and tourists congregate) becoming "packed" with prostitutes, many of whom came from outside of the city to work. Seen as an unhappy spectacle by local business and residential interests, the non-enforcement policy quickly ended and the practice of arresting prostitutes continued, facilitating many questionable police practices. As Gloria Lockett, a former San Francisco prostitute and CAL-PEP's current executive director writes (cited in Delacoste & Alexander, 1998), street prostitutes were commonly arrested for prostitution merely for carrying condoms, which the police often destroyed. In response, COYOTE members spear-headed efforts to educate the police, which at least curtailed the practice of destroying condoms in the city by the early 1980s.

As the following pages discuss, since the early 1980s the enforcement of prostitution laws in San Francisco has fluctuated with shifts in property and citizen concerns, and with shifts in the location of prostitution itself. A long-time vice officer with the San Francisco Police Department (SFPD) thus characterized the SFPD's approach to prostitution law enforcement as follows:

“The role of the police is reactive: they must respond to citizen complaints, criminal cases, and resident complaints. They are not urban planners (i.e. placed in certain areas to keep things clean). Prostitution is the oldest profession and is not going away, but if a legislative body says it’s not legal, it’s not legal, and they (the police) have to keep a lid on it” (Interview, 17 April 2009)

Figure 2.2 “Prostitution Arrests in San Francisco, 1980-2007” demonstrate how prostitution arrests in San Francisco have fluctuated over time.

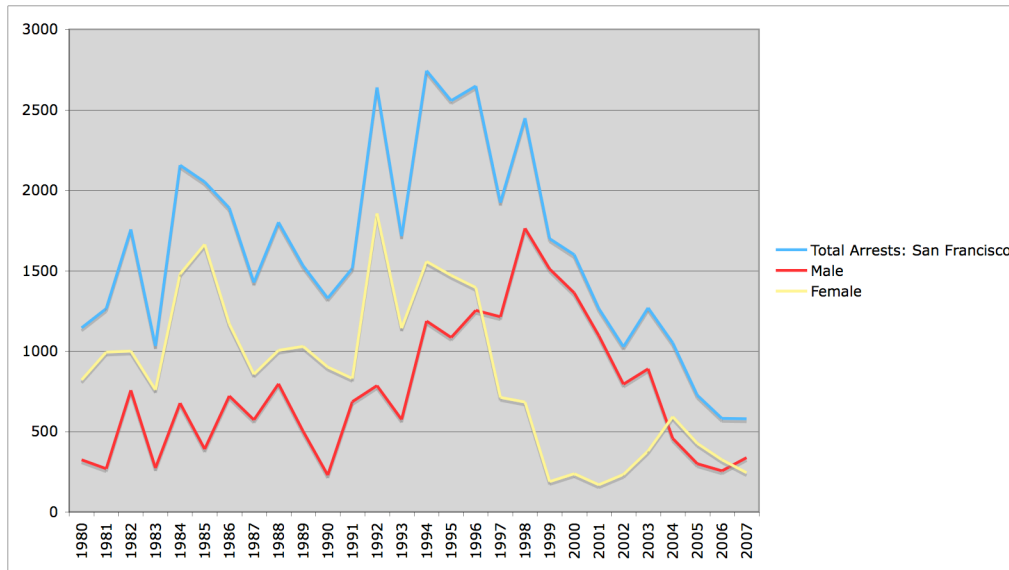


Figure 2: Prostitution Arrests in San Francisco, 1980-2007

Source: Linda Nance, California State Department of Justice 2009

As Figure 2.2 illustrates, prostitution arrests in San Francisco peaked by the mid-1990s when sex workers in San Francisco were targeted by police as threats to public safety (and, hence, property values) as community groups complained and demanded a larger law enforcement presence. These complaints were fueled largely by property concerns in San Francisco where, similar to Oakland, the growth of the technology economy in the 1990s increased migration to the city. Soon, homebuyers were coming to areas such as the Mission district, known for its ethnic diversity, working-class small businesses, affordable rents, and live-work studios for writers and artists (Schwarzer, 2001). There was also movement by homebuyers to the Tenderloin,

known for its large homeless population, single resident occupancy hotels, and proximity to the Union Square tourist and shopping district. Soon residents in these areas grew vocal about the presence of street prostitutes, who they claimed were bringing drugs, violence and other related crimes with them, while the police did little to enforce the law (Popp, 1991)⁴¹. By the end of 1992 these resident concerns inspired a four-part series in the *San Francisco Chronicle's* First Person section entitled “A Neighborhood at War with Prostitution” (Winokur, 1992a, 1992b, 1992c, 1993). And although sex worker activists such as Carol Leigh stated that the real issue driving street prostitution was female poverty, the response that ensued was more uniformed police officers on the streets and the creation of more spaces in the city’s already overcrowded jails (Winokur, 1992b), culminating in a six-day police crackdown targeting street prostitutes, pimps, customers, massage parlors operators, and hotels serving as houses of prostitution. The crackdown resulted in over 800 arrests, targeting mainly street prostitutes (Strupp, 1994a, p.1).

However, this crackdown was not a one-time affair: as pressures from property owners mounted, prostitution arrests increased in the city. As Figure 2.2 demonstrates, in San Francisco prostitution arrests rose in from 1,531 in 1991 to 2,673 arrests in 1992. And between 1992 and 1998, prostitution arrests peaked at an average of 2,500 arrests per year. Although this increase in arrests appeared to preclude any alternatives to criminalizing prostitution, the city did create the San Francisco Taskforce on Prostitution (hereafter referred to as the Taskforce), the first public discussion and study of prostitution in San Francisco where sex workers were fully included in the process. Although the Taskforce will be discussed in more detail in subsequent

⁴¹ The DA’s office and the police responded with a “mapping” plan that would attempt to ban prostitutes from loitering in areas where arrests were regularly made between 9 pm and 3 am, but this was not without protest from activist sex workers who protested at City Hall, claiming this would be an unconstitutional restriction on mobility rights, and not solve street prostitution but simply push it to other areas (Ganahl, 1992; Hoover, 1992)

chapters, its major recommendation was that prostitution laws were ineffective for meeting sex workers health and safety needs, or for ensuring community safety. It ultimately recommended that, similar to 1977, prostitution be removed from the purview of the criminal laws in the city by making it a low enforcement priority.

To date this recommendation has never been implemented officially, but as Figure 2.2 shows, prostitution arrests in the city have decreased from 1,729 in 1999 to 804 in 2006. This decline has not been due to the eradication of prostitution, but to the changing location of prostitution in the city. To explain, the SFPD vice officer stated (Interview, 19 April 2009) “Overall, prostitution arrests are like a balloon: wherever prostitution is pushed, it will come out elsewhere.” As a result, in San Francisco, the decline in prostitution arrests is due largely to the fact that prostitutes have either moved their operations elsewhere, or made them more discreet: “Lately, that’s in residential areas and on the internet” (SFPD vice officer, Interview, 19 April 2009).

Regarding the internet, the vice officer explained that “since the mid-1990s there has been a paradigm shift in the sex industry from the streets to cell phones and craigslist [the free online market place: craigslist.org]” (Interview, 19 April 2009) as relatively inexpensive access to cell phones and the internet have made it easier for many sex workers (and pimps and johns) to conceal their operations:

“As a result, now a pimp can be standing there, texting about a deal, and there is nothing the cops can do, unless there is an under-age girl around and they can check on her, but if not, he’s getting away with pimping.” (Interview, SFPD vice officer, 19 April 2009)

And regarding residential prostitution, the vice officer stated (Interview, 19 April 2009)

“it’s boomed, and why not? There is privacy, they don’t need a permit like in a massage parlor. This is a great way to do business... until someone goes to the wrong door and the residents call the police because they don’t like guys driving around the neighborhoods, looking for parking, and getting the address wrong: then citizens complain.”

She went on to describe how, in one recent example, a “fitness center” opened up across from an elementary school in San Francisco. It only had three treadmills and an exercise ball, but it had a \$6,000 shower and six massage rooms. To neighboring parents “it became clear what this place was for, [and] they [parents] went crazy.” (Interview, SFPD Vice officer, 19 April 2009), leading the SFPD to investigate the property (the officer did not share with me the outcome of the investigation, except to say that the fitness center was actually a massage parlor).

As arrests have declined, due largely to the shifting location of prostitution in San Francisco to less visible locations, police practices (and attitudes) towards prostitutes have also changed in many ways. Today, many police SFPD officers consider prostitutes victims, but, like in Oakland, assistance is only granted through contact with the criminal justice system. To illustrate the SFPD vice officer (Interview, 25 October 2006) described the “Crimes Against Prostitutes Program” (CAPP), which was implemented in 2001 to acknowledge that, “while someone can be a criminal, they can still be a victim”. The officer noted further that the SFPD started the program “so people in the sex industry know the police will help them, and ...that their job is to protect and serve everyone, including prostitutes.” CAPP works as follows: when an individual is a victim of a crime, he or she calls 911 and “the officer will come and take a report like she or he would for anyone else” (Interview, SFPD vice officer, 25 October 2006). However, the officer noted, sometimes the officer will pass the report to vice to look into the case because the officer “can tell” or “knows the person previously” as a prostitute. The report will be investigated by a vice cop who knows the prostitute community and its issues.

According to the vice officer (Interview, 25 October 2006) “The girls and cops usually know each other.” And, at least anecdotally, the relationship between street prostitutes and the police in San Francisco has improved through programs like CAPP.

According to Jennifer (Interview, 23 October 2006), a long-time street-based sex worker in her thirties who has worked throughout the United States and claims to have been arrested 188 times, “the cops are good here [in San Francisco].” She went on to note that while she had one bad experience with an SFPD officer (who handcuffed her to the gear shift), for the most part “they [prostitutes and the police] know each other” (Interview, 23 October 2006). She described one SFPD officer as “her best friend”—they would chat about their lives, and when he arrested her, he would take her to the station, note she was there, and then drive her back to her stroll. Yet despite these experiences, the fact remains that even in San Francisco prostitution is not considered a legitimate occupational choice. Instead, law enforcement has primary jurisdiction over prostitution, even as arrests fluctuate.

Actually existing political opportunities

Neo-liberal trends towards hyper-punitiveness (particularly towards sex workers) in the Bay Area have reinforced anti-prostitution sentiments *and* increased political opportunities for COYOTE’s daughters opposing prostitution. SAGE, mentioned above and in the previous chapter, has played a key role in shaping policy approaches to prostitution in the city⁴². According to Lane Kasselman (Interview, 22 November 2007), a representative from the San Francisco Mayor Gavin Newsom’s office and point person on sex work policy issues, the mayor’s office meets with sex worker activists on a regular basis, including representatives from sex worker rights organizations like SWOP. His office “deals with them like they do any other interest group” and “will sit down and work with and listen to them”. However, according to Kasselman, they work with SAGE on everything, and Norma Hotaling is a good friend

⁴² As noted previously, SAGE was founded by the late Norma Hotaling, a former prostitute, substance user and member of COYOTE and CAL-PEP. Similar to CAL-PEP and the SJI, SAGE is run in large part by (former) sex workers and offers health and social services to men, women and transgendered persons; however, unlike these two organizations, SAGE does not view prostitution as a form of work, but as a form of commercial sexual exploitation.

of the mayor's. In the eyes of his office, "SAGE does 'God's work' and is setting the bar internationally and across the country."

Adherence to the view of prostitution as a victimizing-yet-criminal activity has provided SAGE with opportunities to influence prostitution policy in the city, and this is apparent in two of SAGE's most recent initiatives. The first example is an effort to "end demand" for prostitution. Through collaboration with the San Francisco District Attorney's Office, SAGE developed the First Offender Prostitution Program (hereafter referred to as First Offender) in March 1995. First Offender treats individuals (mainly women) arrested for prostitution as victims by providing them with the option to work with SAGE (in lieu of jail time). If they choose to do this, they are given in-custody and out-of-custody assessments, referrals, peer support, rehabilitation, vocational training, and case management (for women trying to exit prostitution). With SAGE/First Offender, they also have access to individual case management, groups, legal advocacy, and referrals to a variety of health, education, legal, housing, and trauma and substance abuse recovery resources.

However, unlike past efforts that mainly target prostitutes, First Offender also targets their clients ("johns", who are mostly male) arrested for prostitution. With First Offender, Johns are given the option to attend "Johns' school", a program first developed by Swedish conservative legislators and feminists in the 1980s in an effort to equally enforce prostitution laws and treat women as victims, not criminals. For those opposed to prostitution, end demand programs are considered a progressive approach to prostitution-policy-as-usual because they penalize and stigmatize johns, not prostitutes. But as the following brief discussion illustrates, end demand programs like First Offender only reinforce the status quo—namely that prostitution is not a legitimate economic choice made by willing agents, but an immoral, criminal activity.

In San Francisco, the district attorney's (DA) office oversees the First Offender, in conjunction with SAGE. According to an assistant DA (Interview, 25 October, 2006), johns can be entered into the First Offender when they are arrested for solicitation and receive a citation. If the john has no previous arrest or conviction, he receives a letter offering him the option to do the First Offender in lieu of a conviction for solicitation (Section 647(b) of the Penal Code, described above). Willing participants must pay a \$1,000 fee to attend the eight-hour First Offender class (which runs every second month for 25-30 participants), where they listen to speeches by the assistant DA on the legal ramifications of prostitution arrests; the health department, which shows graphic pictures of STIs; and then a panel of ex- prostitutes (from SAGE), who share their own stories, which are often vitriolic towards johns. This is quite different from the diversion program offered to arrested prostitutes, described above, which can last for weeks.

According to the DA's representative (Interview, 25 October, 2006), the johns' school is positive for a number of reasons. First, it is a way to "start thinking outside of the box with prostitution" by improving the lives of those arrested because of their contact with the criminal justice system. Here, instead of simply punishing johns by sending them to jail, the First Offender can "break the cycle of prostitution by making people stop and think about what they are doing" (Interview, 25 October 2006). As a result, according to two long-time vice officers with the SFPD, First Offender has decreased the inequities in prostitution arrests. As Figure 2.2 demonstrates, SFPD officers have arrested more johns: the number of males arrested even exceeded that of females between 1996 and 2004⁴³ (Interview, 12 February 2007). Second, as the DA's representative noted (Interview, 25 October 2006), the First Offender raises money for

⁴³ Since its establishment, dozens of other jurisdictions in the United States, Canada, and Europe have replicated or are exploring replicating First Offender.

services for sex workers: approximately \$180,000 is raised per year from participant fees, but they are directed to SAGE, not programs like the SJI that do not encourage sex workers to exit prostitution.

Since SAGE and its First Offender program have been rewarded for their efforts, it is clear that political opportunities favor those opposing prostitution. The First Offender made SAGE the only San Francisco nonprofit to win the Innovations in Government Award from the Ford Foundation, Harvard's JFK School of Government, and the Council for Excellence in Government in 1998. All of this is despite the fact that, as a closer analysis of the First Offender reveals, it has been developed, promoted and extensively funded with little new results. First, there is no proof that johns' schools end demand for prostitution. While there is low rate of second arrests among johns who have participated in the program, even representatives from the DA's office (Interview, 25 October 2006) and the SFPD (Interview, 25 October 2005) concede that this could mean the men seek out prostitution elsewhere, in more discreet locations. And second, because they are developed in tandem with heightened policing of neighborhoods where street-based sex workers reside and work, First Offender often targets street prostitutes more intensely than those working indoors. Moreover, increased numbers of police stings often pressure street prostitutes to work more quickly, in more secluded locations, and provide unprotected sex. From this perspective, then, First Offender is not revolutionary; instead, it merely reinforces the moral status quo and further marginalizes and stigmatizes prostitutes and johns.

The second example of how SAGE has capitalized on political opportunities created by the broader anti-prostitution context is through their anti-trafficking efforts in San Francisco. According to Kasselmann (Interview, 22 November 2007), the mayor has taken a very aggressive stance on trafficking issues because the federal

Department of Justice (DOJ) ranked San Francisco one of the top five ports of entry for trafficked victims (however, he admits that the exact numbers are hard to know, especially since many move on beyond San Francisco). Specifically, trafficking became a key issue for the Mayor's office in 2005 when, as noted previously, federal interest in trafficking and prostitution was at a very high level.

At this time, San Francisco was part of Operation Gilded Cage, "a federal investigation of alleged sex trafficking, harboring of illegal aliens, conspiracy to transport female Korean nationals across state lines with intent to engage in prostitution, and money laundering by individuals involved in the massage parlor industry"⁴⁴ (Macaulay, 2005, p.1). In San Francisco, Gilded Cage raided 11 suspected brothels and arrested 27 suspects in what was described as a major Bay Area sex trafficking operation that preyed on Korean women brought into the country illegally. In a series of searches, investigators said they found more than 100 women working as prostitutes at ten San Francisco massage parlors and one in Emeryville (VanDerbeken & Kim, 2005, p.A1)⁴⁵. While much of the evidence from this operation is currently under federal protective custody, it "made it clear that a lot of the sex in the city's notorious massage parlors was not consensual"⁴⁶ (May, 2006, p.A1).

The city's response to trafficking was to increase surveillance of the city's 200 massage parlors through a multi-agency inspection team. According to Kasselmann,

⁴⁴ Gilded Cage involved the U.S. Attorney's Office for the Northern District of California the U.S. Department of Justice Civil Rights Division, the Federal Bureau of Investigation (FBI), U.S. Immigration and Customs Enforcement (ICE), San Francisco Police Department, Internal Revenue Service (IRS), and the State Department's Diplomatic Security Service.

⁴⁵ At the same time in Southern California, local and federal agents conducted a similar operation that resulted in 18 arrests of people believed to be involved in smuggling hundreds of South Korean women into the United States to work as prostitutes. Agents there also took 46 women into custody when they were found working in suspected brothels in Santa Monica, the Koreatown area of Los Angeles and Redondo Beach (VanDerbeken & Kim, 2005)

⁴⁶ Since the federal raid, just one of the alleged sex parlors targeted in Gilded Cage has been shut down by the city. Golden Dragon Spa was ordered to surrender its massage permit on Aug. 31, after a city administrative judge deemed the business a nuisance and house of prostitution. Two others targeted in the federal raid closed when their buildings were sold (May, 2006)

this team consists of fire inspection, inspectors from the Department of Public Health's environmental division, the police department's vice division, and non-governmental organizations, most notably SAGE. This team goes to the massage parlors to look for particular code violations (e.g. fire code), and can also "bust" for prostitution, while using SAGE to see if the women working there are trafficked. If any team member suspects the women in the parlors of victims of trafficking, SAGE will talk to the alleged victims and inform them of their legal options and services they offer. Kasselmann noted further that women in the massage parlors are not arrested initially because in San Francisco they consider them victims, and there are many programs to help them with rehabilitation and find legitimate ways to move forward; however, even though they are considered victims, cooperation with law enforcement facilitates access to services. In no way are the women considered *agents* who might have made a conscious choice to enter this line of work to escape poverty or other hardships⁴⁷. Moreover, their only option is to work with SAGE. Indeed, this local approach again illustrates how, in the neo-liberal era, punitive approaches to trafficking and prostitution predominate, thereby enhancing political opportunities for groups supporting them.

Conclusion: Prostitution policy and political opportunities

Engaging with the literature on the political opportunity structure, this chapter has considered how efforts to suppress prostitution have long-shaped the context in which sex workers (and COYOTE's daughters in particular) work and act politically. Despite the neo-liberal emphasis on minimal governmental intervention in society and the economy, these suppressive efforts have persisted despite their inefficacy and costs to

⁴⁷ An officer with the SFPD vice division (Interview, 12 February 2007) who has worked extensively on the trafficking issue noted that they had tried to work with the SJI on the trafficking issue (for example, by asking the SJI to distribute the police department's trafficking awareness materials they hand out when doing inspections), but the SJI has not returned their calls.

all levels of government. At the same time, these suppression efforts are entirely consistent with the neo-liberal emphasis on controlling and monitoring populations that deviate from market norms through techniques of (criminal) surveillance (as opposed to social service provision), and they are visible even in the nation's most sexually liberal region, the San Francisco Bay Area.

Anti-prostitution sentiments have also limited political opportunities for groups opposing the criminalization of prostitution. The recent example of Proposition K (in 2008) demonstrates these limitations. Since prostitution is illegal under state law, local governments cannot decriminalize or regulate prostitution out-right; they can, however, pass measures to make enforcement a low priority for the police. Therefore, in 2008, SWOP (and a number of other organizations) spearheaded Proposition K, which would have barred San Francisco police officers from arresting or investigating or prosecuting anyone for selling sex. Advocates (YesOnPropK.org, 2009) claimed this would free up \$11 million per year in police resources and allow prostitutes to form collectives and defend their rights as workers.

However, despite waging a coherent and aggressive campaign, advocates of Proposition K were not able to overcome anti-prostitution sentiments in the region. Drawing on long-standing discourses of victimization, and appealing to neo-liberal dictates of private property protection, Mayor Newsom and District Attorney Kamala Harris (backed by organizations like SAGE, which would likely lose funding from its First Offender program if Proposition K were to pass) waged a strong campaign countering Proposition K by stating it would remove the ability of law enforcement to curb human trafficking and provide services for victims. Claiming "We can not give a green light or a pass to predators of young women," (Harris, cited on NBC News, 2008), Harris said prostitution often accompanies drug crime, violence and quality of life in neighborhoods such as the Tenderloin. And speaking to the concerns of

property owners, particularly those in the Tenderloin (where they addressed the media), Newsom echoed Harris' comments, stating "If Prop K passes, can you imagine living here?" he asked, motioning to the surrounding Tenderloin streets. "This is serious business," he said. "We're trying to clean up the Tenderloin" (Newsom, cited on NBC News, 2008). Demonstrating the resonance of these arguments—but also that such sentiments are not universal-- Proposition K received only 41% of the vote.

Indeed, the failure of Proposition K provides a striking example of how neo-liberal politics and efforts to suppress prostitution have combined to shape the political opportunity structure in which prostitutes work and act politically by creating a political climate hostile to prostitutes' rights' activism. At the same time, neo-liberal politics have also created political opportunities for sex workers in the non-profit sector as health and social service providers. For prostitutes, CAL-PEP and the SJI's provision of peer-led health and social services to sex workers, by sex workers, is an example of such service provision, arguably challenging popular (political and social) conceptions of prostitutes as victims and criminals that have been reinforced through decades of law and policy. But how much of a challenge can CAL-PEP and the SJI wage here, i.e. can they truly advocate for prostitutes' rights? The following chapters consider explicitly how CAL-PEP and the SJI might make such a challenge.

CHAPTER 3

OR WE'D BE NEXT: SEX WORKERS, INNOVATION AND COMPROMISE IN THE FLIGHT AGAINST HIV/AIDS

This chapter tells the story of the California Prevention and Education Project (CAL-PEP), the nonprofit HIV/AIDS service organization developed in 1984, in San Francisco, by sex workers involved in Call Off Your Old Tired Ethics (COYOTE), America's first prostitutes' rights organization⁴⁸. As such, CAL-PEP represents a case of the transition by activists from protest to nonprofit service provision in the neo-liberal era, characterized by (among other developments) the devolution of government responsibility for social welfare onto a network of private, nonprofit service providers⁴⁹. All of this raises questions whether the more radical, oppositional agendas of these activists has been eclipsed by their service provision duties, especially as their organization has grown more dependent on the state.

Although many scholars (most notably Piven & Cloward, 1977) have noted that the creation of formal organizations by activists leads them to focus on organizational maintenance at the expense of broader advocacy efforts, six months of fieldwork with CAL-PEP involving interviews with their staff, clients, local government officials and archival research reveals the story is much more complex.

This chapter demonstrates that within a political opportunity structure where neo-

⁴⁸ Similar to previous chapters, I will use the term "prostitute/prostitution" interchangeably with the broader term "sex work". The latter term refers to the exchange of commercial sexual services for material compensation and covers a wide range of activities—some of which are legal in the United States—such as dancing, pornography and phone sex. While these legal forms of sex work are certainly of interest to me, I am mainly interested in organizational efforts around prostitution, which is *illegal* in most of the United States. As well, the term "client" will be used to refer to those sex workers (mainly prostitutes) who use CAL-PEP's services; it does not, unless specified, refer to the sex workers' own paying clients.

⁴⁹ As noted in previous chapters, feminist activists who formed women's health clinics and gay men and women who formed organizations such as Gay Men's Health Crisis provide comparable examples of this transition.

liberal politics and efforts to suppress prostitution are predominant, CAL-PEP has managed to maintain a commitment to the political struggle from which it was born *internally*, through “radical institutionalization”. Here, prostitutes using CAL-PEP’s services are regarded as agents, not victims in need of rescue. Furthermore, despite historically being blamed for the spread of HIV/AIDS, sex workers (along with other street-based populations) also deliver CAL-PEP’s education and prevention services. As this chapter will show, CAL-PEP is able to engage in radical institutionalization because the localized nature of HIV/AIDS prevention programming in the United States has facilitated the development of programs that meet community needs, and because of the professional capacity in which CAL-PEP involves sex workers and other street-based populations in their organization.

However, CAL-PEP’s capacity to engage in advocacy for sex worker rights *externally*, in the broader political realm, is variously restricted by their encounters with two vectors of political constraint introduced in Chapter 1: section 501c3 of the Internal Revenue Code (IRC) and granting agreements that require them to prioritize data collection and other administrative duties in order to maintain service provision. Yet these constraints have not silenced CAL-PEP altogether: the organization has employed various strategies to promote prostitutes’ rights, albeit in the highly contested realm of nonprofit HIV/AIDS service provision as opposed to the broader legislative arena. All of this demonstrates that while the location and focus of their advocacy efforts may shift, service provision by activists need not preclude expressing a commitment to more radical goals.

Part I. Prostitutes respond to HIV/AIDS in the 1980s: the founding and growth of a grassroots organization

CAL-PEP was born of the San Francisco-based activist organization Call Off Your Old Tired Ethics (COYOTE), in 1984, by Gloria Lockett, a former prostitute and CAL-PEP's current executive director. Prior to this, Lockett (Interview, 18 July 2006) who never finished high school, worked for most of her adult life as a prostitute with a group of women in hotels, bars and apartments throughout California, Alaska and Nevada. Although she and her co-workers knew their activities were deemed socially unacceptable and illegal, they continued to support each other as they moved from place to place, pooled their money, raised five children together, and ran other businesses including a boutique and wig shop. While Lockett was arrested "hundreds of times" on prostitution charges, in 1978 she and her co-workers were arrested for prostitution *and* conspiracy to promote prostitution, the latter of which brought a potential felony conviction⁵⁰. After a year in court, they were found guilty of only being in a house of prostitution, for which she and her co-workers served six months probation. However, as Lockett discusses (1994, p. 208), the police were angry with this outcome and "so they stayed after us", and in 1982, Lockett and Ralph Washington (the alleged pimp in the prostitution ring) were arrested again and charged with "every felony there was". Lockett's bail was set at \$500,000 (Lockett, 1994, p.208).

Lockett knew they needed support for this case: she had heard of Margo St. James, COYOTE's founder, and liked her because she was the only person Lockett knew of who spoke positively of prostitution and did not refer to it as a crime or form

⁵⁰ A felony conviction would mean they would have to serve time in prison, as opposed to simply paying a fine or completing probation, which a basic prostitution charge (a misdemeanor) usually incurs.

of victimization (Interview, Gloria Lockett, 16 October 2006). She contacted St. James, who went to court with them every day. Lockett won her case⁵¹, and Washington was sentenced to 20 years in prison for 12 counts of prostitution-related charges, but on appeal was released in 1986 ("United States of America v. Ralph H. Washington", 1984)⁵². In the meantime, Lockett and the women she worked with lost nearly everything they had (Lockett, 1994). And so following the trial, Lockett joined COYOTE, likening it to voting as "something she could do to make a difference" (Interview, 18 July 2006). As well, she saw that COYOTE's membership was primarily comprised of white call girls, who, unlike women of color, were less likely to be working on the streets and be targeted by law enforcement officials.

The advent of the HIV/AIDS epidemic in the early 1980s instigated a shift by COYOTE activists into AIDS service provision. As noted in previous chapters, this opportunity arose because AIDS decreased support for the fledgling prostitutes' rights movement, and like other stigmatized communities (such as gay men), COYOTE activists knew mainstream health authorities would be slow to respond to their health and safety needs. As Lockett stated,

"in the very near future, prostitutes would be scapegoated for AIDS. At the time, all the attention was on gay men. [But] anyone with any sense whatsoever knew that [since the disease] was sexually transmitted... the next group of people they would target would be prostitutes" (Interview, Gloria Lockett, 18 July 2006; Lockett, 1994, p.209).

⁵¹ In the state of California, case decisions (and, hence, names) are only kept on record if they proceed to the appeal courts.

⁵² The decision provides a summary of preceding events as follows: "Appellant Ralph H. Washington appeals his conviction on twelve different counts, all of which are grounded in alleged prostitution activities. The essence of the government's case is that for fifteen years Washington was the "kingpin" of a prostitution ring that operated principally in Northern California and extended into Alaska, Arizona, Nevada, Texas, and Utah. The prosecution maintains that, except for very small amounts of money paid to the prostitutes for incidental expenses, all prostitution earnings were delivered to Washington, to his bank accounts, or to his nominees. During 1976-1978, Washington filed federal tax returns claiming about \$50,000 in gross income when evidence indicated that he had a gross income from prostitution amounting to between \$250,000 and \$300,000 per year. Under the government's theory of the case, Washington laundered the prostitution money by acquiring \$1,000,000 in assets, including retail businesses, rental property, a Rolls Royce and a \$350,000 residence." ("United States of America v. Ralph H. Washington", 1984, p.1)

With over 15 years experience challenging the public's perceptions of prostitutes, COYOTE therefore began its own HIV prevention efforts. Although they did not have much money, COYOTE volunteers began to hand out condoms, informational fliers about HIV/AIDS and held discussion groups to inform sex workers about the virus (Stoller, 1998).

Initially, COYOTE expected their grassroots health service efforts would be a one-time affair, but two developments provided opportunities for COYOTE's membership to remain involved in HIV/AIDS service provision. The first was the devolution of AIDS service provision by health authorities to local, community-based organizations. As noted in previous chapters, the Centers for Disease Control (CDC) began to understand that including community-based organizations (CBO) in HIV/AIDS prevention efforts encouraged behavior change between the risk group and the prevention organization, offered flexibility and new ideas for delivering information and services to persons with HIV, and brought unaddressed problems to public attention (Berry & Arons, 2003; Salamon, 2003). And, as indirect measures seemed to indicate, these community-based efforts were beginning to successfully discourage unsafe sexual behaviors (M. Bailey, 1991; Wolitski, 2006).

Second, the very stigmatization of prostitutes COYOTE fought against became an *opportunity* for them to engage in health service provision when health authorities' suspected that prostitutes were potential transmitters of HIV/AIDS. Initially, funding for research, community outreach and other AIDS-related services for women was very limited because women were not yet considered a vulnerable risk group. But since prostitutes had long been considered at higher risk for STIs by governmental and public health officials alike, when HIV was discovered, questions arose at the CDC about whether prostitutes (but not necessarily the men purchasing their services) were a potential source of transmission (Alexander, Decario, & Hsu, 1996). Fuelled by

media reports that prostitutes were spreading this virus, public concern also increased that female prostitutes would bring HIV to the general population, representing the popular, familiar pattern of scape-goating prostitutes for the spread of STIs (J. Cohen & Alexander, 1995; J. Cohen, Derish, & Dorfman, 1994). Consequently, the first federal research money available to study women and AIDS was announced in 1985 by the CDC to study HIV infection rates among female prostitutes in the United States (Darrow, 1990, p.22). Universities and local health departments applied, and the selected grantees were from Miami, Florida; Los Angeles and San Francisco, California; Newark, Jersey City and Patterson, New Jersey; Atlanta, Georgia; Colorado Springs, Colorado; and Las Vegas, Nevada (CDC, 1987), and data collection commenced in May 1986⁵³.

At the San Francisco site, Dr. Judith Cohen (who led this site study through the Association for Women's AIDS Research and Education, known as Project AWARE) and her colleagues teamed up with COYOTE in 1984, which, as noted above, was already working to decrease the scape-goating of prostitutes for HIV/AIDS. A key part of their strategy was to hire three sex workers from COYOTE's active membership and train them about HIV/AIDS transmission and risk reduction, and also certify them as phlebotomists (J. Cohen, Derish, & Dorfman, 1994). Along with Gloria Lockett, the others hired were Priscilla Alexander, a white woman and ally of sex worker activists with excellent writing skills, and Sharon Kaiser, a white social worker with a history of sex work. They named their team the California Prostitutes Education Project (CAL-PEP's original moniker). As Nancy Stoller (1998) states in her work about

⁵³ At these sites, any woman 18 years of age who reported engaging in prostitution at least once since January 1978 was eligible. Women were recruited from a variety of settings (streets, detention centers, clinics, call girl networks, etc), but "[n]o attempt was made to obtain a representative sample because there was no way such a sample could be drawn" (Darrow, 1990, p.23). The 1,829 women who participated provided blood sample, underwent a physical examination, filled out a sheet collecting socio-demographic information, and answered extensive questions about their sexual histories and practices. Compensation for participation varied by site (Darrow, 1990).

CAL-PEP's development and management of a stigmatized identity, these women (and COYOTE more generally) were multi-cultural, knew street culture, had been to jail and overall knew a lot about the communities the CDC (and health departments) wanted to reach. And so the AIDS establishment considered them gatekeepers to the local prostitute population.

From its inception, CAL-PEP's service repertoire reflected COYOTE's radical view that prostitutes were safest and healthiest when they were not criminalized, moralized or judged. Therefore, Project AWARE's intervention, in partnership with CAL-PEP, did not seek to "rescue" women from prostitution in order to help them prevent HIV, but bring health services to them based on their knowledge that sex workers would be reluctant to respond to public health authorities and would more readily accept HIV education from their peers. And since they knew many sex workers they targeted would not be able to afford these health services otherwise, they therefore offered the services in exchange for ongoing participation in the study (Dorfman, 1992). And so through Project AWARE CAL-PEP workers visited strolls, single-resident occupancy hotels, and other areas where prostitutes were known to congregate, two to four days per week, usually in the late afternoon or evening. In these places, CAL-PEP workers would deliver a variety of educational messages concerning AIDS risk reduction (condom use, for example) and other issues of sex worker health and safety, along with free condoms and bleach kits. Sex workers participating in the study received 10 dollars at the beginning and 10 dollars after they received their test results (usually four to six weeks later). Physical examinations and interviews took place in rented hotel rooms or in a van outfitted for these purposes. One hotel room was always dedicated to interactive education sessions: here, a VCR continuously showed HIV education videos, and food and drinks were always served. As well, participants could take the "Hot and Sexy Safe Sex Quiz", where an entry

form at the bottom could be filled out to enter a raffle for a draw for \$100 (first prize) and 100 condoms (second prize).

In the end, Project AWARE found that due to distrust of public health or other officials who might be associated with government or law enforcement, persons indigenous to the community studied (i.e. prostitutes) were able to gain access more readily to other sex workers, establish a rapport, and became role models for positive behavior change ⁵⁴ (Dorfman, 1992, p.38). These findings contributed to the CDC's broader finding that, like other populations considered at risk, sex workers themselves were the most successful at recruiting their peers for HIV/AIDS testing and education, thereby providing the CDC with access to valuable information about an otherwise hard-to-reach population.

Although the partnership between COYOTE/CAL-PEP and Project AWARE was meant to be a temporary arrangement, the continuation of the AIDS epidemic and incentives created by health authorities for local, community-based organizations made permanent the shift for many COYOTE members from activism to HIV/AIDS service provision. Grants were increasingly available for local, community-based HIV prevention work, the first of which was a grant of \$30,000 from the California State Office of AIDS in 1985, which funded CAL-PEP to conduct outreach in San Francisco's Tenderloin neighborhood, distributing condoms and information about HIV/AIDS to street-based sex workers. However, even in sexually liberal San Francisco, local socio-political conditions were not immediately favorable to CAL-

⁵⁴ Overall, the San Francisco site study (as well as others) contributed to the CDC study's broader finding that HIV/AIDS infection rates for prostitutes were *lower* than for other risk groups. Among infected prostitutes, two major sources of HIV were identified: unprotected sex with a boyfriend or husband (who she was less likely to use a condom with than a client); and intravenous drug use (IDU). Overall, though, IDU was the major risk factor: HIV/AIDS infection in non-drug using prostitutes was either low or absent. Instead, prostitutes who admitted to using IV drugs, and those who had ongoing relationships with male IDUs were far more likely to be infected with HIV/AIDS (J. Cohen, 1989; J. Cohen & Alexander, 1995; Darrow, 1990).

PEP's work. CAL-PEP soon discovered that the police would arrest and harass women on the streets for merely having condoms in their possession. COYOTE/CAL-PEP obtained an order that prohibited the police from confiscating or damaging condoms, and also from charging women on the streets for holding drug paraphernalia if they were found to have bleach or water (Delacoste & Alexander, 1998; Lockett, 1994). Despite these initial challenges, CAL-PEP continued to adapt to their local environment and develop innovative programs, such as support groups for sex workers, safe sex work shops, information and education programs in the jails, a safe sex quiz contest and a speaker's bureau, which would, for example, work with the AIDS Training Center in San Francisco to train community health outreach workers to be sensitive to sex worker concerns (CAL-PEP, 1989; Lockett, 1994).

In order to capitalize on funds the CDC made available (often through other government agencies) for HIV prevention and education, in 1987 CAL-PEP incorporated as a nonprofit organization under section 501c3 of the IRC, and thus became a separate legal entity from COYOTE. However, CAL-PEP maintained a strong link to their COYOTE roots initially by staffing their board with sex workers and through their philosophy to not moralize or judge women for their participation in prostitution but to help them "protect themselves, their partners and their clients from contracting AIDS"⁵⁵(CAL-PEP, 1989, p.1).

CAL-PEP's nonprofit status was beneficial from a service perspective because it allowed them to capitalize on more government funds, which in turn gave them the capacity to expand their HIV prevention activities in the prostitute community. For example, as CAL-PEP spent more time on the streets, they found they were serving three types of sex workers: those who used crack and used prostitution to support their

⁵⁵ By 1988, CAL-PEP was the recipient of grants from the California Department of Health Services, followed by grants from the CDC and National Institute of Drug Abuse (NIDA) that same year.

addiction; career prostitutes, who had been out on the streets for numerous years for variety of reasons; and prostitutes who were IDUs. The IDUs were the hardest to reach because they often did not leave the areas close to the source of their drugs. Realizing these women would not come to the CAL-PEP offices for the safe sex education classes, CAL-PEP knew they would have to find a more effective way to reach them. Lockett decided they would use an outreach van, which they were able to fund due to their charitable nonprofit status with a grant from the Robert Wood Johnson Foundation (most federal agencies would not fund such an activity at the time), and take it to areas of San Francisco such as the Tenderloin and Mission and 16th Streets, which had high concentrations of street-based sex workers, many of whom were IDUs⁵⁶ (Interview, Gloria Lockett, 16 October 2006).

At the same time, similar to the women's health clinics and Gay Men's Health Crisis, CAL-PEP's growth as a nonprofit service organization led them to focus more on maintaining service provision at the expense of prostitutes' rights advocacy. Many COYOTE members, as CAL-PEP staff, were over-worked and had less time for COYOTE-oriented prostitutes' rights activities, especially as CAL-PEP's grants were increasingly specified for AIDS prevention activities. COYOTE/CAL-PEP members attended national and international AIDS meetings, and only when there was time (or a stopover on a plane ticket) would they pursue COYOTE's agenda as well (Stoller, 1998). By 1991, CAL-PEP had only one COYOTE activist on its board, and by 1992 there were none, as many of its members moved onto other pursuits often related to prostitution and HIV/AIDS prevention. All of this led Stoller (1998, pp.89-90) to

⁵⁶ Of course, CAL-PEP's growth was not without some pains: CAL-PEP came under fire when reports showed Ralph Washington, CAL-PEP's chairman of the board (who was also at one time involved with Lockett's prostitution ring), was convicted of tax evasion and spent time in prison. Although audits by the state Department of Health Services and the IRS showed CAL-PEP itself did nothing illegal, Washington was forced to resign or CAL-PEP would lose its grant from the San Francisco AIDS Office (Marinucci & Williams, 1993a, 1993b).

conclude that “[t]he child [CAL-PEP], as it were, swallowed the parent [COYOTE]”. Margo St. James, COYOTE’s founder, moved to France, working odd jobs and teaming up in Amsterdam with Gail Pheterson, a scholar, to inform Dutch health officials about AIDS education and organized two International Conferences of Prostitutes, which many COYOTE members attended to discuss issues such as the impact of HIV on sex worker communities world-wide. In 1989, Priscilla Alexander accepted a position as an advisor on prostitution and AIDS issues with the World Health Organization where, drawing from her experience with CAL-PEP, she wrote the first guide to setting up HIV prevention programs for sex workers, which was widely distributed throughout the world (Interview, 11 July 2006). Gloria Lockett continued as CAL-PEP’s executive director, and Carol Leigh as an artist and sex worker activist.

With their distance from COYOTE, CAL-PEP soon began to expand its operations beyond its core prostitute constituency, but this move was also motivated by a *commitment* to this constituency. To illustrate, Lockett (Interview, 18 July 2006) stated that by the early 1990s it became increasingly clear that if they were to prevent AIDS among street-based sex workers, they would have to expand their definition of “community” by working with sex workers’ entire familial and social networks, including their clients, partners, friends and fellow drug users, among others. Consequently, to better serve this population, CAL-PEP decided to move to Oakland, CA in the early 1990s, as their concern grew about the increasing number of sexually transmitted infections in the county.

CAL-PEP was certainly moving into a less friendly social and political context than San Francisco. As noted in Chapter 2, various authors (Rhomborg, 2004; Self, 2003a) have documented how racist exclusions built into federal, state and local policies contributed harshly to urban decay and the structural poverty now deeply

ingrained in portions of Oakland's African American communities. When CAL-PEP moved to Oakland, every census tract in areas like (majority African American) East Oakland was designated by the US Department of Health and Human Services (DHHS) as medically underserved (Rhombert, 2004, p.186), and Alameda County had 13 percent of syphilis infections in the state (CAL-PEP, 1992, p.1). Today, along with violent death, illness--especially sexually transmitted diseases-- has also increased in Oakland's most impoverished neighborhoods. According to the Alameda County Department of Public Health (ACPHD) (Witt, Iton, Perkins, & Kears, 2006, introductory letter), African Americans bear the burden of the greatest health inequities⁵⁷. Sexually transmitted infections (STIs), especially HIV/AIDS, are also concentrated predominantly in the most impoverished African American communities of East and West Oakland⁵⁸. Oakland has the largest proportion of diagnosed AIDS cases in Alameda County, accounting for 45 to 66 percent of the cases each year, 44 percent of which are African American (Boone, Bautista, & Green-Ajufo, 2005, p.44).

Furthermore, in Oakland, the local political context was less open to innovative, harm-reduction oriented HIV prevention health activism that was more common in San Francisco (Lane, 1993, p.1), as illustrated by the case of needle exchanges in Oakland⁵⁹. By the mid-1990s, one in five IDUs in West Oakland was

⁵⁷ African Americans in Oakland have the highest rates of both death and illness from coronary heart disease, stroke, lung cancer, prostate cancer, asthma, motor vehicle crashes, and as noted above, homicide

⁵⁸ According to Bowser and Hill (2007), both heroin and crack led to growing HIV infections and AIDS. Prior to 1990, gay, bisexual and injection drugs users (IDU) were the main source of HIV in Oakland, but then crack inflamed the existing epidemic as young women and men engaged in the exchange of sexual favors for the drug (or money to buy the drug). Soon, HIV-positive IDUs also became part of their clientele, resulting in a crossover between substance-using populations that was so complete by 1995 that it was impossible to tell those who used heroin from those who used crack. And it is no coincidence, Bowser and Hill argue further, that the increasing numbers of HIV/AIDS cases are from the East and West Oakland neighborhoods ravaged by crack: these are the same communities with four decades of accumulated poverty and unemployment behind them.

⁵⁹ At the time, needle exchanges were illegal according to California state law, and so previous to this, handing out syringes was an act of civil disobedience. In San Francisco, where needle exchanges first emerged in the state in response to the AIDS epidemic, it took until March, 1992 when Mayor Frank Jordan declared a state of emergency, which gave him the power to legalize the exchanges and provide

HIV positive, making it one of the communities hit hardest by IV drug related AIDS west of the Mississippi, but Alameda County was only spending \$4 million per year in services (compared to San Francisco's \$40 million) (Blumenthal, 1998, p.1148). The Oakland police and DA's office also refused to practice non-enforcement of the laws forbidding needle exchanges (Light, 1995a, 1995b), even though needle exchanges had demonstrated considerable success in neighboring cities like San Francisco and Redwood City (Blumenthal, 1998, p.1148). This resistance came to a head in 1992, when community activists with the Alameda County Exchange (ACE) set up a table on a deserted West Oakland street with clean needles, bleach, alcohol wipes, condoms and AIDS literature (and within 30 minutes collected 800 used syringes and gave out a roughly equal number) and were arrested. Although they were eventually acquitted, needle exchange volunteers continued to endure police harassment, and it was not until 2000 when the governor of California declared the AIDS epidemic a State of Emergency and legally sanctioned needle exchange programs that the ACPHD began to fund the exchanges (Casa Segura, 2007, p.1). Of course, CAL-PEP did not endure similar difficulties to ACE because they did not conduct activities that were illegal under state law⁶⁰. But Oakland, as noted above, was and is a far less wealthy and far more conservative city than San Francisco, and as subsequent sections have shown, this has frequently impeded their ability to develop and offer local programs and services for sex workers and other street-based communities.

funding for them, namely through the San Francisco AIDS Foundation (SFAF). However, this state of emergency had to be declared every 2 weeks, and it was not until 2004, with the passage of Bill 547 that this requirement was eliminated (Interview, Bobby Bownas, Syringe Exchange Specialist, Harm Reduction Coalition of Oakland, 10 June 2007).

⁶⁰ According to Carla Dillard Smith, CAL-PEP's executive director (Interview, 3 November 2006), since CAL-PEP receives federal funding, they are forbidden by law from running needle exchanges. However, if another agency receives a grant to do this, CAL-PEP can act as the fiscal agent (which means they would administer the grant), and also help the other organization get started and help them with press conferences and such. CAL-PEP would also conduct sex education and support groups at the sites.

However, community need has also fueled the growth of their organization, and so since moving to Oakland, the CAL-PEP of today bears little resemblance to its parent organization, COYOTE, and the grassroots efforts from which it began: its main office is located in the former Alameda County Health Department building, across the street from the Oakland police department headquarters. Their office is on the third floor, in a large open space they share with AIDS Project East Bay. According to CAL-PEP's deputy director, Carla Dillard Smith (Interview, 3 November 2006), they have approximately 25 paid and volunteer staff (among which only Lockett identifies as a former sex worker) and a current budget of \$1.2 million (up from \$500 thousand in 1998 but down from \$2.7 million in 2002), eighty percent of which is from the federal government through the CDC.

Today, CAL-PEP's service provision reflects and addresses the racialized, gendered nature of the HIV/AIDS epidemic: services, while available to anyone, are targeted mainly at Oakland's population disproportionately impacted by HIV/AIDS--African American men and women who are predominantly poor. This has occurred because although AIDS was once a disease associated mainly with white gay men, current data indicates that acquiring the disease is increasingly linked to gendered, racialized poverty. Women are now one of the fastest growing infected groups, and African Americans, who only constitute 13 percent of the American population, constitute 49 percent of total AIDS cases in the United States (and), and are disproportionately concentrated in some of the most impoverished areas of the nation (Alameda County, 2003, p.1; Boone, Bautista, & Green-Ajufo, 2005, pp.6-7; CDC, 2007a, p.1). As a result, as Lockett noted in a 1992 newsletter (CAL-PEP, 1992),

“we began as a prostitutes' health organization...Today... seventy five percent of our clients are minorities, most of them need services because they're poor. The bottom line is we're changing to meet the needs of the communities we serve—and represent—because there's no one else out there doing it” (p.4).

Although sex workers still comprise up to 40 percent of their clients (Interview, G. Lockett, 18 July 2006), CAL-PEP now reaches more broadly to street-based populations, the majority of which are African American, often parolees, homeless and without jobs and/or health insurance, all of which commonly leaves them out of traditional health care channels (Williams, 2003). CAL-PEP data shows that in 2004 alone they provided services to 15,529 clients primarily through HIV testing, street outreach, workshops, substance abuse treatment services, and case management. Of these clients, 74% were African American, 91% were people of color, and 30% were under age 25. CAL-PEP provided services to 657 injection drug users, 2,630 crack cocaine users, 998 sex workers, 1,525 homeless individuals, and 288 HIV positive individuals.

Part II. Maintaining radical commitments: CAL-PEP and grassroots, community-based service provision

Given their current size and scope of activities, it is initially difficult to see how an organization so large and *physically* a part of a mainstream government agency could maintain and express a commitment to sex worker rights. Therefore this section will discuss how, despite CAL-PEP's growth and expansion, they have maintained their commitment to sex worker rights through radical institutionalization in two key ways: by continually developing and implementing programs that do not seek to moralize or rescue those involved in prostitution; and by involving the sex worker (and other) communities they serve (who are often *blamed* for the spread of HIV/AIDS in America and not employable due to their involvement in criminal activities) in service provision and their operations.

Programming

In keeping with their radical roots, CAL-PEP continues to develop and offer non-judgmental, community-based HIV prevention and education services to sex

workers (and other street-based populations). These programs include HIV/AIDS/sexual health education (through street outreach distributing literature, condoms and bleach kits in Alameda and San Francisco counties); Mobile Outreach and Recovery for Ex Offenders (the MORE project), which uses two large recreational vehicles equipped with testing and counseling rooms to bring HIV testing and counseling to communities where, because of socio-economic impediments, people there might not otherwise be tested; individual and group substance abuse counseling; harm reduction workshops; prevention case management, where trained CAL-PEP staff work individually with clients to assess their risk for HIV and develop a plan involving health care and other prevention-oriented activities; and peer treatment advocacy, where advocates focus on providing services to HIV positive individuals to help them adhere to medications, access different medical options, and maintain good nutrition, among other activities.

CAL-PEP's commitment to sex workers' rights is evident in their continued development of HIV/AIDS prevention programs for sex workers that do not require or encourage them to exit the sex industry but instead treat them as workers (not criminals) who deserve to work safely. Observing that more young women (under age 18) were conducting street-based sex work (or were considering this work), CAL-PEP recently added new programs to their repertoire, including Sisters Informer Sisters about Topics on AIDS (SISTA), a CDC-developed and funded skill-building peer-led intervention that runs through five group sessions that include discussions of self-esteem, relationships and sexual health among African American women; and Growth Spot (G-SPOT), a Substance Abuse and Mental Health Services Administration (SAMHSA)-funded program serving youth 14-24 years old with a goal to provide HIV and substance use prevention and education to decrease the spread of HIV and substance use among adolescents and young adults while also providing counseling,

prevention and education and service linkages. G-SPOT also provides street outreach, education workshops, and runs a drop-in center at the CAL-PEP offices. CAL-PEP's Young Sex Worker Program is funded by Alameda County and is for female sex workers and other at-risk youth and their partners, aged 14-25. The goal of this program is to decrease the spread of HIV and substance use through education via street outreach and their mobile unit. Finally, Measure Y, funded through the City of Oakland's *Violence Prevention Act*, works in collaboration with the county and community-based organizations to work specifically with sexually exploited minors found walking the strolls and in juvenile hall to assess their needs, educate them about their rights, health and safety and self-actualization, and provide service linkages (CAL-PEP, 2004b).

The (now defunct) Day Treatment Program (DTP) provided prominent example of CAL-PEP's linkages to the prostitute community and commitment to treating them as workers; however, it also illustrates the challenges inherent in maintaining programs with such morally and politically unpopular positions in partnership with government agencies. The DTP was an outreach-run, harm-reduction outpatient drug treatment program devoted to primarily African American women and other women of color for whom abstinence-based drug treatment was either unavailable or something they felt they could not do because of childcare concerns, affordability, or other reasons (Bowser, Ryan, Dillard-Smith, & Lockett, forthcoming). Deciding they needed a program to provide a middle ground between street outreach (which was possibly too brief) and formal, mainly abstinence-based drug treatment (which was either too burdensome or did not have space), CAL-PEP obtained a demonstration grant from the federal Department of Health and Human Services's (DHHS) Center for Substance Abuse Treatment (CSAT) to provide drug treatment from April 2001 to March 2006. This program would serve the most

inaccessible and least likely of their clients to seek and receive treatment, namely African American or other women of color who actively used drugs and often traded sex for drugs and other resources to support themselves (Bowser, Ryan, Dillard-Smith, & Lockett, forthcoming).

As a demonstration grant to a local, community-based organization, it provided an opportunity for CAL-PEP to provide a safe, judgment-free space for a normally marginalized and criminalized population to improve their basic health (Bowser et al., forthcoming). Here, instead of street outreach, they provided a space where women and other sex workers could come and receive services. The DTP was open during the day and offered case management, HIV and drug risk reduction education sessions, group discussions, one-on-one psychological counseling, and a laundry and shower facility and meals (CAL-PEP, 2001, 2004b). CAL-PEP outreach workers recruited clients in cohorts of 50 (per year) from street locations in Oakland where primarily African American sex traders and substance users congregated. Clients were directed to the house and could drop in and out as needed, although they were required to not use drugs on the premises and be sober enough to participate in the counseling and group sessions.

The program effectively demonstrated that treating sex workers non-judgmentally, as workers, promoted sex worker health and safety. In the final evaluation of the program ⁶¹(see Bowser et al., forthcoming), the DTC showed

⁶¹ For this, CAL-PEP used the Government Performance and Results Act (GPRA) survey. According to the Department of the Interior, “GPRA seeks to make the federal government more accountable to the American people for the tax dollars it spends and the results it achieves. The Department of the Interior is complying with GPRA through its performance management system that provides useful information to managers and promotes accountability for results. In addition to a strategic plan, GPRA requires agencies to prepare related annual performance plans and annual performance reports. The legal requirements for an annual performance plan are met by a performance budget. The annual performance report requirement will be fulfilled by both the performance budget and the performance and accountability report (PAR).” (<http://www.doi.gov/ppp/gpra.html>). In each DTP cohort, then, over the course of the year (at intake, and roughly six and twelve months into the program), clients completed interviews for the GPRA, and following the 12-month questionnaire they were welcome to return to the DTC informally.

significant efficacy for CAL-PEP’s clients in the areas indicated in Table 1, entitled “DTC outcomes”, below:

Table 3.1: DTC Outcomes

ISSUE	AT INTAKE	AFTER 6 MONTHS	AFTER 12 MONTHS
Full time employment	7%	15%	19%
Living on streets	13%	5%	No data
Days when alcohol and illegal drugs used (in the last 30 days)	27.7	15.1	16.9
Average number of nights spent in jail	2.4	1.2	0.9

Source: Bowser et al., forthcoming

However, as Bowser et al (forthcoming) notes, participants’ HIV sexual risk behavior did not change very much over the course of the program. At intake, the more partners the women claimed to have, the more they had unprotected sex with known IDUs and the more days they spent using crack. By the sixth month, though, while they continued to have multiple sex partners, they did so somewhat more safely, namely by avoiding known IDUs as partners. To probe this finding more deeply, CAL-PEP conducted focus groups, which revealed that risky sexual practices continued because sex work was their primary source of income, since many could not find employment in the legal economy that paid a living wage⁶². And so to make enough through sex work (especially where crack addiction was involved), they continued having multiple partners, although over the course of their participation in the DTP they avoided IDU partners on a more regular basis. Overall, though, the DTP and mobile testing programs indicated that by making it easy for the target community to access services,

⁶² As their focus group also revealed, sex trading was not uncommon, and many of the regular sex traders complained of women in their neighborhoods who were not regular sex traders but came out on the streets several days before the 15th and 30th of each month (when welfare checks are issued), thereby increasing competition for their regular clients.

a population normally considered “hard to reach” by traditional public health channels *could* be reached and, once in contact, respond to education, counseling, attention and services *without* requiring them to abstain from substance abuse as a condition of receiving treatment and services. All of this led Dr. Bowser and his colleagues to conclude in their evaluation that “[h]arm reduction treatment projects like the CAL-PEP Day Treatment effort are necessary to address the social and economic needs of women who trade sex for drugs and money” (forthcoming, p.12).

Despite CAL-PEP’s success with the DTP, the program was discontinued, demonstrating how local, community-based programming (and the radical methods of service provision it can promote) is often subject to broader neo-liberal trends of declining governmental support for health and social services, even if these are contracted to private, nonprofit service providers. Although the DTP data showed that a group of women normally considered “hard to reach” and unresponsive to treatment *could* be reached and, once in treatment, respond to education, counseling, attention and services, Dr. Bowser and his colleagues stated:

“CSAT funded projects that are innovative and that demonstrate effective ways to address drug treatment are funded with the understanding that they will be continued by state and local health departments. The Alameda County Public Health Department that serves Oakland, California, like so many city and county health departments do not have the funds to support new prevention and treatment projects, but neither do they have the interest in seeking funds to do so. They reflect the same philosophical opposition to harm reduction that 50% of national treatment programs have. As a consequence, they end up reinforcing African American [especially female] marginalization in American society through continued neglect of services” (p.13)

All of this is to say that despite program efficacy, the day treatment program’s existed in a broader political-economic environment that not only left many resorting risky sexual practices for survival, but limited CAL-PEP’s capacity to continue delivering programs that expressed its commitment to treating sex workers non-judgmentally, as workers.

Service Delivery

CAL-PEP continues to express its commitment to prostitutes' rights internally, through its method of peer-based service delivery: they still employ their grassroots and train them to be experts in HIV prevention and service provision. Initially, CAL-PEP only hired sex workers, but as their client base expanded, so did their definition of a "peer" to include former substance users and persons of color from high-risk communities (who might not necessarily have been sex workers or substance users), among others. This has helped CAL-PEP establish and maintain trust and a rapport with the communities they serve: after all, as Lockett (1994) stated, "we needed people who were comfortable going into crack houses, housing projects and out on the street at night". As Bethanne, (Interview, 1 November 2007), a program coordinator at CAL-PEP stated, clients also feel more hopeful when they see someone they "ran with back in the day get out of the life and give back to the community".

Gayle and Grant illustrate this model of peer service provision. Gayle, a 52 year old African American HIV-positive woman, struggled with substance abuse since the age of 12, and is currently on methadone maintenance. Although she only has one client (john) now, who comes to her home (to supplement her monthly SSI check), "All my life I knew how to exchange sex for money" (Interview, 14 December 2006). She worked mainly on the streets, has been arrested many times for prostitution and has gone in and out of jail as a result. With little formal education and a criminal record, Gayle would be ineligible for most legal employment, and would also not be an individual one might immediately consider a credible voice in HIV education efforts. However, when CAL-PEP was working in San Francisco in 1990, she came to know them and used their services. At the time, CAL-PEP also was producing an HIV education video, *Breaking the Silence*, to show at their HIV prevention events. Gayle was hired to star in this (and other) HIV education video. She said this experience and

hearing CAL-PEP talk about the virus through outreach helped her share her story about acquiring HIV. Currently, Gayle receives health services as a CAL-PEP client and has been involved in many of the AIDS awareness marches run by various organizations in the Bay Area.

Grant (Interview, 1 February 2007), a CAL-PEP outreach worker, provides another example of how CAL-PEP involves its grassroots in service provision. Prior to coming to CAL-PEP, Grant sold drugs and had seen CAL-PEP in his neighborhood, but he claimed to have the same attitude as many others in the area, namely that “ok, I’ll take the condoms and move on because you’re interfering with my business”. Some CAL-PEP employees had asked him if he was interested in working with them but he refused initially because “he had a negative image of working with people who were gay and/or had HIV” (Interview, 1 February 2007). However, after spending time in prison, he felt pressure from his family to change his life; however, with a criminal record, it was hard for him to find work. He asked the CAL-PEP staff if there was still work and he interviewed and got a job as an outreach worker, for which he had to do state training and learned about HIV/AIDS and STDs. After six months he was certified as an HIV testing counselor. Overall, he says, “I am proof that you can change your life”, and with CALPEP he wanted to give back to the community he had affected via drug dealing. With CALPEP, he has been able to show his community that it is not just a “gay” organization, and that STDs and HIV/AIDS were not just “gay-related” (Interview, 1 February 2007).

Considering the funding CAL-PEP receives from a federal agency, questions arise as to *how* CAL-PEP is able to continue its radical commitment to hiring members of a community who are (or were) involved in activities that are illegal, such as drug dealing and prostitution. Two conditions make this possible, the first being the professional/credentialed capacity in which they hire members of the communities

they serve; and the second being the localized nature of grants for HIV/AIDS prevention services.

Professionalism

By working with them in a “professional” capacity, CAL-PEP is able to engage with and hire from marginalized communities: CAL-PEP has not hired individuals like Grant and Gayle (described above) to facilitate or participate in selling illegal drugs or prostitution, but to deliver *AIDS services*. Consequently, their capacity to deliver services consistently and effectively is paramount to (moral or other) judgments about what Grant and Gayle have done in the past (or do outside of CAL-PEP). Grant’s case is particularly illustrative here. Despite having a criminal record and little formal employment experience, Grant has been able to work as an HIV prevention outreach worker because he has the necessary *professional credentials*—his state HIV prevention certifications—and therefore his criminal record is not relevant to his capacity to be involved with CAL-PEP.

However, none of this is to say that involving sex workers and other street-based populations in the more professionalized realm of health service provision has been easy for CAL-PEP. Although they have many staff members who have been with the organization for up to 15 years—a great feat considering the high turnover and low retention rates in the non-profit sector (Peters, Fernandopulle, Masaoka, Chan, & Wolfred, 2002)—they have seen many staff come and go, and have had to institute policies to help recruit employees who can work consistently with the organization. As Dillard Smith (Interview, 3 November 2006) noted, since some of their peer staff are former substance users, returning to their communities during outreach puts them in contact with substances again, sometimes facilitating their relapse. As a result, CAL-PEP eventually had to hire people who had demonstrated two years of sobriety. They now have a staff support policy, which requires staff who relapse to do counseling

through the CALPEP medical plan and then remain consistently clean; if they fail, they are let go. However, Lockett has remained insistent about community-based hiring, stating this is essential to implementing their mission of HIV prevention and education, and community empowerment.

Localism

Localized HIV/AIDS prevention grants also allow CAL-PEP to hire from the communities they serve. Here, Grant and Gayle are ideal service providers, as they are from *and* can more easily reach the communities served-- something which is not always possible for government agencies. Instead, CAL-PEP works by the motto “their time, on their turf” meaning they will go to places where these individuals might congregate at times convenient for them. According to Dr. Ben Bowser (Interview, 17 November 2006), a professor at Cal State Hayward who has served as an external evaluator for a number of CAL-PEP’s programs, the Alameda County Department of Public Health (ACDPH) has tried to provide services similar to CAL-PEP’s but being a civil service, they only offer services until 6 pm, which works for their clients who can make it there⁶³. However, CAL-PEP is willing to work *after* 6 pm, and so the county has an incentive to fund CAL-PEP because they have more flexibility. Bowser notes further that this timing issue matters because many of those served by CAL-PEP are on parole and cannot be seen in areas where they might have been in trouble, such

⁶³ According to the ACDPH website (http://www.acphd.org/user/about/about_overview.htm), “Public Health is an array of programs and services designed to protect the health and safety of Alameda County residents. The backbone of Public Health includes assessments of the health status of residents, disease prevention and control, community mobilization and outreach, policy development, education, and assurance of access to quality medical and health care services.” The ACDPH is headquartered in Oakland and have 25 satellite offices across the county, covering 1.4 million residents. Their 600-plus staff includes public health nurses, doctors, epidemiologists, dentists, medical social workers, physical and occupational therapists, dietitians, outreach workers, health educators, program managers, among others - working in five divisions, which include Community Health Services; the Division of Communicable Diseases Control & Prevention; Family Health Services; Emergency; Medical Services; and Administrative Services.

as on main streets or near liquor stores. However, notes Bowser, these locations are often the only places where “they are less likely to be harassed as poor, African American, unemployed people. So they stay inside somewhere all day and then come out around 8 pm... because parole officers finish paroling/working around 6!” (Interview, Ben Bowser, 17 November 2006).

But involving sex workers and other street-based populations has not always guaranteed CAL-PEP’s access to these communities. Even though CAL-PEP been operating for over 25 years, Salina (Interview, 9 November 2007), a CAL-PEP program coordinator, noted that when they started their mobile van service, many in the communities they took it to did not trust the van because they thought it was maybe a parole officer, or “something to do with the police”. Lisa, a 38 year-old HIV-positive African American CAL-PEP client, expressed this sentiment. Struggling with drug addiction from the age of 12, Lisa worked as a street prostitute in Oakland from age 14 to support her addiction. While working at 14th St and International Boulevard (a high prostitution area in the city) in 1989, the CAL-PEP mobile van came to the area “and asked people if they wanted to learn about HIV” (Interview, Lisa, 29 November 2006). Lisa stated further “people [living and working in the area] were suspicious at first because they were doing drugs and were worried that CAL-PEP was part of the police”. However, Lisa went on to say, CAL-PEP offered food and put up a schedule about when they would do lectures about HIV, and had an HIV quiz and raffle where participants could win twenty-five dollars. Consequently, she said, CAL-PEP became very popular and “people wanted them to come every week” (Interview, 29 November 2006). To date, Lisa has used CAL-PEP for HIV/STD tests and also has a peer advocate, who helps her find housing and navigate the care system for HIV.

To decrease suspicions about their motives, CAL-PEP has therefore had to “walk the walk and talk the talk and meet people where they are” (Interview, Salina, 9

November 2007). In so doing, Salina stated further that “people want to know who you are and what you are going to *do* about their problems” (Interview, 9 November 2007), so CAL-PEP makes it clear that they are there to *test* for HIV, not *give* people HIV. As a result, Salina stated (Interview, 9 November 2007), when CAL-PEP goes to a new area now, they do not just bring the van right in first but instead park farther away and then walk to the target area and introduce themselves to the apparent gatekeeper and say who they are and what they do (test for HIV and offer incentives for the test). She emphasized that to be effective, they need to gain trust and pay people for their time and feed them with hot food, and so CAL-PEP will usually stay in an area for two to three weeks to make sure everyone has a chance to obtain a test and, if necessary, receive linkages to CAL-PEP’s and/or other’s health services.

Despite these challenges, an outing with CAL-PEP’s mobile HIV testing project (described above) one morning in November 2006 illustrates the benefits of their (radical) commitment to hiring from and going to the communities they serve. On this day, a group of African American CAL-PEP outreach workers parked a large recreational vehicle housing the organization’s mobile HIV testing clinic near 32nd Street and San Pablo Avenue, where many of the houses are surrounded by chain-linked fences and violent crimes occur frequently. Many homeless, marginally housed and persons recently released from prison congregate in this area. The CAL-PEP workers—many of whom were from the area—were unfazed by their surroundings. Instead, toting bags of condoms and information about HIV/AIDS, they walked up to various individuals, introduced themselves (if someone did not already know them) and struck up conversations, asking them if they would like to participate in an HIV education session (with a free hot lunch) and take a free HIV test. Everyone encountered was given condoms and information about HIV testing, and they filled a

room in a near-by building for the lunch, where Elena, a CAL-PEP staff member, quizzed them about HIV/AIDS prevention.

Part III. Beyond Radical Institutionalization? Encountering political constraints

Indeed, CAL-PEP has maintained a commitment to sex worker rights within the organization, but what of advocacy for this *externally*, beyond the organization? Is CAL-PEP able to mobilize individuals like Gayle and Grant and, as an organization, advocate for prostitutes' (and other street-based populations') rights in the public and legislative realm? To explore these questions, this section discusses how CAL-PEP's encounters with charitable non-profit status under section 501c3 of the IRC and 'granting agreement' data collection requirements indicate the flip-side of activist entry into nonprofit service provision in the neo-liberal era (particularly with regards to HIV/AIDS). Although (as demonstrated previously) CAL-PEP's engagement with the state has given them the power to develop innovative programs that involve marginalized populations (e.g. sex workers) in service delivery, it has also increased demands on them to be accountable to granting agencies. All of this has limited CAL-PEP's capacity to focus on and remain engaged in broader sex workers' rights advocacy from which they were born.

Section 501c3

CAL-PEP's incorporation as a charitable nonprofit organization (charitable nonprofit) in 1987 under Section 501c3 of the Internal Revenue Code made official its evolution from a small, grassroots effort attached to a protest organization, to an organization focused on health service provision. Indeed, this move was motivated by COYOTE member's commitment to the sex worker community: the demand for AIDS services was not diminishing, and nonprofit status was (and is) required by most funding

agencies that could help CAL-PEP continue its service provision⁶⁴. However, it also signaled CAL-PEP's departure from prostitutes' rights advocacy. Initially, CAL-PEP remained closely linked to COYOTE through its board of directors and employees, who were predominantly sex workers connected to the organization. But it soon became clear that to maintain their funding streams (and, hence, nonprofit status), CAL-PEP would have to distance itself from COYOTE. This became apparent when their funding from government sources grew and was increasingly specified for certain activities, namely HIV prevention and testing activities, and nothing else unspecified in the contract (such as lobbying and advocacy work for sex worker rights, or otherwise).

CAL-PEP made two major strategic choices that demonstrated their prioritization of maintaining nonprofit status over COYOTE-oriented prostitutes' rights advocacy. The first of these choices was evident in 1990, when COYOTE pressed CAL-PEP to volunteer staff and resources for the International Committee on Prostitutes' Rights meeting in San Francisco, a highly politicized event in the area that brought sex worker activists world-wide together to discuss and promote such issues as decriminalizing prostitution. Not wanting to jeopardize funding or nonprofit status, CAL-PEP ultimately refused to do most of the work COYOTE wanted and had a minimal presence at the conference, "coming down on the side of service, 'responsibility' to funders, and bureaucratic submission to the terms of its contracts" (Stoller, 1998, p.90). As a result, by 1991, only one sex worker was on CAL-PEP's board, and others retired from CAL-PEP, sometimes with considerable conflict (Stoller, 1998, pp.89-90).

⁶⁴ As noted in previous papers, this incorporation requires organizations to form a clearly defined board of directors and management structure. Moreover, the organization must severely limit its expenditures on and participation in political activities, namely lobbying and campaign participation.

CAL-PEP's second strategic choice was to remove "Prostitute" from their name, becoming the California Prevention and Education Project. According to Gloria Lockett, (Interview, 16 October 2006), in attempting to expand their funding base, they were applying to many federal government agencies and organizations they considered more conservative who would not look at CAL-PEP's proposals because of the word "prostitute" in their name. Many of these organizations and agencies were concerned that CAL-PEP was educating people *to be* prostitutes. Although Lockett heard some COYOTE members were disappointed with the name change, she is thankful for this change because it has helped them continue their work, especially during the tenure of the Bush II Administration, which CAL-PEP feels is the most sex-negative yet. Therefore, to acquire funding more funding, they changed their name and now stress they are not helping people do something illegal, but helping them protect themselves. Today, CAL-PEP's mission is "to provide accessible health, education, disease prevention, risk reduction and support services to people at high risk HIV/AIDS or those already infected in a culturally and linguistically appropriate way" (CAL-PEP, 2004b, p.1).

Of course, these strategic choices have not meant CAL-PEP and the SJI muted their ties to the sex worker rights' movement altogether: Gloria Lockett remains the executive director and in this capacity makes no secret of her history as a sex worker. In so doing, as Stoller (1998) has written, "CAL-PEP's leading staff person [is] an assertive, street-savvy African American prostitute, an identity practically guaranteed to cause anxiety in a white middle class bureaucrat—especially one who hears his or her money is in the hands of such a woman" (p.93). Lockett still supports and advises various prostitutes' rights organizations and causes, such as the St. James Infirmary (the sex worker clinic in San Francisco, which is the subject of the next chapter); however, this is no longer the sole focus of her work, or that of CAL-PEP's. Instead,

the majority of CAL-PEP's reflects the organization's broader mandate of promoting HIV/AIDS prevention in the African American community.

Data Collection

Incorporation as a 501c3, and the funding this has provided CAL-PEP, has consequently increased the organization's administrative burdens, as their granting agreements demand they provide data demonstrating program efficacy. As noted in previous chapters, data collection requirements have increased as a function of the broader policy climate (particularly under the Bush Administration), which has grown more sex negative and suspicious about the efficacy of community-based harm reduction-oriented HIV prevention activities (Epstein, 2006). Consequently, funding for HIV prevention has also decreased⁶⁵. As Carla Dillard Smith (Interview, 3 November 2006) stated,

“With Clinton, we had a \$2.7 million budget (through lobbying his Minority AIDS initiative) and it was heaven. Bush is hell. Since the Bush administration targets sex, we had to change our name (taking prostitutes out) because we knew it would compromise federal money. As well, since then, two years ago the NIH started targeting sexuality researchers and harm reduction in favor of abstinence and defense of marriage stuff.”

With this reduced budget, as Dillard Smith noted further, the pressure for more data has occurred “because the US Congress has grown increasingly concerned with knowing how we know what we did was effective” (Interview, 3 November 2006). She stated here that since the State of Emergency regarding

⁶⁵ Currently, the CDC's \$700 million HIV/AIDS budget (80 percent of which goes to state and local health departments and CBOs) is estimated to fall short by \$350 million needed to provide comprehensive prevention services (Boschert, 2006). Along side the falling budget has been growing doubt about program efficacy, leading federal and other granting agencies have instituted more evaluation requirements, the most significant of which was the CDC's Program Evaluation and Monitoring System (PEMS), “a national data reporting system developed to strengthen the capacity to monitor and evaluate CDC-funded HIV prevention programs administered by the DHAP” that includes a standardized set of HIV data prevention variables, web-based software for the data entry and management, assistance with planning and conducting evaluation, training for data collection and evaluation, and support services for the software implementation ⁶⁵(Thomas, Smith, & Wright-DeAgüero, 2006, p.75).

African Americans and HIV/AIDS is still in effect in Alameda County, doubt has increased among government officials (especially at the federal level) that prevention messaging and education is working at all. All of this has meant that to meet increased data collection and program evaluation requirements, and complete scarce (yet more complicated and competitive) grant applications.

The following pages discuss the extent of CAL-PEP's growing data collection requirements. In 2001, CAL-PEP hired Shira (Email correspondence, 24 October 2007), their current data manager, who has a bachelor's degree and has received training in various data management computer programs (namely SPSS-DE). Indeed her skills are needed to manage the vast amounts of data CAL-PEP collects to demonstrate program efficacy, which is summarized in Table 3.2 "CAL-PEP's data collection activities", below:

Table 3.2: CAL-PEP's data collection activities

Form	Data variables	Where data submitted	Programs forms collected for
CAL-PEP Log Sheet (created in-house)	Name, age, sex, race, location, number of condoms and bleach kits, population (prostitute, etc), previous contact with CAL-PEP and commitment to information; frequency of condom and needle use; referrals given	City of Oakland; CDC	SISTA; Measure Y; all HIV prevention activities: street outreach, workshops, one-on-one meetings, prevention case management, testing
CAL-PEP intake form (created in-house)	Personal info (name, age, birthdate, etc); government services received; employment; medical information; mental health information; housing information; substance use history; legal information; social network/support information	Alameda County	HIV prevention case management
Evaluating Local Interventions (ELI) forms (group check sheets; individual level interventions forms; outreach check sheet; outreach short form; prevention case management form)	Across forms, variables include: HIV behavioral risk population (IDU etc); race, age, gender; sexual orientation; HIV status; health, hepatitis, STD, drug use histories	California State Office of AIDS via the ACDPH (ACDPH collects forms from CAL-PEP and enters them for submission to the State)	HIV prevention activities: street outreach, workshops, one-on-one meetings, prevention case management, testing
HIV counseling information form	Client information (race, ethnicity, etc); HIV testing history; risk reduction steps; counselors notes and review/assessment of testing issues; client referrals	Alameda County Office of AIDS (which submits the information to the State)	HIV counseling
Government Performance and Results Act (GPRA) forms	General demographics, kind and extent of drugs used, number of times arrested, and number and types of sex partners	SAMHSA (although no longer required, CAL-PEP still collects the data for their own records)	GSPOT
GSPOT intake form (in house document)	Name, age, address, date of birth, race/ethnicity, incarceration history, type of housing, schooling, use of legal and health services, HIV/STI test histories, status and risk factors, drug alcohol and tobacco use; drug treatment mental health assessment	SAMHSA	GSPOT

Overall, Shira noted (Email correspondence, 9 April 2008), for any given intervention there are at least two forms that have to be filled out, and with the exception of the ELI forms, CAL-PEP enters all of the data into the entry program SPSS-DE. She also added that CAL-PEP is part of the PEMS system, stating “However, the system has still not been implemented. They've been training and making changes to the system for the past three years or so. I think they will start enforcing the use of PEMS starting in January [2008]. We will be using PEMS for testing, case management, and SISTA workshops for our CDC grant” (Email correspondence, 24 October 2007).

Along with collecting this data, CAL-PEP must enter it into various systems (for the city and county) and process and analyze it for the two reports per year (four in total) for each of the CDC and the ACDPH. In these reports, they document activities such as numbers of HIV tests administered and prevention outreach contacts, and discuss whether they reached their projected targets for these, among other items⁶⁶. To illustrate the complexity of this process, the reporting requirements for CAL-PEP’s CDC grant contract #04064 “Human Immunodeficiency Virus (HIV) Prevention Projects For Community-Based Organizations” (CDC, 2004), which funds their HIV testing and prevention projects, are provided below:

1. You must provide CDC with an original, plus two copies of the following reports:
 - (a) Your interim progress report, no later than February 15 of each year. The progress report will serve as your non-competing continuation application, and must contain the following elements:
 - (1) Current budget period activities objectives.
 - (2) Current budget period financial progress.
 - (3) New budget period proposed program activity objectives.
 - (4) Detailed line-item budget and justification.
 - (5) Baselines and target levels of performance for core and optional indicators.
 - (6) New budget period proposed program activities.
 - (7) Additional requested information.
 - (b) The second semi-annual report will be due August 30 of each year. Additional guidance on what to include in this report may be provided approximately three months before the due date. It should include:
 - (1) Baseline and actual level of performance on core and optional indicators.
 - (2) Current budget period financial progress.
 - (3) Additional requested information.

⁶⁶ Dillard Smith is in the process of providing copies of these reports for this research (Email correspondence, 2 April 2008).

- (c) Financial status report, no more than 90 days after the end of the budget period.
 - (d) Final financial and performance reports, no more than 90 days after the end of the project period.
 - (e) Data reports of agency, financial, and HIV interventions including, but not limited to, HIV individual and group level; PCM; outreach; CTR; and/or partner CTR services are required 45 days after the end of each quarter or as specified in the most recent evaluation guidance. Project areas may request technical assistance. Submit data to the Program Evaluation Research Branch electronically, and then send an electronic notification of your data submission to the Grants Management Specialist listed in the “Agency Contacts” section of this announcement.
2. Submit any newly developed public information resources and materials to the CDC National Prevention Information Network (formerly the AIDS Information Clearinghouse) so that they can be incorporated into the current database for access by other organizations and agencies.
 3. HIV Content Review Guidelines
 - (a) Submit the completed Assurance of Compliance with the Requirements for Contents of AIDS-Related Written Materials Form (CDC form - 0.1113) with your application as Appendix D. This form lists the members of your program review panel. The form is included in your application kit. The current Guidelines and the form may be downloaded from the CDC website: www.cdc.gov/od/pgo/forminfo.htm. Please include this completed form with your application. This form must be signed by the Project Director and authorized business officer.
 - (b) You must also include approval by the relevant review panel of any CDC-funded HIV educational materials that you are currently using by the relevant review panel. Use the enclosed form, “Report of Approval”. If you have nothing to submit, you must complete the enclosed form “No Report Necessary”. You must include either the “Report of Approval” or “No Report Necessary” with all progress reports and continuation requests.
 - (c) Use a Web page notice if your Web site contains HIV/AIDS educational information subject to the CDC content review guidelines.
 4. Adhere to CDC policies for securing approval for CDC-sponsored conferences. If you plan to hold a conference, you must send a copy of the agenda to CDC's Grants Management Office.
 5. If you plan to use materials using CDC's name, send a copy of the proposed material to CDC's Grants Management Office for approval.

Although both Dillard Smith and Lockett believe in evaluating their programs, they stated that such reports to the CDC have become increasingly complex and time-consuming (especially as their budget has decreased since 2000) and can run over one hundred pages in length, leading them to liken the process of producing each report to “writing a dissertation” (Interview, Carla Dillard Smith and Gloria Lockett, 25 March 2008). As a result, it is difficult to obtain and maintain these grants and reports *without* devoting a significant portion of the organization’s staff and resources to these activities. As Lockett remarked, “Can you imagine what it [reporting] is like for newcomers [small nonprofits that receive CDC grants for the first time]? It makes it so

the grant process totally favors organizations where people have PhDs and MAs. We are really returning to more of a medical model of HIV prevention, where the government prefers to fund bigger organizations like Red Cross with more professional staff, not smaller nonprofits” (Interview, 25 March 2008).

These data collection requirements have challenged CAL-PEP’s capacity to maintain and express their commitment to prostitutes (and other street-based constituencies) in their hiring practices, especially at the administrative and managerial levels. As Amy, a former CAL-PEP staff member (Interview 20 October 2006) noted, “they [CAL-PEP] aren’t just handing out condoms and having brief chats about HIV anymore, which anyone can do”. Instead, she notes, with more data collection requirements, staff are required to be more highly trained to do more involved interventions, such as following certain protocols, conducting more complicated testing, and collecting data on very detailed and complex information forms outlined above. Given the high levels of distrust of public officials among members of the community CAL-PEP serves and the highly personal nature of much of the data collected, it must be collected carefully, which has required CAL-PEP to train their outreach staff about the importance of data collection.

These more complex grant compliance requirements have meant CAL-PEP has professionalized their management and administrative staff. Consequently, CAL-PEP’s board of directors is composed mainly of African American men and women who are leaders and/or professionals in the Oakland area. The majority of CAL-PEP’s administrative and management staff are African American women, and while many of them have advanced degrees, few have histories of sex work. For example, Carla Dillard Smith, CAL-PEP’s deputy director, has no history of sex work and a Masters’ degree in public policy, and two other women who serve as program coordinators also will receive Master’s degrees in public health this year. At the administrative level,

CAL-PEP has a scheduling assistant for Gloria and Carla; a part time data-entry clerk; and three women comprising the book-keeping and accounting staff. The reception desk is staffed by various CAL-PEP clients who are predominantly African American men and women, some of whom have histories of sex work/substance abuse.

Because of CAL-PEP's growing data collection requirements, the radical nature of CAL-PEP's work is often minimized. As Dillard Smith argues "all of this emphasis on numbers has taken some of the edge off what we do. Now every week we have program meetings and the first thing we do is review numbers!" (Interview, 29 November 2006). This has raised questions among the staff as to whether they are "serving people or collecting numbers" (Interview, Carla Dillard Smith, 29 November 2006). Moreover, many of the management staff have grown farther removed from the day-to-day operations on the streets, causing some outreach staff to express frustration. As one staff member (9 November 2007) stated, "their [CAL-PEP's] directors are getting older and don't listen as much to the people on the front lines." The staff member went on to describe a testing day where management hoped they would test a certain number of people, and when the staff tested far fewer, they were disappointed. However, stated the staff member, the testing and counseling combined with all of the required paperwork takes so much time that with the number of staff they had, there was no way they could test the desired number of individuals, let alone empower or educate them about broader political issues and struggles relevant to them⁶⁷.

⁶⁷ This staff member requested I not tape our conversation, and so I cannot provide a more extensive direct quotation to describe this incident.

Part IV. Pushing the Limits? Advocating for prostitutes' rights in the nonprofit sector

CAL-PEP's move from a small, grassroots organization to an agency with a professional administrative and management structure capable of dealing with the complex data collection/accountability requirements, appears to illustrate, as Piven and Cloward (1977) predicted, that protest movements that develop formal organizational structures will focus more on activities related to maintaining their organization than on disrupting elites and established power structures. Indeed, although CAL-PEP maintains a commitment to sex worker rights in its service provision methods, it is far removed from the prostitutes' rights movement from which it was born. However, in making this transition over time from protest to service provision, CAL-PEP has instead entered a new political realm from which sex workers have largely been excluded: nonprofit health service provision. Here, as this section will demonstrate, CAL-PEP promotes prostitutes' rights (i.e. that prostitutes be treated as workers, not criminals) through its research and evaluation and AIDS service advocacy work in ways that do not compromise their nonprofit status or detract from their data collection activities. However, despite deploying these strategies, they continue to exist in a broader political climate hostile to prostitutes' rights, even if this is promoted through service provision.

Research & Evaluation

Despite the restrictions on political advocacy posed by section 501c3 and data collection requirements, CAL-PEP's research and evaluation efforts have brought sex workers into the realm of nonprofit AIDS service provision, a political and institutional forum from which they were largely excluded. As Nancy Stoller (1998) writes, forming CAL-PEP demonstrated COYOTE's realization that although the government was not interested in supporting sex worker rights, it was interested in

fighting HIV/AIDS, and so sex workers could at least “force a place at the policy table” (p.85) by becoming part of this fight, namely by providing research and evaluation that challenged popular notions that sex workers place the general public at risk for STIs. In so doing, she adds further, CAL-PEP helped demonstrate prostitutes could be experts in HIV/AIDS education (Stoller, 1998).

Consequently, since Project AWARE, CAL-PEP has developed their reputation as experts in HIV/AIDS prevention by participating in a number of research and evaluation projects described below. Participation in these projects-- and the data collection they require—is viewed differently by CAL-PEP’s leadership from the data collection activities required for grant compliance, described above: unlike the latter, these research projects are seen as ways to involve the community served and advocate for their needs. Consequently, the production of this research has allowed CAL-PEP to provide empirical proof that peer-based non-judgmental, harm-reduction oriented approaches to sex worker health and safety are effective and, contrary to popular belief, sex workers are responsible for their health and concerned with that of their community.”

Indeed, as a group traditionally acted *on* by mainstream health officials, CAL-PEP was initially skeptical of participating in research projects. Lockett (Interview, 18 July 2007) stated that at CAL-PEP’s inception, research was a “real nasty word” to her because she disliked how top-down it appeared when (predominantly white) researchers “came to communities of color, got their material, and then basically left the population studied with nothing.” However, her opinion of research and evaluation activities changed when a doctor with the ACDPH approached them to apply for funds from the CDC to promote HIV prevention among women and infants (The Women and Infants Demonstration Project, hereafter referred to the Demonstration Project). The goal of the Demonstration Project was to decrease pregnancy and increase

condom use among women and their partners considered at high risk for HIV (namely young women, aged 15-34, who were sexually active, particularly those who used crack cocaine use and exchanged sex for cash, drugs or other trade, and were likely to have unprotected sex with multiple partners). As such, the Demonstration Project would provide services, but it also had a rigorous research and evaluation component to determine more broadly the ways a local intervention could be developed and adapted for used in other areas.

This project appealed to Lockett and CAL-PEP because unlike past research she had witnessed, this project adhered to CAL-PEP's mission to involve the sex worker community in the project's implementation and evaluation process. Headed by Lockett, Dillard Smith and four research assistants, the Demonstration Project ran from 1991-1995 and went to four target areas and attracted residents with free condoms and bleach kits. Once there, researchers engaged in a stage-based encounters to assess the client's HIV risk reduction behavior and frequency of condom use. Repeated encounters of this type allowed the researchers to adjust the information, education and level of support to the clients' needs, which were determined through the project. As part of the project, they also provided referrals to CAL-PEP's (now defunct) Ujima House, which provided prenatal care through the Demonstration Project, and they launched the Nefertiti Peer Networks, where women in East Oakland were recruited and trained to work as HIV/AIDS educators and referral providers (CAL-PEP, 1993).

The results of this Demonstration Project highlighted the value of non-criminalizing approaches to prostitution by showing that involving prostitutes in the implementation and diffusion of the intervention minimized prostitutes' stigma in the community. These results were published in the journal *AIDS Education and Prevention* (Terry et al., 1999). Since the Demonstration Project, CAL-PEP has

bolstered its expert status in HIV/AIDS prevention to marginalized communities by engaging in numerous other research and evaluation projects, including a survey of young women to study risk for HIV and seroprevalence (1996-1998); a study to evaluate their mobile clinic services and their efficacy for preventing AIDS among IDUs and sex workers (1996-1998); a HIV behavioral risk assessment study in San Francisco (1997-1999); and a study from 2000-2002 of how to reduce HIV in African American communities (CAL-PEP, 2004a). Over time, CAL-PEP has published their research extensively (for more detail, see the following: Bowser, Ryan, Dillard-Smith, & Lockett, forthcoming; Bowser, Word, Lockett, & Dillard-Smith, 2001; Dorfman, 1992; Dorfman, Hennessy, Lev, & Reilly, 1988; Lockett, Dillard-Smith, & Bowser, 2004; Oliva, Rienks, Udoh, & Dillard-Smith, 2005; Terry et al., 1999).

CAL-PEP has applied its expertise in HIV prevention for sex workers to the other marginalized, street-based communities they have grown to serve, which has further bolstered their role as experts in the HIV/AIDS prevention field. CAL-PEP has been a long-time member of the California HIV/AIDS Research Program (CHRP) (formerly the University of California's AIDS Research Project [UARP]), which "was established [in 1983] to support excellent, timely and innovative research in basic, clinical, social/behavioral and epidemiologic sciences through research awards, collaborative agreements with the State Office of AIDS, and special initiatives.... CHRP communicates the findings of its funded research to the public through a variety of mechanisms: the annual report, the bi-annual Conference on AIDS Research in California, and various publications" (CHRP, 2008, p.1). Through the CHRP their most recent major project was the Brutha's Project, which works to prevent HIV/AIDS among men who have sex with men but do not identify as gay (termed "MSM").

The Bruthas Project illustrates how CAL-PEP has also applied its philosophy of non-judgment to service provision with other marginalized communities. According to James (Interview, 27 October 2007), who works with the project, Bruthas was developed in light of the State of Emergency and the growing rates of transmission among heterosexual couples; here MSMs were suspected of being major transmitters of the disease. He stated many MSMs believe they are “not gay” and thus “not susceptible to AIDS,” and so they will engage in sexual encounters without condoms, returning to their female partners and putting them at risk for HIV/AIDS. Applying CAL-PEP’s belief that services must be brought *to* clandestine and marginalized communities, the Brutha’s Project employs men to go out after-hours to (heterosexual) bars, to walk down the street, and also to recruit people they know. James stated that since most MSM try to keep this aspect of their sexual life a secret, it is hard to recruit them, so their main tool is an information booklet with prevention messages inside. They use the books at bars to engage people in conversations and “let them know what’s going on” but also talking about other diseases African American men are also higher risk for (diabetes, etc) as an entre into talking to them about HIV/AIDS.

Advocacy

CAL-PEP’s record of research and service provision has given them credibility and thus a place in the policy process, but as a charitable nonprofit and recipient of federal grant money CAL-PEP is very limited in its advocacy activities in the formal political arena (with regards to legislative lobbying and participation in political campaigns). However, CAL-PEP has been able to draw on its expertise and lobby in a manner permitted under section 501c3: by providing *information* to various legislative and other interested bodies about their constituency and its needs in order to continue service provision. Here, having such a large body of research and data has allowed

CAL-PEP to improve their programs and also advocate for their grassroots at the local, state, federal and international levels.

Locally, Gloria was the Chair of the regional Ryan White Council, where she helped to ensure the *Ryan White Care Act* was re-funded (CAL-PEP, 1995). Lockett and Dillard Smith also sit on the local HIV Health Services Prevention and Planning Council (established under the *Ryan White Care Act* in 1990), which is important, according to Dillard Smith (Interview, 3 November 2007) because they are visible to local health authorities and therefore are often “first in line” for funding and programs because they test, document, report and evaluate what they do. Dillard Smith cites the example of piloting their mobile testing program, which they were able to do because they were on the Planning Council. At the state level CAL-PEP has always traveled to Sacramento for the AIDS Lobby Day, and has sent staff members invited to speak on various issues such as the importance of providing health education to sex workers and women of color (CAL-PEP, 1999/2000). Federally, Carla Dillard Smith participated in Congressional hearings on HIV/AIDS in Washington, DC in 1998 when the state of Emergency was declared (CAL-PEP, 1998), and Lockett, Dillard Smith and various staff members frequently travel to Washington, DC and Atlanta, GA for CDC-sponsored conferences and training events. As well, this year CAL-PEP will attend the National Conference on AIDS, hosted by the National Minority AIDS Council, which works to develop leadership among communities of color to fight AIDS. And internationally, CAL-PEP has been active at the International AIDS Conferences in Japan, Geneva and Toronto, among other locations. However, CAL-PEP’s lobbying and advocacy work has not come without compromise. As Dillard Smith stated (Interview, 3 November 2006), while all of this advocacy work is necessary, it pulls them from their core work, so they must keep in mind that their first commitment is to their clients.

Limited possibilities in health service provision

Within the realm of nonprofit health service provision, however, CAL-PEP's expertise has not guaranteed them freedom to innovatively serve their community, demonstrating that-- in spite of desires expressed by policy-makers in the neo-liberal era for creative, local, community-based approaches to social service provision-- nonprofits are commonly constrained in expressing their radical commitments through service by the broader political/moral environment in which they operate. In CAL-PEP's case, they continue to operate in a broader political climate resistant to nonjudgmental approaches to sex worker health and safety: as a result—as demonstrated by the examples below-- their proposals are occasionally rejected by mainstream health authorities, or they must modify how they demonstrate a commitment to prostitutes' rights in their programming. Indeed, these examples are not typical, but they demonstrate CAL-PEP is not immune to (or ignorant of) the broader political environment in which they operate, and thus adapts to it accordingly in order to continue with service provision.

SAMHSA

In the winter of 2007 CAL-PEP applied for a Substance Abuse and Mental Health Services Administration (SAMHSA) grant. Before discussing this grant in particular, it is important to note that although CAL-PEP has clearly been quite successful at obtaining grants for service provision, it has often had to act subversively in how they write their grants, often omitting terms like “prostitute” and “harm reduction”, even though “this is exactly who the program will serve or what the proposed program will do anyway” (Interview, Gloria Lockett, 16 October 2006). Such strategic considerations have become essential, especially as large grants from federal agencies (which are the most sought after, as they are often larger, multi-year grants than those offered by foundations and local government agencies) have grown scarce and more

complicated. Although one might argue that such strategic considerations are proof CAL-PEP has lost its radical edge, its commitment to sex workers and other marginalized street-based populations is still evident in the programs they develop that refuse to moralize and judge sex workers.

To illustrate, in 2007 CAL-PEP decided to apply for the SAMHSA grant to re-open its day treatment program, but this time for younger sex workers or those “at risk” for entering the sex industry. As a group closely attuned to the needs of street-based populations, CAL-PEP had been noticing more of these individuals in their street outreach work. While the proposed program would not address the lack of detoxification and safe house facilities, it would fill specific, identified gaps in the network of services⁶⁸. This center would be open to women aged 12-24 and have services such as individual and group substance abuse counseling, meals, connections to job training and other social services. Employing a harm reduction philosophy and expressing a commitment to prostitutes’ rights, they also would not force any of the women to leave the sex trade or to stop using substances as a condition of accessing services at the day treatment center.

Their application for a SAMHSA grant demonstrates the broader political context’s resistance to certain approaches to sex worker health and safety, despite the American governmental interest in promoting local, community-based health and social service programs in the neo-liberal era. To fund the DTC, CAL-PEP learned (by tracking relevant government agency funding announcements, which they do almost daily) of SAMHSA’s request for proposals (RFP) in the fall of 2006, which invited

⁶⁸ For example, there is no detox facility in Alameda County for youth age 18 and under, and there are only a limited number of beds for inpatient substance abuse treatment. There is also no “safe house” in the county to provide housing for young sex workers, although it is possible to make referrals to a “safe house” in San Francisco, but it only has a small number of beds. Some educational and vocational services are available from Scotland Center, but many young sex workers need pre-vocational skills-building to be able to take advantage of these resources.

community groups to submit proposals for a three year, \$300,000 grant to offer services to women of color who engage in substance use and other activities that could put them at risk for HIV/AIDS. The RFP for this SAMHSA grant-- which provides application directions and requirements for groups applying for the grant-- was 58 pages in length, and called for extremely detailed research to demonstrate community need, program descriptions, discussions of evaluation processes, budgeting, predictions of outcomes, letters of support from other community and local government groups, not to mention strict document formatting instructions, among a myriad of other requirements (it spent nearly three pages outlining font and document formatting requirements).

Although it is understandable that groups receiving government funds should be explicit and accountable in their wishes so that, in turn, the federal granting agency can justify how it disperses funds, these requirements are also extremely time-consuming and complicated for community groups. At CAL-PEP—which, one could argue has the data, skilled staff and history of program success needed for this grant-- composing this particular SAMHSA grant took nearly two months to complete (in the end, the submitted application was 132 pages in length). Although CAL-PEP hired a professional grant writer to compose the main narrative and program description components of the grant, it still taxed the administrative and management staff with not only program design, but also with writing and soliciting letters of support from community groups and government agencies, and providing adequate statistical and evaluation of CAL-PEP's efficacy in providing related services (it also was not the only grant they had to write that year).

However, CAL-PEP failed to obtain the grant, indicating that local, community-based programming must also, at times, confront a broader political context the often does not favor groups that adopt radical stances (in America,

anyway) towards sex worker health and safety. In the end, although CAL-PEP was careful to remove any explicit reference to harm reduction and was able to provide adequate evidence of their success with their previous day treatment center, they did not receive the grant. According to Gloria Lockett (Interview, 25 March 2008), an official from SAMHSA informed them that although their grant was “technically excellent” (meaning it was a well-developed program and the grant had all of the required components), they would not receive the funding because their method of reaching sex workers (i.e. not requiring them to leave the sex industry) was and is not very popular with the current federal administration.

SEMS

In response to the concerns of public officials, and in support of occupational choice for young people, CAL-PEP has modified their commitment to sex worker rights when it comes to working with young sex workers in Oakland. Lockett (Interview, 18 July 2006) stated that CAL-PEP began to work with sex workers under the age of 18 when they began to notice more young women (ages 14-16) working on the streets. The growing number and visibility of young sex workers in the Oakland area has also been noted by the county, local agencies and other law enforcement officials, leading to the formation of the Intra-agency Children’s Policy Council (ICPC) in 2002, which CAL-PEP was invited to join. According to Gary Thompson (Interview, 30 November 2006), the director of the ICPC, the ICPC was developed to help organizations working with young sex workers-- termed “sexually exploited minors” (SEMs)⁶⁹— design programs, develop resources (ICPC does not fund organizations directly),

⁶⁹ According to Thompson, those in the Network had to fight the prostitution moniker in order to shift the label from “child prostitute” to ‘SEM’. They felt this definitional change was necessary because at least 90 percent of the youth prostitutes that come “through the system” have experienced or are escaping sexual exploitation, and also often have single parents, incarcerated parents, are academic failures, and about 75% have substance abuse issues. Despite all of this, he states that it was still hard to get this change because “many still see them as choosing to do it: this is not the case; it’s child abuse. As a result ‘Child prostitution is child abuse’ has become our [main mission] line.”

facilitate meetings, create programs and develop partnerships among CBOs and other agencies. ICPC was also asked by the county to research who the SEMs were, where they worked, etc. and report their results. They were then asked to form a taskforce, which was composed of law enforcement, CBOs, interested adults and others to do specific research and produce a report. Although SEMs are a not new phenomenon, and it is still difficult to assess whether the number of minors in prostitution locally is growing, a two-day conference about the issue was convened in April 2006 in Oakland (Chang, 2006; Graham, 2006; Sherman, 2006). Thompson stated that at this conference CAL-PEP and a number of other agencies came together informally and soon received money through Measure Y, which was passed in 2004 by the city council to provide approximately \$19 million annually for violence prevention and public safety programs and services. Through the ICPC, CAL-PEP teamed up with other organizations in the area to develop the Sexually Exploited Minors Network in Alameda County⁷⁰, whose mission is to

“provide specialized services to sexually exploited minors, as well as provide ongoing education and awareness to support adolescent victims of sexual exploitation in the areas of policy development, cross system/cross regional case planning efforts, viable placement options, prevention of further victimization and highlight best practices/lessons learned” (Alameda County, 2006)

CAL-PEP has worked with this network since 2005 and is the only organization in the network doing direct street outreach to this population, namely through its G-SPOT, SISTA and Measure Y programs described above.

However, CAL-PEP’s has modified its philosophy of treating prostitutes as workers when it comes to women under the age of eighteen. Regarding the young sex worker population in general, Lockett reinforced that while CALPEP believed women

⁷⁰ Other organizations in this network providing direct services include Asian Health Services, which works with young Southeast Asian women engaged in or at risk of sexual exploitation; Dream Catcher Youth Shelter, the only emergency shelter for youth ages 12-28 in Alameda County; and the George P. Scotlan Youth and Family Center’s Sexually Exploited Minor’s program, offering case management and support services to SEMs.

over 21 can “decide what to do with their bodies, children (like these girls) need to be in school” (Interview, 18 July 2006). And so, through involvement with the ICPC, she and the CAL-PEP staff want to ensure these girls are “making *choices* and not just doing street work because they think it’s their only option.” Moreover, she stated, CAL-PEP sees many of the young girls do this work because of their family backgrounds (for example, their mothers did this work or there is drug addiction in the family, and so these girls are the breadwinners.) Therefore, Lockett stated, “CAL-PEP says yes, you are doing this for a living, but that there are other things you can do as well.”

As a result, Lockett (Interview, 18 July) notes, CALPEP has come to differ from COYOTE on prostitution when it comes to minors because “[COYOTE] was more just about doing what you want with your body/ your body is your business”. Here she noted further that COYOTE’s attitude was more characteristic of “white girls who see [prostitution] as a choice,” whereas CAL-PEP’s clients participate in prostitution because they have no other choices. But even with a modified commitment to sex worker rights for young women, CAL-PEP is still limited in the services it can offer due to funding constraints. Within the SEM network/ICPC, it is up to the organizations to raise their own funds to implement their programs, even though the county has determined the SEM issue should be considered seriously.

Conclusion

A 1988 article in the San Francisco *Chronicle*, entitled “Former Hookers Help Themselves” (Olszewski, 1988) describes a CAL-PEP outreach excursion in the city’s Tenderloin neighborhood, where they handed out condoms and bleach kits. The article ends by describing how Gloria Lockett has handed condoms without judgment to Beti, a transgendered sex worker who shoots speed. Over 20 years later, Lockett is more likely to be found in the boardrooms of health departments, meeting with major

donors, and making presentations at AIDS prevention events world-wide than she is out on the streets. But then again, CAL-PEP is no longer a small organization on a shoestring budget that mainly distributes condoms and bleach kits in the Tenderloin.

Indeed, one may conclude that CAL-PEP has “sold out” and is yet another case of a grassroots organization outgrowing and abandoning its radical roots by prioritizing service provision over protest. However, a closer look at CAL-PEP’s organizational growth and development shows the reality is much more complex. Indeed, from removing “prostitutes” from its original name, to creating a highly professionalized management and administrative structure and establishing themselves as expert advisors in issues of HIV/AIDS prevention, CAL-PEP has made some compromises, shifting from advocacy to service provision maintenance. But these compromises have been made to ensure CAL-PEP can reach its grassroots constituency (now more broadly defined as street-based populations at risk for HIV/AIDS) *and* involve them in service provision.

Despite these compromises, CAL-PEP has also managed to remain a fundamentally radical institution, committed to putting a vision of sex workers’ (and other street-based populations) rights into practice. At CAL-PEP, prostitutes—a group commonly blamed for the spread of disease—can act on their own behalf to serve their peers (and broader community) and help them meet their own immediate health and safety needs. In so doing, CAL-PEP represents an important site of possibility: it provides sex workers with a credible model of peer service provision they can replicate elsewhere (the St. James Infirmary, the subject of the following chapter, is one such example of this replication). However, CAL-PEP also represents a site of criticism: many also argue that while CAL-PEP might offer valuable services, this has taken it away from the broader, long term struggle for sex workers’ rights, which are also essential to the community’s health and safety.

Certainly, CAL-PEP's capacity to advocate here is constrained by their nonprofit status and data collection requirements, which have led them to largely avoid political activities that might compromise their nonprofit status and/or grants. At the same time, CAL-PEP has demonstrated an uncanny ability to circumvent these constraints and advocate for prostitutes' rights within the HIV/AIDS prevention establishment. They have continuously evaluated their programs and engaged in various research projects, the results of which they have published extensively to inform political and public officials alike of the benefits of non-judgmental, non-criminalizing approaches to sex worker health and safety. Furthermore, they have engaged in a wide variety of advocacy and lobbying activity permitted under Section 501c3 of the IRC, such as providing information to various legislative bodies about the importance of funding HIV/AIDS prevention services for sex workers and other street-based populations; participating in AIDS Lobby Days at the state level; and speaking at International AIDS Conferences world-wide. Indeed, none of these activities involve directly lobbying public officials or engaging in protests to decriminalize prostitution; however, they have promoted the notion that sex workers (and the general public) will be safer and healthier if they are not criminalized. After all, to quote Gloria Lockett, in the age of HIV/AIDS, when it comes to advocacy, "there's no time to be stuffy. People are dying" (cited in Olszewski, 1988, p.D5)

CHAPTER 4

A PLACE OF OUR OWN? EXPLORING THE RADICAL POSSIBILITIES AND POLITICAL POTENTIAL OF THE ST. JAMES INFIRMARY

This chapter turns to consider the St. James Infirmary (SJI), COYOTE's daughter and CAL-PEP's "younger sibling". Established in 1999 in San Francisco by sex worker activists involved with COYOTE and CAL-PEP, the SJI is the world's only occupational health and safety clinic for sex workers. In telling the SJI's story, this chapter considers how sex worker activists might maintain their radical commitments (in this case, to prostitutes' rights) when they transition into the realm of nonprofit health service provision in the neo-liberal era. Similar to the previous chapter, this chapter first discusses the political context in which the SJI emerged in the 1990s: the social movements of the 1960s were long over, and anti-prostitution sentiments were on the rise among political officials and the public. Sex worker rights activists therefore moved from the realm of protest to form partnerships with the local health department and establish the SJI.

Yet this close partnership between sex worker activists and government has not precluded their commitment to prostitutes' rights. Similar to CAL-PEP, the SJI expresses a commitment to prostitutes' rights *internally* by treating sex workers as *workers* (not criminals) and by involving them in the organization's service provision and management operations, despite a history of prostitutes being blamed for the spread of STIs and HIV/AIDS. But what of the SJI's capacity to mobilize the sex workers who gather there on a weekly basis and engage them in broader advocacy *externally*, in the political and legislative realm? In response to this question, this chapter discusses further how the SJI is variously constrained in such endeavors by two vectors of political constraint: incorporation as a nonprofit under section 501c3 of the Internal Revenue Code (IRC) and by data collection requirements imposed on

them by various granting agencies. Indeed, encounters with these vectors have led them to focus on organizational maintenance and service provision at the expense of broader political advocacy. But, like CAL-PEP, the SJI also employs strategies of circumvention that help them promote and express their commitment to prostitutes' rights beyond their organization without compromising their capacity to offer services to sex workers.

Part I. Only in San Francisco? Sex workers, public health and the development of the SJI

When told about the SJI, the response for many might first be to say “only in San Francisco”. For this reason, it is important to first discuss briefly how the political context in San Francisco has created opportunities for sexual minorities to develop partnerships with various government agencies. Broadly speaking, San Francisco has a reputation as the nation's vanguard progressive city and is nationally known for its culture of tolerance and celebration of diversity, and for being generous when it comes to social programming for its residents⁷¹. Given the city's high degrees of political engagement, liberal ideology, secularism, friendliness towards immigrants and sexual liberalism among its residents (DeLeon, 1992, 2002), on the surface it is unsurprising that San Francisco government agencies have been open to developing and implementing progressive methods of health and social service delivery for and with sexual minorities, particularly with the advent of the HIV/AIDs epidemic.

Indeed, much of San Francisco's reputation for sexual liberalism—and hence openness to working with sexual (and other) minorities-- stems from the fact that it is the center of lesbian and gay political influence in the US ⁷²(R. Bailey, 1999).

⁷¹ With an annual budget of \$5.7 billion per year and a population of only 750,000 (City and County of San Francisco, 2007, p.18), the city exceeds even New York City-- with an annual budget of \$59.0 billion (Budget, 2008, p.1) and population of 8 million—in per capita spending.

⁷² Of course, as D'Emilio (2002) writes, this did not mean the gay and lesbian movement was unified and harmonious. For many gay men, liberation meant freedom from harassment, whereas for many

Therefore, when the AIDS epidemic emerged, San Francisco began its efforts to identify, treat and prevent AIDS long before other cities, the federal government or the state of California because of the nature of the affected community and its relationship to the city (I. Cohen & Elder, 1989). Gay men—namely those who were white and middle class-- had the resources and a well-established political presence in the city's civic and political life, which facilitated the city taking responsibility from the start for AIDS service provision, in conjunction with the gay community. Most notably, the city was able to draw from the network of social welfare organizations within the gay community itself in order to deliver care at reasonable costs (I. Cohen & Elder, 1989)⁷³. One of the major examples of this collaboration was between the San Francisco Department of Public Health (SFDPH) and the San Francisco AIDS Foundation (SFAF)⁷⁴.

As noted in the previous chapter, however, prostitutes were not in a similar political position to gay men with the advent of the HIV/AIDS epidemic. Even in supposedly sexually liberal San Francisco, the AIDS epidemic quickly led sex workers

lesbians it meant freedom from patriarchy. As well, class issues also rified the community: gay male real estate speculators had little concern for their brothers who could not pay skyrocketing rents, and gay men and women of color found themselves displaced by more privileged members of the community.

⁷³ Of course the city also had a financial imperative to work with the gay community: AIDS was costly to the city. As the illness increased and patients required more care, clinical and convalescent facilities and were often unwilling to accept AIDS patients because of the perceived threat AIDS posed to patients and staff.

⁷⁴ Opened by gay activist Cleve Jones in a storefront office in the Castro neighborhood, the SFAF began with a donated typewriter, pilfered office supplies and one phone line as an all-volunteer grassroots CBO composed mainly of gay community leaders and physicians (Armstrong, 2002; Arno, 1986). Although the SFAF's initial goal was to raise funds to support and disseminate research about AIDS, it soon became clear that this would be of little immediate, practical help for the increasing numbers of gay men afflicted with AIDS, and so the SFAF soon shifted its focus to direct service provision (I. Cohen & Elder, 1989). By October 1982, the SFAF formally contracted with the SFDPH to provide educational services in San Francisco, including educational events, telephone services, materials development and providing the media with accurate information. In 1983 the SFAF also contracted with the state of California's Department of Health Services to provide information about AIDS to other counties in northern California, and the foundation also established a social services department that same year to assist persons with AIDS and related conditions in need of emergency services such as shelter, financial assistance and medical attention (Arno, 1986).

to be scape-goated by public health and political authorities alike for the spread of disease, and the criminalization of prostitution made it difficult for them to gather without fear of arrest. Yet despite lacking the resources and political clout of gay men, activist sex workers in San Francisco were at least networked through COYOTE, through which they formed CAL-PEP in the early 1980s to respond to the epidemic. CAL-PEP thus proved to be an important precursor to the SJI because through it, sex worker activists learned how to access public health and other government resources. Furthermore, through CAL-PEP many sex worker activists also established their expertise in sex worker health and safety. Most notably, Priscilla Alexander, a COYOTE activist and CAL-PEP founder, developed a model for a sex worker clinic while working for the World Health Organization in the 1990s that would provide much needed services to the sex worker community *and* provide a site from which prostitution research would be conducted and disseminated.

The clinic model (Alexander, 1995b) was based first and foremost on the radical and highly pragmatic notion that sex work was *work*—regardless of motivations—in that it involved the provision of a service in exchange for compensation, and like any other work, posed occupational health and safety hazards to participants. So unlike the clinics created by public health officials in San Francisco in 1911 that sought to regulate and control sex workers (described in Chapter Two), this clinic would be *peer-run*, mixing professional and administrative personnel, wherever possible, with sex work experience, to provide *free and non-judgmental* health services, including general medical care, gynecological services, orthopedic care/physical therapy, mental health services, and drug treatment groups. A Board of Directors comprised of sex workers and those knowledgeable about relevant issues would over-see the planning and operations of the clinic, while day-to-day

management would be provided through an administrative coordinator in a non-hierarchical manner (Alexander, 1995b)

Although establishing a clinic would meet sex worker's health and safety needs more immediately and empower sex workers and help them build community, opportunities for establishing one were limited, even in San Francisco. Opening a clinic required money, space, staff and licensing, among other costly elements. Activist sex workers and their allies knew that history and politics were largely stacked against them, and despite COYOTE's presence in the city and CAL-PEP's growth and success, they still lacked the resources and representation within the city's governing institutions that would make implementing this project much easier. Moreover, few politicians or other public figures were willing to stand in favor of openly supporting such an endeavor. However, as the following pages demonstrate, two events (motivated by the very scapegoating of prostitutes COYOTE fought so hard to challenge)—gentrification concerns leading to the San Francisco Task Force on Prostitution, and the SFDPH's targeting of prostitutes for the spread of syphilis—provided an opportunity for sex worker activists in San Francisco to establish an occupational health and safety clinic for sex workers.

The San Francisco Taskforce on Prostitution

As discussed in Chapter Two, in the early 1990s growing concerns about the impact of street prostitution on property values in gentrifying areas led the San Francisco Board of Supervisors to create the San Francisco Taskforce on Prostitution (hereafter referred to as the Taskforce) in 1994, the first public discussion and study of prostitution in the city. The Taskforce wanted to consider a new approach to prostitution for the city, which could include anything from the non-enforcement of prostitution laws to city-owned love barracks (McCormick, 1993). The Taskforce also was unique in that it offered sex workers an opportunity to be fully included in the process, providing an

important cultural and political site in which conversations took place and recommendations were made for alternative approaches to prostitution (Lutnick, 2006). Sex worker activists drew from the organizational presence they developed with COYOTE to capitalize on this (brief) political moment to promote a non-judgmental, non-criminalizing approach to prostitution⁷⁵.

The Taskforce's activities and politics were an important formative event in the SJI's establishment: it brought activist sex workers (and their allies) into the political institutions and processes of local government. The Taskforce produced its final report in March 1996, presenting findings and making recommendations in the areas of law enforcement, health and safety, quality of life concerns, labor policy, immigration and youth issues (SFTF, 1996). Its major finding was that prostitution is not monolithic, but the city had institutionalized one approach—persecution-- which disproportionately targeted street workers, who composed less than 20 percent of the prostitution trade in the city. The Taskforce emphasized further that this approach was costly to the city (at approximately \$7.6 million per year in law enforcement-related expenditures) and did little to eradicate resident concerns *or* provide safety, security and services to prostitutes. It therefore recommended the city *stop* enforcing and prosecuting prostitution crimes and focus instead on quality of life infractions, which in turn would free-up resources to provide services for needy constituencies.

Although this major recommendation (non-enforcement) has yet to be implemented, the Taskforce also made recommendations which the SJI would later reflect: that health care be accessible, without discrimination, to sex workers; and that health care providers be trained to be sensitive to sex worker needs. These recommendations were based on the Taskforce's finding that many sex workers were

⁷⁵ Six members of the Taskforce representing various neighborhood associations also expressed concerns, eventually leaving the Taskforce claiming that they believed the deck was "stacked" in favor of legalizing prostitution (Strupp, 1994b, 1995).

receiving inadequate health care due to a lack of health insurance *and* to a fear that disclosing their work activities to health care providers would lead to discrimination or arrest.

Activist sex workers in San Francisco took advantage of this political window of opportunity created by the release of the Taskforce's findings by establishing themselves further in the social and political institutions of the city. In 1996 Margot St. James ran for Supervisor, coming in seventh in a race for six seats. As well, in 1995 Carol Stuart, a long-time COYOTE member and SJI founder and board member, created the first sex worker caucus in the Harvey Milk LGBT Democratic Club because it would provide an open political space from which prostitutes could speak publicly, organize, and develop alliances with another sexual minority whose struggle was in many ways similar to theirs as sexual minority⁷⁶ (Interview, Carol Stuart, 20 November 2006).

Syphilis & the SFDPH

Even though they were becoming more entrenched in the city's political institutions, sex worker activists and their allies were aware that gentrification forces and anti-prostitution sentiments remained strong in San Francisco. And so as the years passed following the Taskforce, it became clearer that the non-enforcement of prostitution-related laws in the city was a remote possibility at best. However, when sex workers were targeted for the spread of syphilis in San Francisco in the late 1990s, sex worker activists realized again, as they had with the formation of CAL-PEP, that sex workers would have to help themselves when it came to disease prevention: working more

⁷⁶ Stuart noted further in the interview that they when COYOTE had been more active, there was always a concern that they would be arrested for conspiracy to commit prostitution. By organizing a caucus in the Harvey Milk club, if they were to be arrested for prostitution conspiracy, all of the members of the club would have to be arrested too (although this never happened). However, maintaining the partnership between sex workers and the Harvey Milk Club has been difficult. Stuarts stated that as the LGBT community becomes more empowered/enfranchised, they want less to do with prostitutes on the street; she claims this will hurt the LGBT community eventually.

directly with the public health department might provide a more effective route to eventually decriminalizing prostitution (Alexander, 1995a).

In 1998, Carol Stuart and Margot St. James received a call from a brothel-based sex worker who had been arrested and had her blood drawn (under the guise of testing for syphilis) without her consent. The sex worker asked Carol if this testing was acceptable, and Stuart said “hell no” (Interview, Carol Stuart, 20 November 2006). Stuart and St. James soon began to hear from more sex workers who had recently been tested this way for syphilis. Carol called the general counsel at the health department and was put in touch with Dr. Jeffrey Klausner, the newly appointed head of the SFDPH’s department of STI Prevention and Control ⁷⁷ (also known as City Clinic). Stuart et al met with Dr. Klausner to express concerns about testing prostitutes in jails and stated there was a more effective way to prevent syphilis (and other STIs) among sex workers: Priscilla Alexander’s occupational health and safety clinic for sex workers.

Fortunately, the SFDPH was open to new approaches to sex worker health, and Dr. Klausner provided exactly the alliance sex workers needed. Upon coming to his position, Dr. Klausner (Interview, 31 October 2006) had assessed the sexual health landscape and realized the SFDPH was still not meeting the needs of a number of communities in the city, including sex workers. The testing incident in the jails signaled the need to improve on this. However, for sex workers to gain the SFDPH’s support for their clinic model, concessions were required. Klausner was aware of a discussion in the late 1990s to move massage parlor regulation from the police to the

⁷⁷ Within the SFDPH’s structure, City Clinic is a subdivision of one of the SFDPH’s two major divisions, the Population Health and Prevention Division, which has two major sub-sections, the San Francisco AIDS Office and Community Health and Safety Services. The other major division is the Community Health Network, which is the system of integrated health services delivery and includes such sub-divisions as San Francisco General Hospital, Housing and Urban Health, Behavioral Health, and Community Health Promotion and Prevention, among others.

health department, which came out of the Taskforce's finding that a conflict existed for the police, who enforced the regulations but also gained licensing fees from them (in the amount of \$170,000 per year). He wanted the massage parlors to be regulated by the health department, and so he sought sex worker community support for this change. As a result, he was open to discussing the possibility of a clinic.

At the same time, sex workers in the dancing sector were also making gains and becoming increasingly visible. Johanna Breyer and Dawn Passar, heads of the Exotic Dancers' Alliance (EDA) had recently won a \$2.85 million settlement for dancers in 1998 against the Bjiou Group in reference to pending sexual harassment cases (Akers, 2005; Lutnick, 2006). Even though this victory demonstrated to the public and political officials alike that sex workers had legitimate health and safety concerns, Breyer was increasingly concerned about the health needs of dancers. At the same time, both women had jobs with various community-based public health services (Breyer worked for the SFAF and Passar was with Asia-Pacific Islander Wellness Center and the Asian AIDS Project), which brought them into contact with various public health officials. In August 1998 Breyer and Passar were at an HIV Planning Council meeting, where they met Dr. Klausner, who they encouraged to better meet the needs of sex workers; he in turn found the support he needed from the sex worker community for shifting the massage parlor regulations away from the police. A meeting was consequently arranged with Carol Stuart and Priscilla Alexander. Together, the awareness of (illegal) syphilis testing in jails (by the health department, discussed above) and growing support for sex worker health and safety in the dancing and massage sectors coalesced. With Priscilla Alexander's program model, they were able to open the St. James Infirmary on June 2, 1999, after hours in the City Clinic offices.

However, it soon was clear that the SJI's location in the City Clinic hindered its ability to establish itself as an independent group that could act as claims-makers and service providers (Lutnick, 2006). According to Dr. Deb Cohan, the SJI's former medical director (Interview, 19 December 2006), day staff at the city clinic were a bit resentful of their presence, thinking this group was getting "an easy ride": after all, many of the SJI's staff were volunteers without a health care background. And according to Drew (Interview, 9 January 2007), a peer staff member, they often received complaints about any mess or movement of office equipment (real or imagined) they might have left. So with some help from the SFDPH, the SJI moved to its current Mission St. location (formerly the city's Disease Control and Investigation division). Although smaller than City Clinic, there was (and is) enough space for three counseling rooms, two offices, a small group meeting room and a community room that hosts the food and clothing bank and a computer workstation.

The SJI Today

Today, the SJI's remains closely connected to the SFDPH (particularly the AIDS Office and City Clinic) because of budgetary concerns: the SFDPH was one of the few sources of funding available for such a project. And so with Dr. Klausner's support, City Clinic donated the space and many of the supplies and medical staff needed for the clinic. However, there was little else in terms of funding, since, as Carol Stuart (Interview, 20 November 2006) noted, "there was an aversion to funding something that did not focus on saving fallen women". So Stuart paid people (and other fees, like incorporation expenses, etc) out of pocket until the SJI accepted money from the AIDS Office, the only other place open to supporting sex worker health projects. Indicating the compromise that this budgetary arrangement represented, Johanna Breyer (Interview, 23 October 2006) stated that accepting this money was also unfortunate because "we wanted to get away from the idea that sex workers were

vectors of disease, and now the agency that historically promoted that idea also funded us”. But at the same time, as Carol Stuart stated (Interview, 20 November 2006), she and the SJI would take money from anyone if it meant giving people health care, noting further that “Any woman who has been a prostitute knows about taking the money, and you take it to get what you need” (Interview, 20 November 2006).

Currently, the SJI is funded by a variety of sources, although they remain largely dependent on the SFDPH. According to Naomi Akers, the SJI’s current executive director (Interview, 5 December 2006), the SJI’s budget is approximately \$450 thousand per year, summarized in Table 4.1, below:

Table 4.1: The SJI’s Budget

Source	Amount	Programs Funded
SFDPH AIDS Office	\$138,815 per year until the end of 2008	HIV prevention works for sex workers and their current partners, including STI testing, groups, outreach, needle exchange, evaluation, 50% of annual audit, portion of insurance and accounting fees, 10 hours per week of executive director’s salary
SFDPH Office of STI Control and Prevention (aka City Clinic)	\$128,245 (in-kind, annually)	HIV testing services, certain medical staff (nurse/clinical director, phlebotomist, HIV counselor). Includes also rent for the clinic, computer and phone network support and infrastructure, medical supplies, lab testing costs, harm reduction supplies (condoms and lube)

Source: SJI. (2007). *St. James Infirmary: 6 month agency report*. San Francisco: St. James Infirmary.

Table 4.1 continued

California State Office of AIDS	\$75,000/year for 3 years (until end of June 2010)	Needle exchange services, specifically to increase needle exchange services to include HIV/STI/HEP C testing, Hep A/B vaccines, holistic services, partial funding for peer educator training program for secondary syringe exchangers
California Endowment	\$94,000 over 2 years (ending in 2008)	Capacity development. Includes small portion of executive director salary and salary for development director to explore web-based programs; patient database; registration coordinator and support staff for medical records management and patient billing; portion of annual accounting and insurance fees; some office supplies and educational materials; board and management staff trainings at Compass Point, a nonprofit development service; consultant fees for board and executive director and staff development
Syringe Access Fund	\$5,000/year for 2 years (until 2008)	Needle exchange coordinator
General funds (from individual donations and various fundraising events, such as Gay Pride, Erotic Health Day, the Folsom Street Fair, and the San Francisco AIDS Walk)	\$97,000	50% of executive director's salary and accounting fees; 90 percent of development director's salary; most medical providers; acupuncture services not covered through Immune Enhancement Project (described below); all database fees over \$10,000 provided by California Endowment; all computer and office equipment; some printing costs; staff training costs not covered funding sources; partially funds massage services; needle exchange services not covered by SF AIDS Office grant (wound/abscess care)

Source: SJI. (2007). *St. James Infirmary: 6 month agency report*. San Francisco: SJI

Along with this funding, the SJI also relies heavily on the generosity of other agencies, namely the University of California, San Francisco (UCSF) AIDS Research Institute (for medical services), Walden House (a drug treatment center where they refer clients), and the Immune Enhancement Center (an acupuncture college; trainees here volunteer at the SJI's clinic night). Akers and the development director also recently completed a grant from the National Minority AIDS Foundation (for two computers) and, at the time of writing, were in the process of applying for grants from the Horizons Foundation (to develop and promote HIV prevention media materials for sex workers) and the Third Wave Foundation (to enhance programs for transgendered individuals).

With this budget, the SJI has grown to serve a broad spectrum of the sex worker community. As Dr. Cohan, the SJI's former medical director observed (Interview, 19 December 2006), at the beginning most who came to the clinic were "either Margo St. James's friends or strippers and a few BDSM folks," but this has changed over time and today the SJI serves a diverse sex worker clientele. The tables below (based on 2006 data collected by the SJI) provide an overview of the populations served, recruited through word of mouth (37 percent), outreach (on the streets, in massage parlors and dance clubs, etc: 29 percent), referrals (16 percent), pre-trial diversion (8 percent), and media advertising (8 percent). Data published by the SJI (Cohan, Cobaugh, Cloniger, & Klausner, 2002, slide #9) indicates that between 1999 and 2003 there were 1,059 total encounters between SJI staff and sex workers (in and out of the clinic), and 699 people were served at the clinic during this time ⁷⁸(with a mean of 2.5 visits per client in this time period, in a range of 1-34).

⁷⁸ While 1,059 total encounters over three years (1999-2001) appears to indicate that the clinic served less than 1 client per day, as discussed below, the clinic is only open three days per week for very limited hours (Tuesday from 1-6 pm; Wednesday from 6-9 pm; and Thursday from 6-9 pm).

Table 4.2: SJI Clientele

Gender	
22% men who have sex with men	
2% men who have sex with women	
43% women who have sex with men, women or transgenders	
33% transgenders	
Ethnicity	
60 % white	
19% Latino/a	
15% African America	
2% Asian/Pacific Islander	
2% American Indian	
3% Other	
Types of sex work reported *	
Hooking/prostitution – 10	Escorting – 22
BDSM – 17	Dancing/stripping – 12
Street work – 7	Survival sex – 2
In-call – 1	Massage/sensual massage – 10
Porn – 3	Various – 7

This is a one-month sample, in real numbers, based on voluntary responses and thus is not the total number of clients served. According to Naomi Akers, the SJI's executive director, the SJI does not yet keep data on demographic changes over time (Email correspondence, 15 May 2007).

Although the data above shows the clinic serving a range of sex workers, many long-time clinic staff readily acknowledge that their clientele is becoming increasingly service-dependent: transgender individuals and street-based sex workers are the fastest growing groups at the SJI⁷⁹. Since these groups disproportionately face issues of substance abuse, mental health, employment, housing and violence challenges, they demand more of the SJI's resources, as they require more time for counseling and assistance finding housing, food, employment and linkages to other social services,

⁷⁹ According to "Good Jobs NOW!" (TLC, 2006, p.1), the most recent snapshot of the economic health of transgenders in San Francisco, of those surveyed 60% of respondents earned under \$15,300 per year, and only 8% earned over \$45,900, while over 57% have experienced employment discrimination. The report illustrates further that low income and transgender status has also contributed to instability in living situations for many: 27% have experienced housing discrimination, and not even 5% own their own residence. Regarding street-based sex workers, General research on prostitution makes clear that this population, while estimated to only make up twenty percent of the trade (PEN, 2004, p.1), are more likely to be women of color, have less education, and face the highest risks for abuse, such as exploitation by pimps and law enforcement officials, and drug and health-related problems (Weitzer, 1999). At the SJI, street-based workers certainly experience these challenges. According to Cohan et al (2006), at the SJI those doing street-based work were less likely to have a community/contact with other sex workers, and were also the most likely to be arrested and convicted of sex work-related charges and to have experienced sex work-related violence.

such as General Assistance (GA) or Supplemental Security Income (SSI). Trisha, a transgendered sex worker, provides an example of this dependency: she stated (Interview, 1 November 2006) she uses the SJI for not only medical services, but the computer, massage service, and clothing and food banks.

Part II. Expressing radical commitments: sex workers and health service provision at the SJI

With sex workers at the SJI so closely connected to the SFDPH, questions arise as to whether the organization might promote sex worker rights among those it serves and in the broader political realm. As this section will discuss, the SJI does this *internally*, by employing a non-judgmental philosophy towards sex workers, and by involving them in service provision and organizational management. All of this is made possibly by the local government's (SFDPH's) openness to community-based health service provision (termed "localism"), and by the professional capacity in which sex workers are involved at the SJI.

Philosophy

The SJI's commitment to prostitutes' rights is expressed through their philosophy (mission statement), which is informed by a commitment to harm reduction. Harm reduction is generally associated with substance abuse treatment, emphasizing non-judgmental service provision and meeting people "where they are at" to help them make informed health choices⁸⁰. This philosophy is clearly reflected in the SJI's mission, which is as follows:

"Our mission is to provide compassionate, non-judgmental health care and social services for adult entertainers and sex workers, while preventing occupational illnesses and injuries through a comprehensive continuum of services" (SJI, 2008,

⁸⁰ According to the Harm Reduction Coalition (www.harmreduction.org), "Harm reduction is a set of practical strategies that reduce negative consequences of drug use, incorporating a spectrum of strategies from safer use, to managed use to abstinence. Harm reduction strategies meet drug users "where they're at," addressing conditions of use along with the use itself." Practical examples of harm reduction include methadone and heroin assisted treatment, and syringe exchanges and safer facilities.

p.1)

Therefore, in stark contrast to most community and government-related programs, which often seek to “save” sex workers from the trade by making their exit a prerequisite for getting help, the SJI non-judgmentally accepts the performance of all kinds sex work, including helping people leave the industry if that is what they want (Selke, 2004).

Localism

Implementing this philosophy is facilitated by the health department’s belief that local, community-based service provision provides the most effective means of reaching San Francisco residents. According to officials from the AIDS Office,

“Sex workers are citizens and have rights to health services, and the SJI is a specific agency decided to provide services to them. The SJI also does prevention messages for HIV, and the sex workers’ partners get services too. The AIDS Office makes no judgment about the populations they reach, and since they are at risk, this makes reaching to sex workers all the more important. The job of the AIDS office is HIV prevention, no matter what people are doing.” (Interview, 27 February 2007)

And so, according to Dr. Klausner (in Lelchuk, 1999) the SJI’s philosophy acknowledges that access to health care should not be determined by what people do in their private lives; after all, he says, “if someone is driving under the influence and crashes his or her car, are we not going to care of him or her?” (in Lelchuk, 1999, p.A4).

A brief description of a clinic night at the SJI one night in January 2007 provides an example of this philosophy in practice. At 6 pm, the doors open and community members stream in—a mix of biological and transgendered men and women-- chatting, taking a number and a chart, and helping themselves to food that has been laid out by a peer volunteer. Some venture to the community room to take advantage of the reiki and acupuncture offered while they wait for their appointment.

Pratima, the physician on duty (everyone is on a first-name basis), comes to the community room to hug a patient she has not seen in awhile. Towards the end of the night, a stunning tall blonde dancer comes in to collect a bag of condoms (half mint, half regular) for a sex party she and some fellow dancers will be working at, while one of the peer staff working that night discusses how she has to go home and clean up from a client who has a cooking oil fetish.

This sex worker-friendly environment provides a radical challenge to how sex workers have received health services because, as noted extensively in the literature, sex workers often do not disclose their profession to their health care providers for fear of arrest or of receiving inadequate care, among other concerns (Alexander, 1995a, 1998; Cohan et al., 2004; Cohan et al., 2006; Zalduondo, Hernandez-Avila, & Uribe-Zuniga, 1991). Therefore, as Dr. Cohan (Interview, 19 December 2006) stated, at the SJI, by the time she sees the patient they have already gone through intake and met with a peer counselor, so they know they can trust the doctor, which means there is “no bullshit” and they can get to their health issues immediately. To illustrate, she cited the example of a patient she had since 1997 whom she thought she knew well.... Until she saw her at the SJI when it opened in 1999! Both of them were apologizing because they had no idea about this. Now, this patient came to her recently with a shoulder injury from fisting, and they joked about listing it as “repetitive stress” on the intake form. As Cohan notes, “You cannot replicate such honesty in a clinic, no matter how hip” (Interview, 19 December 2006). She now teaches classes on sex worker health and she warns students that, within this area of practice, they jump right into sexual history differently from in “the real world”.

Peer-based Service Provision

With its non-judgmental approach to sex worker health and safety, the SJI expresses its commitment to prostitutes' rights within the organization by involving sex workers—a group historically *blamed* for the spread of HIV/AIDS—in service provision and organizational management. Before discussing how they do this, it is important to first outline the range of services the SJI offers *free of charge* to a primarily uninsured but very diverse sex worker population. These services meet a range of sex worker health and safety needs, beyond HIV/STI prevention, including primary medical care, gynecological services, confidential HIV/STI testing and counseling, immunizations, acupuncture and massage, transgender health care (including hormone therapy), peer counseling, substance use counseling, legal, housing and social assistance referrals, condom and lube distribution, and a food and clothing bank. Specifically, primary medical care, STI/HIV counseling and testing, and holistic services are offered on Wednesdays from 6-9 pm. Counseling and testing for STIs, HIV and Hepatitis C, as well as vaccinations for hepatitis A&B, wound and abscess care, holistic services, and needle exchanges and secondary needle exchanges (where an individual is trained to exchange syringes on behalf of others) are available on Tuesdays from 1-6 pm. Thursdays from 6-9 pm is specifically for transgender health care and HIV/STI testing and counseling. The SJI also publishes its “Occupational Health and Safety Handbook” (SJI, 2004). Now in its second edition and referred to as “the Bible” by many SJI clients, this purple book lists the SJI’s hours and services, along with 260 other pages pertaining to where to access health, legal, housing, transportation, social assistance, and other related services. Heart icons next to the service locations indicated whether the organizations are sensitive and friendly to sex worker issues.

The SJI also offers services to sex workers in partnership with various other organizations in San Francisco, one of which is a needle exchange service in partnership with the SFAF's HIV Prevention Point (HPP) Syringe Exchange program⁸¹. This program provides the SJI with in-kind support of clean needles and outreach supplies (such as bleach kits and condoms). Aside from the Tuesday night exchange noted above, the SJI also offers free HIV/STI testing every Saturday with the HPP program on 6th street in San Francisco. Along with these services, in partnership with the University of California, San Francisco (UCSF), the SJI runs the Positive SHE program, a series of group sessions addressing issues of sexual health for HIV positive women, on Mondays and Wednesdays (SJI, 2004). The SJI has also, with the support of Supervisor Jake McGoldrick, worked in partnership with the Sex Workers Outreach Project (SWOP) and the SFDPH to implement a sex worker grievances hotline, where sex workers can anonymously file (via phone or email) complaints about the police, public health officials or any other issues they might wish to discuss (McGoldrick, 2006). According to Dr. Klausner (Interview, 31 October 2006), beginning in April 2007 the SFDPH would review the information collected in order to determine what issues were most pressing and how to best move forward⁸². All of the SJI's services, described above, are provided by sex workers, presenting a radical departure from how sex workers traditionally receive health care. As the SJI's informational brochure states,

"The Infirmary is run by current and former sex workers from the many sectors of the adult entertainment industry. Although the Infirmary uses fully trained medical professionals for primary care, we're unlike many clinics in that we fully represent

⁸¹ Since the majority of the SJI's funding is from the city's Office of AIDS, which is federally funded (mainly through the Ryan White CARE Act), they are not permitted to use this money for purchasing syringes (there is a federal ban on this).

⁸² Klausner also noted that, at the time of the interview, that the SFDPH has had five calls and two emails. Although they are working with SJI and SWOP to get the word out, they know that the least empowered sex workers (namely street workers) are the least able or trusting to call and share such information.

the community we serve. Most of our clinic's staff, interns, & volunteers are also clients. We're challenging the traditional client/provider dichotomy. That means that unlike many other clinics that try to target sex workers, we don't just treat sexually transmitted infections. We look beyond one kind of health problem, and try to deal with each person's specific occupational and health concerns. *Putting ourselves in charge of health care delivery is a powerful revolution in the way American clinics are run [italics added]*" (SJI, 2008, p.2)

During clinic hours at the SJI there are two physicians, a physician's assistant and nurses who do not have histories of sex work; and the holistic service providers (massage, reiki and acupuncture) and phlebotomists have varying degrees of sex work experience. However, the remainder of the paid and volunteer staff (all of whom work on a part-time basis) -- including the executive director, development coordinator (responsible for fundraising), executive assistant, harm reduction training and transgender services coordinator, harm reduction services coordinator and 5 harm reduction counselors, outreach coordinator and 8 outreach workers, needle exchange coordinator, registration coordinator and 4 registration staff and volunteers, and community and clothing room volunteers -- are current, former or transitioning sex workers.

Professionalization

Like CAL-PEP, professionalization allows the SJI to involve sex workers in service provision and organizational management: all sex workers offering services to their peers have received training and certification for their respective positions from a number of sources, such as phlebotomy and harm reduction training through the SFDPH or City College, and HIV counselor training through the AIDS Health Project at UCSF, which is offered to programs/groups with a relationship to the AIDS Office.

However, this professional training has not necessarily de-radicalized the clinic: by using this training to involve sex workers as health service professionals, the

SJI makes a (political) statement that sex workers are capable of and supported in the provision of care to their own community, which is quite remarkable given the long history of sex workers (particularly prostitutes) being spoken for and intervened on by health, community, government and social service workers alike⁸³. As Johanna Breyer stated, “while the SJI is peer based, it is also professionalized in that they need policies, procedures, protocols, namely because it is a health clinic, and confidentiality and creating a safe space is important” (Interview, 23 October 2006). And indeed, qualified primary care providers are important at the SJI.

Moreover, as Aly, who works with the SWEAT Project, stated (Interview, 18 July 2006), this model of hiring sex workers allows them to use the SJI “as a way to get something (legal) on their resumes and gain other job skills”. She stated that this is useful for sex workers who want to transition to other employment, as many are doing something that is illegal or carries a stigma, and this makes them reluctant to disclose their sex work (and any skills they gained from it) to a potential employer. David, a former staff member (Interview, 10 November 2006) cited an example here of the transgender population at the SJI, many of whom have been trained as peer educators, outreach workers, and HIV counselors, which are entry level jobs in the health and prevention fields.

Gina’s experience at the SJI illustrates how the combination of professional skill development and a commitment to offering services to sex workers, by sex workers, radically challenges how health services have been delivered to this population. Gina (Interview, 17 October 2006), a 33 year-old African American

⁸³ Unlike clinics in even the so-called straight community, there is an absence of hierarchy in terms of service provision, which is apparent in the terms used to describe “clients” and “service providers”: those using services are not clients but “participants” and those providing the services are “community members”.

woman, is originally from Chicago and worked as an escort and ran a phone sex business. After selling this business, she moved to Sacramento in the mid-1990s and became ill. Although she had private health insurance and was up-front with her doctor about her sex work, she found him dismissive because he assumed that, because she was a sex worker, her illness was the result of an STI (which was not the case). Through friends, she heard about the SJI and went there, and within 24 hours was diagnosed. She returned to Sacramento and “told her friends about the place and how impressed I was and that I wanted to move here to San Francisco and volunteer with them. I was blown away by the comprehensive care and went there for it although I had private insurance” (Interview, 17 October 2006).

Upon moving to San Francisco, Gina began to volunteer and currently runs the Positive SHE program for women and transgenders who are newly diagnosed with HIV/AIDS and need assistance. She also facilitates various groups at the infirmary. As she described it (Interview, 17 October 2006) “most sex workers come into the infirmary without any health skills to work in a hospital, and it was through the infirmary that I got such training. I believe the founders [of the SJI] thought providing such training to sex workers would be a good way to show sex workers had brains and also have the skills to help other sex workers.” To illustrate these skills and how effective this seemingly radical model of peer-based health service delivery is, she cited an example where she counseled a male client of a sex worker (or “john”). He came to her and told her “he had barebacked [not used a condom] with a hooker and was worried and wanted information” (Interview, Gina, 17 October 2006). As opposed to chastising him for his actions, she instead focused on his concerns and gave him statistics and information about HIV/AIDS prevention, and offered him some tests, and “he walked away happy and I walked away feeling like I helped someone”

(Interview, Gina, 17 October 2006).

Of course, this peer model of service provision has not always been flawless, even with the professional training its employees receive. As Johanna Breyer stated (Interview, 23 October 2006), the SJI draws from a community of workers that often has no traditional, or “straight”, work experience, and so “sometimes just telling someone they have to be there at a certain time on a certain schedule is hard because their sex work hours are often unpredictable” (Interview, 23 October 2006). Moreover, she added, it has also been hard to keep a core group working/volunteering “because people need money, and often if more lucrative opportunities come around, people will take them instead of volunteering (volunteers are usually first to go here)” (Interview, 23 October 2008). As well, since the SJI is a harm reduction organization, Breyer added here that “they have sometimes had to deal with people working while using [substances]” (Interview, 23 October 2006), and so they now have a policy that a person cannot work at the clinic if they have used a substance within a certain number of hours before work.

Furthermore, requiring peers to have certain credentials has meant that-- similar to other grassroots community based organizations such as GMHC and the WHC (described in Chapter 1)-- the race and class makeup of the peers providing services is different from many of those receiving services. The majority of the fifteen paid staff interviewed at the SJI had at least a bachelor’s degree, and all but one were Caucasian. For the most part, participants also worked in the more privileged sectors of the sex industry, such as dancing, in/outcall, escort, and dominatrix sectors, all of which usually have higher pay and are far more shielded from law enforcement. According to Jennifer, a female street-based sex worker (Interview, 23 October 2006), “different types of sex work have different dangers, and street is the most dangerous.

If there were more people at the St. James who worked on the street, it could be better because a lot staff who have worked as escorts and dancers have attitude problems, and you can't have attitude on the street!" And so since many of the sex workers receiving services at the SJI are not from the more privileged sectors of the industry, promoting diversity among the staff and sensitivity to different sex work experiences has always been important. As Naomi Akers, the executive director, indicated (Interview, 5 December 2006):

"there is an assumption that one peer can represent the community, and this is not really true because the community is so diverse ... For sex works, there are different types of experiences and some here are in recovery and this is their first real job, or they had a bad sex work experience, so they really have to try to get peer staff to be open to all types of experiences with sex work."

Therefore, as David notes (Interview, 10 November), he was happy to see more staff of color with the most recent hiring wave, which will take the clinic in a bold new direction. He cites the example of the new outreach director, a Latina woman who has done lots of work in the Mission, which will be useful because the SJI has never had that insight and inroad into the neighborhood's largely Latino/a population.

Despite these challenges, however, sex workers interviewed at the clinic generally favored the peer-model of service provision and were enthusiastic about how the clinic was serving them. When asked how they would rate the clinic on scale of one to five (with one being the least satisfied, and five being the most satisfied), all but two of twenty sex workers interviewed gave it an overwhelming "five" (with two rating it a four because "there's always room for improvement"). However, most expressed sentiments in line with Rockie, a female-to-male (FTM) transgender sex worker, who stated (Interview, 17 October 2006) he likes the fact that the SJI is peer-run "because it is more comfortable and seems to work better. People outside [the sex industry] might know what I have gone through [as a sex worker] or about sex work intellectually, but will never understand it as intimately".

Part III. Encountering vectors of constraint: promoting for prostitutes' rights beyond the SJI?

The SJI provides a place where sex workers-- some of the most socially isolated, resource-poor and politically marginalized individuals in the nation (Mathieu, 2003)— can gather, all of which raises questions about the SJI's capacity to support and advocate for prostitutes' rights *externally*. In particular, what elements of the broader political environment impact the SJI's capacity to mobilize sex workers and challenge the broader laws and policies that compromise their health and safety? The following pages turn to consider how section 501c3 of the IRC and data collection requirements imposed by granting agencies constrain the SJI's capacity for political mobilization and advocacy.

Section 501c3 of the IRC

The SJI is incorporated as a nonprofit organization under Section 501c3 of the United States Internal Revenue Code (IRC). As described in more detail in Chapter 5, the major advantage of incorporation is it allows the SJI to offer tax deductions to donors, and its income for “exempt purposes” (i.e. those activities that give the SJI its charitable status, such as free HIV testing) is not subject to federal taxation (IRS, 2006a). Along with the tax exemption, incorporation as a charitable nonprofit also allows the SJI to capitalize on funding from the SFDPH. As a result, since the majority of the SJI's funding is from the SFDPH for exempt purposes like HIV prevention work, the SJI does not pay tax on this money, nor does it pay tax on the remainder of its donations from individuals and private foundations.

However, incorporation as a nonprofit potentially decreases the propensity of the organization to engage in any political advocacy work for fear of losing their

nonprofit status. Reluctance to engage in advocacy for this reason was reflected among staff at the SJI. Although the SJI's informational flyer explicitly states "The St. James Infirmary is fundamentally against the criminalizing of sex workers for their profession" (SJI, 2008, p.2), SJI staff members were largely reticent to encourage or promote any political activities to this (or any other) end as an organization, reflecting the concerns that doing so might jeopardize their charitable nonprofit status and, hence, ability to offer services. As David, a long-time peer staff member and volunteer at the clinic declared,

"the SJI should stay out of political and community organizing completely because... this violates their agreement as a non-profit, and is potentially dangerous to the organization because it kicks up dust. They should stay out of all of it and just do their job. Instead, SJI can really be an incubator/meeting ground/community space for sex worker organizations and use the space in a way that does not involve the SJI in an administrative way, like a church, for example" (Interview, 10 November 2006)

This position was reiterated by, another long-time peer staff member, who noted (Interview, 15 December) that while the SJI seeks to provide a space for healthy opinion and debate so people can think a bit differently when they leave than they did before, they do not want to jeopardize their status as a 501(c)3 health service provider.

Although this position might appear to indicate submission by the organization to their funders (and the IRS), this position is understandable for two important reasons. First, with their explicit commitment to sex worker health and safety, the SJI has a limited universe of funds it can apply for and therefore does not want to risk losing them. According to COYOTE activist Carol Stuart (Interview, 20 November), the SJI "does not have relationships with the type of individuals and other potential donors who would just give \$20,000" because the SJI lacks the capacity to reach out to them *and* a mission focused on "saving fallen women". Moreover, she added here, the SJI refuses to take money from the Department of Justice, law enforcement or

other groups or individuals who have been known to “do harm” to prostitutes⁸⁴.

Consequently, according to Johanna Breyer (Interview, 23 October 2006), the biggest challenge for the SJI has always been funding—“basically keeping the SJI afloat and working with limited resources”.

She stated further here that because the SJI came out of COYOTE and the EDA—and they support decriminalization of prostitution—“the SJI has always been disadvantaged for funding, especially from the feds, who want more stuff that brings outcomes of people getting out of prostitution” (Interview, 23 October 2006). As noted in Chapter 2, the federal *Trafficking Victims Protection Reauthorization Act* (2003) starkly curtailed any federal funding for groups that support or advocate the legalization or practice of prostitution. The SJI, in its refusal to condone criminalizing prostitution and view prostitutes as victims, clearly is ineligible for these funds. As a result, declares Naomi Akers (Interview, 19 December 2006), “the trafficking issues and money for it has grown like a malignant cancer and keeps money in the anti-camp, which makes it hard to talk about making meeting sex worker and human rights a public health issue.”

The SJI is also reluctant to jeopardize its nonprofit status because the grant-oriented funding it receives is highly contingent and in no way guarantees long-term service provision for sex workers. In one example, the AIDS Office officials noted (Interview, 27 February 2007) that it is possible agencies like the SJI might not be funded if they do not have competitive applications or continue to fit with the current priorities set by San Francisco’s HIV Prevention and Planning Council, which currently sees female sex workers (as part of the HIV risk group of heterosexual

⁸⁴ A slight exception here is the SJI’s participation in a city program called “Project 20”, where individuals sentenced to community service for unpaid parking tickets, among other minor offenses, can complete their required community service hours, if appropriate.

women who have sex with men) as a key population to target. The officials stated further, however, that if female sex workers are not considered at-risk for HIV one day, then they would not have to fund the SJI anymore (or as much), although they do not expect this to happen. As a result, their office is committed to ensuring agencies like the SJI have long term funding because “it takes awhile for (new) agencies to get going and institutionalize their services” (AIDS Office officials, Interview, 27 February 2007).

In another example of this contingency, in 2007 the SJI was awarded a one time award of \$75,000 from the San Francisco Board of Supervisors, which would be added to their existing SFDPH contracts to pay for a harm reduction training coordinator, increase the hours of their harm reduction coordinator and counseling team, increase outreach to indoor sex workers and conduct an assessment of their needs, fund social media projects (podcasts and blogs by SJI clients and staff), purchase office supplies and incentives for clients, and pay approximately one half of the costs for the new medical records database (described in more detail below) they are developing. However, according to Naomi Akers (Interview, 25 March 2008), they have yet to receive the award from the Board, even though they spent six months completing five revisions of their proposal and receiving approval for this funding. Akers is not sure what is causing the delay, although she suspects it has to do with a city budget deficit, which (at the time of writing) could amount to a 15 percent reduction in program expenditures across the board (in which case the SJI is also expecting to have to make cuts across programs). Although Akers says the SJI has been reassured it will receive its money, in the mean time, they have had to cover their costs with their general funds (Interview, 25 March 2008). Given such contingencies, it is understandable why the SJI does as little as possible to minimize risk of losing

their nonprofit fundraising status.

Data Collection

Along with maintaining their nonprofit status, the SJI has also contended with data collection requirements (although not to the same extent as CAL-PEP), which detract resources from the organization. According to Naomi Akers (Email correspondence, 2 November 2007), the SJI has collected data from its inception, mainly to support their programs (in grant applications, etc) and to better understand the community they serve. Similar to CAL-PEP, however, she notes that much of their data collection has become more onerous at the SJI in recent years as the federal government under the (now previous) George W. Bush Administration grew more concerned about the cost of providing medical/health care solutions for HIV/AIDS.

Today, according to Akers (Email correspondence, 2 November 2007 & Interview, 25 March 2008), the SJI now collects two types of data about their activities and clients (aside from medical chart information, which is common at any clinic) for submission to various local and state agencies: core variables and data for the California State Office of AIDS. Core variables are required for their SFDPH AIDS Office contracts for HIV prevention activities, not inclusive of HIV testing (this requires a different form, described below). Core variables include date of birth or age, zip code, race/ethnicity, gender, gender of sex partners, whether there has been injection drug use in the last 6 months (and, if yes, whether they shared needles), and whether there has been sex without a condom in the last month. They also document the date, type of service the client received and how many minutes of service. Core variables are collected on forms distributed to clients while they wait for services on clinic nights and after groups. The forms are submitted to the relevant program

coordinator (the individual in charge of clinic night or the particular group), who in turn makes sure they were filled out properly. The coordinator then submits the forms to the SJI's data entry clerk, who enters all the core variables into the SFDPH database. This data is then used by the San Francisco HIV Prevention and Planning Council to evaluate programs to understand HIV risk in the city, and make plans and set priorities for future HIV prevention work.

The SJI also collects data for the California Office of AIDS, through the state's Counseling Information Form (CIF). The CIF forms ask for a range of variables regarding HIV risk assessment, such as presence of tattoos (which might indicate exposure to HIV-infected needles), whether the individual has received a blood transfusion since the 1980s, whether the person has done sex work, presence of hepatitis B and whether vaccinated, and questions about condom use and the number of sex partners. This data is collected at the close of each HIV testing and counseling session. The form remains on site (at the SJI) for 30 days and is "for reimbursement and data gathering about HIV test clients throughout the State of California" (Fecente, 2007, p1). According to Akers (Interview, 25 March 2008), since the SJI is contracted by the SFDPH (City Clinic) to do HIV testing, they collect this information and are reimbursed by the State through their contract with City Clinic. The SJI does not actually have to enter the data collected on the forms into any system; instead, the forms are collected periodically by a representative of City Clinic, which in turn submits them to the San Francisco AIDS Office for submission to the State Office of AIDS.

Data collection requirements detract from the SJI's capacity for community empowerment and/or broader political advocacy in a number of ways. First, they have increased the staff's workload, costing time and resources. Overall, according to Akers (email correspondence, 2 November 2007), "the collection is not necessarily the

burden because most of it is what we would either already want to collect or is in many counseling settings and would come out in conversations anyway.” She stated further here that what is most difficult is the data *entry*, which she declared was “way time consuming” (staff refer to the core variables as “chore” variables) and fluctuates over time depending on the tool, and can become more burdensome when a new evaluation tool is started.

This fluctuation in workload is illustrated by the SJI’s involvement with the CDC’s Program Evaluation and Monitoring System (PEMS) implementation and trials. According to Akers (Email correspondence, 2 November 2007),

When PEMS was piloted two years ago it was crazy! We had to do it for our AIDS Office contract programs, so basically all of them. We hated it and so did everyone in the City. Our DPH eventually put the halt on PEMS over a year ago. And we never actually entered any PEMS data just collected it, but I would say it took about 5-10 minutes for each client interaction, so [multiply] that by 250 or so a month which would have been way more if we entered the data.

Akers elaborated further (Interview, 25 March 2008) that the major problem with the PEMS data collection system was that for every client interaction through their programs, they had to collect 17 pages of data. As Akers said, “it [the form] made it so obvious that whoever developed it had never sat down with a person and actually collected the data: each form was like taking an entire medical history!” (Interview, 25 March 2008). Fortunately for the SJI, the SFDPH took feedback from their stakeholders about PEMS and negotiated with the State AIDS Office about how to minimize the amount of data stakeholders needed to collect to demonstrate compliance with their contracts and that they were meeting the needs of communities prioritized by the San Francisco HIV Prevention and Planning Council.

Second, data collection duties have also increased the operational costs at the SJI, thus detracting resources from other (potential advocacy) activities. Currently, the SJI pays their data entry clerk \$15.50 per hour for approximately 10 hours per week of

work entering the core variables. They used to have different program staff do their own data entry, but according to Akers (interview, 25 March 2008), “this was too expensive because some people took forever to do it!” Along with the costs of data entry, database development has also proven expensive, as illustrated by the SJI’s experience with developing the infrastructure needed to obtain reimbursements (\$72-\$73 per patient visit) from the California Department of Health and Human Services (CHHS) for medical services they provide and fund with the in-kind services of City Clinic staff and the SJI’s general fund. For the past three years, the SJI has had their billing number and approval to submit bills to the CHHS, but they needed a medical records database (which would contain all of their patient’s medical chart information, such as allergies, prescriptions, lab results, etc) to run reports and submit information necessary to CHHS for reimbursements. According to Akers (Interview, 25 March 2008), SJI staff members went to Sacramento for the training about how to bill the CHHS and learned the database the state was developing would not be very helpful, and that they would be better off contracting to an outside agency to create their own database. The California Endowment grant (described in Table 4.1, above) provided funding for this database’s development (\$10,000 of the \$75,000 grant). However, Akers declared, “it [the database] ended up costing five times as much! [\$50,000]” (Interview, 25 March 2008) and is still not finished. There were multiple reasons for the delay and cost over-runs. According to Akers (Interview, 25 March 2008), the original person hired for the project ended up “not doing her job and not working out” (Interview, 25 March 2008). Moreover, the SJI’s computer network got a virus, and there was a break-in and the computers were stolen. As a result, the SFDPH took them off of the city system, and they had to create an independent network for the SJI. There is pressure at the SJI to get this database done, though, because, according to

Akers (Interview, 25 March 2008), “once September passes we cannot bill retroactively, and at \$72 to \$73 per client visit, we need the money!”

In response to the time and resource costs data collection requirements impose on the organization, the SJI has had to professionalize their board and management to a degree, which is beginning to limit the number of sex workers they hire in these positions. At the management and administrative levels, the SJI has also shifted to hire individuals with more credentials. Johanna Breyer (the first executive director) and Naomi Akers, the current executive director, have Masters degrees, a requirement that has become essential due to the large research, evaluation data management component of the job. At the board level, according to board member Terrance Alan (Interview, 16 February 2006), to raise more funding, the SJI Board has decided to move away from strict sex worker community membership quota here to include more professionals with extraordinary public and private practices (such as doctors and lawyers) that also have connections to the sex worker community. As the owner of a gay strip club, Alan represents this new shift in SJI board membership. Of course, Alan noted further, there was trepidation to expand the Board this way because the SJI is such a “homegrown” organization, and there is a fear that this might make the SJI more professionalized as opposed to radical. Furthermore, although someone like Alan might know the industry well, he also profits from the industry, which raises questions about how far he might go in advocating for sex worker health and safety if it means hurting his bottom line.

Despite the different ways in which data collection detracts resources and professionalizes the clinic, the staff generally sees some value in these activities. For example, Akers believes there is a lot of utility in the core variables. She stated here that although collecting the data requires more staff time, the forms are a valuable tool for keeping the SJI clients occupied while they wait for services—“it keeps them

distracted and they are less likely to fight”—and many clients also enjoy filling them out because it makes the clinic feel more “official” (Interview, Naomi Akers, 25 March 2008). She added here “the data entry is paying off in the time I am saving to run reports for billing and evaluation. I also use the reports for every grant we apply for”⁸⁵ (Email correspondence, 2 November 2007). However, Sara-Anne (Interview, 31 January 2007), a program coordinator at the SJI, expressed frustration with the data collection process, stating that in order for them to serve their population they have to do the research to prove their needs to get money to do the work, while other care providers have someone else doing the studies. She feels she spends a lot of time “counting and collecting arbitrary numbers for the SFDPH” when she could spend the time testing someone. However, she conceded, “the SJI is the only place for sex workers, so they have to work hard to make sure they look good” in order to keep the SJI funded and open for service provision.

Part IV. More than just a clinic? Examining the political potential of the SJI

On the surface, maintaining nonprofit status and completing data collection duties appear to render the SJI “just another nonprofit clinic” concerned with budgets and management (much like the women’s health clinics described in Chapter One), albeit one staffed with sex workers. However, this focus on organizational maintenance has not entirely precluded the SJI’s promotion of prostitutes’ rights. The following pages discuss how the SJI is planning to and already has employed various strategies of circumvention to promote prostitutes’ rights beyond the clinic’s doors.

⁸⁵ The reports Akers is referring to are the bi-annual reports documenting and evaluating their programs and organizational activities, which a major requirement of their grant agreement with the SFDPH (SFDPH, 2006).

The H-election

A major step the SJI is taking to increase their advocacy work is through making the H-election under section 501h of the IRC. As described in more detail in Chapter 5, in exchange for their tax exempt status, charitable nonprofits (including the SJI) forgo participating in political campaigns and face severe restrictions on the amount of direct and grassroots lobbying they can do (Internal Revenue Service, 2007; IRS, 2006a, 2006b, 2007a). Charitable nonprofits may, however, elect under IRC section 501h to be covered by this section, which specifies how much they can spend on lobbying. At the SJI, Naomi Akers stated (email correspondence, 15 November 2007) they are planning with the Board of Directors to make this election in the future, but board member Terrance Alan (Interview, 16 February 2006) stated the SJI currently spends “zero dollars” on political activities or advocacy of any sort.

However, if they make the H-election, engaging in political activities will likely remain difficult for two key reasons. First, the SJI has very little “extra” money to devote to these activities because the majority of its funds (which are from the AIDS Office) are restricted funds, meaning they can only be used for HIV testing and counseling, among other narrowly-stated purposes (such as the paperwork related to testing, etc) dictated by their contract (SFDPH, 2006). These funds (from the Office of AIDS) are quite unlike *unrestricted* funds (such as those from private donors or Erotic Health Day), which—while also not guaranteed or renewable-- could be used at the SJI’s discretion for programs and projects *not* related to HIV testing. A major source of unrestricted funds is often private donors and organizations that are less constrained by the dictates of HIV planning councils, government agencies and all other parties that might oppose harm-reduction approaches to prostitution. But, as noted previously, the SJI has few of these sources.

Second, even with unrestricted funds and the H-election, gaining support for

prostitutes' rights from the SJI's clientele is not guaranteed: not all of them agree with its mission opposing the criminalization of prostitution. As Mo, a 29 year-old male sex worker stated, "prostitution should be illegal because some people prostitute themselves and know they are sick and still have unprotected sex, which puts the whole world at risk" (Interview, 8 November 2006). And Tanesh (Interview, 13 November 2006) also added the following sentiments, for different reasons:

"I will never think prostitution should be legal, and things like needle exchanges bother me because it encourages you to use. Here [at the SJI] they give you condoms and stuff, which encourages you to go out there [on the streets to do sex work], and I totally believe transgenders should have other ways to work besides being on the corner. If sex work is what you want, then you have my blessing, but I see myself as having something more or being better. What do these girls on the street [referring to the younger women] do when their looks fail?"

However, more sex workers at the SJI favored some type of legal reform, although they were in no way unified on what this might look like. Vickie, a 37 year old transgender sex worker who "had to do what I had to do to survive", stated "they should decriminalize prostitution because if people want to buy and sell their bodies, then it's their prerogative and there is no crime in this. It should not have any regulations and should just be left alone because things have less problems when they are left alone" (Interview, 8 November 2006). Rockie (Interview, 17 October 2006) expressed a slightly different sentiment: "we should legalize it, like in Amsterdam... because it spreads disease and needs control and oversight by a government entity". Ronita, a 43 year old transgender sex worker also stated "we should legalize it [prostitution] so they [the government] can tax it".

Indirect politicization

Even without the H-election, many SJI staff members believe the organization is indirectly making political statements and encouraging their clients to become politically active, even if this is not done in by more traditional means (through

lobbying, etc) that are largely prohibited under their current charitable nonprofit status. According to SJI founder Carol Stuart, “While people at the clinic will say they are not political or doing anything political, the fact that they can sit in a room together without the threat of arrest is in fact a political act... especially in a state where 2 or more people in a room talking about/doing prostitution can land you in jail for conspiracy” (Interview, 20 November 2006). And so, according to David (Interview, 10 November 2006), “the waiting and community rooms at the SJI are one of the most powerful things about the clinic”. Here, states Aly, a long-time peer volunteer and staff member at the SJI (Interview, 18 July), the SJI is indirectly politicizing sex workers by providing a space where a marginalized population can come together and share information in a protective environment, which brings a lot of self-efficacy and social capital development as a result of feeling and being part of a community.

Aly went on to describe a number of examples of indirect politicization at the SJI, such as raising sex workers’ awareness about the laws prohibiting sex work. She cited the example here of the SJI’s ongoing harm reduction groups with rotating topics, which provide clients access to information that can politicize them by making them more aware of their rights. In one workshop, a lawyer detailed how prostitutes might be arrested (through undercover operations, for example) and how they can to recognize the signs that a john is actually a police officer (entrapment) and what to do if they are not read their rights. Another way the SJI raises awareness for sex workers is through access to language. According to Aly (Interview, 18 July 2006), many of the SJI’s clients have never heard the term “sex worker” and when they do, many immediately feel less stigmatized and more empowered. As well, a large sign in the SJI’s community room reads “ Ban Poverty, Not Prostitutes” which alerts many sex workers that the enforcement of prostitution laws impacts mainly the poorest sex

workers on the streets, and therefore alleviating poverty might be a more effective way of dealing with prostitution

Indeed, this indirect politicization is not only strategically important (in that it allows the organization to maintain its nonprofit status), it is quite pragmatic: participating in political activities of any sort might not be possible for many of the SJI' clients, especially as the number of sex workers with more resources (indoor workers) declines at the clinic, and the number of street-based and transgendered sex workers (with fewer resources) increases. As Robyn Few, a Bay Area sex worker activist stated (Interview, 20 October 2006), "although they [the SJI] do great work offering services, many other sex workers will not go to SJI because they do not feel welcome there, mainly because of the long wait and the 'bitchy trannies' that make it less appealing". Melania, an SJI program director (who has also worked in the indoor sector as a dancer and escort, among other work) notes further that, "Some [sex workers] also will not come to the clinic because of pride. I know women charging \$2000 per hour (with a 2 hour minimum) who would never come here because they are too invested in *not* being whores and would feel like one if they came to the clinic. For them to come here would be to maybe confront the reality that some are not as well off as you are" (Interview, 19 December 2006). And so, as Vicky W (Interview 1 November 2006) noted,

"It is hard to mobilize the populations who are at the SJI and just scraping by: if you don't have your basic needs met, you cannot do justice work, especially when there is no justice in your own life...although sometimes people who are denied justice are also the most motivated"

To illustrate, Nick (Interview, 23 October 2006), a 39 year old transgendered (FTM) sex worker who had a history of involvement with Hydra, the German prostitutes' rights group (when she lived in Germany), stated that it currently is most important for her to "work on herself first" as she deals with her crystal methamphetamine

addiction. Furthermore, only three sex workers interviewed at the SJI had been politically active regarding prostitution law reform in the past: as noted above, Nick was involved with Hydra in Germany; Vicky W participated in SWOP activities; and Jennifer went to a COYOTE meeting once in Washington, DC when Margo St. James was active there. Samantha, a 35 year-old female who has worked mainly as a dominatrix and in phone sex stated “being open about sex work is a political act in and of itself” (Interview, 17 November 2006). For the most part, other sex workers interviewed at the SJI had not participated in sex worker activism because they had never heard of SWOP or COYOTE, or because they were too concerned with other issues in their own lives (such as addiction).

And so although many of the SJI’s clients are currently not engaged (or ready to engage in) political advocacy for prostitutes’ rights, it appears as if indirectly politicizing them has had some effect. Many SJI clients stated that being at the SJI encouraged them to get more involved in political and community life about issues that were personally important to them, such as transgender rights or to the continuation of service provision at the SJI. Regarding transgender rights, Shaquanequa, a 35 year old transgendered sex worker “who has never even voted in my life because I am just not into that,” (Interview, 2 November 2006) stated

“the SJI has made me want to become more politically active in some ways; for example, when I see someone make a bad choice or discriminate, I like to educate them about it. For example, when kids say “ew, you’re a man”, I say ‘yes, I am a man, but I am TG [transgender], and there are people like that here’. I have felt more political this way because of how much the SJI talks about being open-minded and about unity, and unity is something a lot of TGs don’t have” (Interview, 2 November 2006)

In another example, Monica (Interview, 25 October 2006), a 37 year old MTF transgendered sex worker noted that she sometimes attends demonstrations in San Francisco against the war in Iraq and candle light vigils for those who have died from

AIDS deaths. For her, the Transgender Day of Remembrance is especially important because, as she stated, “it could be me”. Here she explained that she feels she has put herself at risk for being a victim of a hate crime by cross-dressing, and feels “this has to stop”. She has also testified on behalf of the Native American AIDS project at the Board of Supervisors meeting, where she also shared how valuable her experience at the SJI has been (she uses the SJI for the Positive SHE group, peer counseling, condoms and lubricant, clothes, STI checkups and massage and acupuncture).

Regarding the continuation of services at the SJI, Nick (Interview, 10 November 2006) stated that she appreciates how the SJI encourages political involvement by posting flyers and brochures about different events (such as the AIDS Walk in San Francisco). Here, she stated

“The most important thing that has contributed to my politicization at the SJI is seeing there can be a place (the SJI) where people care and support people and are not full of BS [bullshit]. The SJI shows it is possible to have a meaningful life. At the time when I am ready to give back to society, I would want to give back here [the SJI]”
(Interview, 23 October 2006)

Kelly, a 34 year old transgendered (MTF) sex worker stated the SJI “makes her want to do more politically because she knows they get some money from the government and she would like to get politically involved to know what goes on behind the scenes to make sure the St. James [Infirmary] continues to operate” (Interview, 7 November 2006). She started further here that “I feel I could lead something like that with people here, but I’m not sure what is holding me back”, noting here that “being a trans could be seen as a character defect that could destroy my efforts in the process [of advocating for the clinic]” (Interview, 7 November 2006).

Research

Like CAL-PEP, the SJI also promotes prostitutes’ rights by conducting and disseminating research that clarifies misconceptions about sex workers in order to

encourage law reform⁸⁶. As Margo St. James declared, “basically, the way now for prostitutes to get respect is to have a clinic and publish research and information out of it” (Interview, 25 October 2006). The SJI’s first research project began in 2001, and true to the community-based orientation of the clinic, research was (and continues to be) conducted with the goal of meeting the occupational health and safety needs of the community, as opposed to debating how to shift the community into other forms of work. Therefore, the first study was a pilot assessment of where in San Francisco sex work occurs so they could decide where a mobile van should go for outreach. The second research project occurred in 2002, when the SJI community developed its “Occupational Health and Safety Handbook”.

With Dr. Cohan’s connections to UCSF, the SJI has also embarked on research that works to educate the public about issues of sex worker health and safety. An example here is the Sex Work Environmental Assessment Team (SWEAT) study that began in 2003 and focuses specifically on sex worker experiences in order to explore the ways social capital impacts the health of biologically born female sex workers, not inclusive of transwomen. In the published results to date (Cohan et al., 2006), an observational study was conducted with SJI sex workers. Through univariate, bivariate and multivariate analyses of 783 sex worker interviews, they discovered that the majority of sex workers never discussed their sex work with a health care provider, and that those who worked collectively with other sex workers were less likely to contract STIs. According to Dr. Cohan, they are now in the second phase of the study, where they are doing a quantitative piece regarding stigma and what people like and do not like about their work, among other issues, and how this relates to health. In

⁸⁶ According to the IRS, charitable nonprofits are permitted to conduct, publish and disseminate issue research and analysis, as long as it is non-partisan. Discussing broad social issues-- as long as specific legislation are not discussed—is also permitted (IRS, 2007b).

many ways, this research challenges the utility of the current legal regime by looking at how criminalization affects health. According to Aly (Interview, 18 July 2007), they are asking questions to flesh out what people mean and want by different legal regimes, and how they are impacted by the current regime.

However, conducting and disseminating research that supports prostitutes' rights has been limited by the broader political climate, which, as noted previously, is dominated by groups opposing non-criminalizing approaches to prostitution. To illustrate, Dr. Cohan noted that when she applied for funding from the National Institutes of Health (NIH), which she eventually received to fund the SWEAT study, someone "looking out for her" at the NIH called and told her it would be best if she took "sex work" out of the title of her project, "Social Capital, Self-Efficacy and Sex worker Health" and change it to "Ethnography in an HIV Risk Population" because the former was "too controversial". However, according to Aly (Interview, 18 July 2006), who currently oversees the SWEAT study at the SJI, despite these challenges, they have managed to publish material and make it available through conference presentations (such as the International AIDS Conference in Toronto in 2006) and publications (see for some examples Cohan, Cobaugh, Cloniger, & Klausner, 2000; Cohan, Cobaugh, Cloniger, & Klausner, 2002; Cohan et al., 2004; Cohan et al., 2006; Lutnick, 2006). Aly added here that other individuals and groups could use this information to make their own political arguments, which she claims is useful because many do not want the SJI to exist, so getting the information out can keep up support for their work (Interview, 18 July 2006).

Conclusion

In the mid-1990s, neo-liberal politics and policy emphasizing service contracting to

nonprofit organizations and gentrification concerns were entrenched in the supposedly liberal San Francisco Bay Area. And once again, sex workers found themselves blamed for neighborhood “blight” and the spread of disease (this time, syphilis). This time, however, sex worker activists in the Bay Area were arguably, older, wiser and more experienced. Capitalizing on opportunities for access created by various levels of local government (namely the Taskforce and the SFDPH), sex worker activists took the struggle for prostitutes’ rights “inside” and founded the SJI in partnership with the SFDPH.

As this chapter has also shown, the SJI remains heavily dependent on the SFDPH for funding, raising questions about the clinic’s capacity to continue the struggle for prostitutes’ rights from which its founders were born. However, stepping inside the SJI reveals it has maintained a commitment to prostitutes’ rights by putting this into practice: sex workers—long blamed for the spread of STIs—are the key service providers, managers and leaders. And, on a weekly basis, their peers are gathered here, free from harassment, rendering the SJI a potential political incubator, where sex workers could be mobilized to challenge the very laws that stigmatize and marginalize them. However, similar to the WHC, GMHC and CAL-PEP, encounters with the broader regulatory environment (namely the vectors of political constraint) have severely curtailed the SJI’s potential here. As a result, maintaining nonprofit status, funding streams and fulfilling contract requirements for data collection pre-occupy the organization as they work to maintain service provision.

Consequently, one might conclude the SJI is really no different from any other nonprofit health service organization in the neo-liberal era that, while formed by activists, has lost its “radical edge”. However, this chapter has demonstrated that such a characterization is not accurate. By employing various strategies—including (a

consideration of) the H-election, indirect politicization and the publication of research—the SJI has managed to promote prostitutes’ rights beyond its doors while also maintaining its service functions. And indeed, many of the SJI’s clients—despite challenges—have been active in the political realm, in some cases motivated by their contact with the SJI. All of this shows that despite its limitations, “There is political potential in the SJI: if the clients feel supported, you might be surprised at how they will speak out” (Interview, Margot St. James, 25 October 2006).

CHAPTER 5

TO SERVE AND TO ADVOCATE? TAX STATUS, DATA COLLECTION AND NONPROFIT POLITICAL ACTIVITY

In the United States, prostitutes' rights activism failed to repeal laws criminalizing prostitution, while further legal developments (particularly at the federal level since 1980) have heightened state efforts to suppress prostitution and created political opportunities for COYOTE's daughters opposing sex worker rights. Among the daughters favoring sex worker rights, CAL-PEP and the SJI are two nonprofit organizations that offer health services to sex workers in partnership with state agencies. If, similar to earlier chapters, one understands that political opportunities are shaped by exogenous factors that facilitate and/or inhibit prospects for mobilization, the advancement of claims, and for movements to affect mainstream institutional politics and policy (Meyer & Minkoff, 2004), this chapter asks what factors influence CAL-PEP and the SJI's capacity as *health service nonprofits* to advocate on behalf of those they serve to challenge and/or influence state policy?

To provide a conceptual and contextual framework answering this question, this chapter draws from the literature regarding the relationship of civic organizations (particularly nonprofits) to the state to analyze in more detail how the vectors of political constraint (introduced in Chapter 1 and considered through CAL-PEP and the SJI's experiences in Chapters 3 and 4) potentially limit their capacities as nonprofit health service organizations to engage in advocacy and challenge state policy. Indeed, these vectors-- tax-exempt status under section 501c3 of the Internal Revenue Code (IRC); and data collection requirements imposed by granting agencies, particularly the federal Centers for Disease Control (CDC)— do not apply only to CAL-PEP and the SJI, and so the goal of this chapter is to discuss broadly how each vector potentially limits nonprofits' political capacities by restricting their lobbying and campaign

activities, and detracting resources (particularly time and money) from their organizations, and professionalizing their staffs. However, building on the notion (described in Chapter One) that engagement with the state is dynamic and need not entirely preclude political activity, this chapter also considers various strategies organizations like CAL-PEP and the SJI might employ to circumvent these vectors and continue engaging in advocacy for prostitutes' rights.

PART I: Theorizing government-organizational relationships

Specifying the political constraints CAL-PEP and the SJI face as nonprofit organizations raises broader questions about the relationship of organizations to the political process. As discussed in Chapter 1, Piven and Cloward (1977) argued that the creation of formal organizations by activists limits their the political potential by shifting their efforts from protest to organizational maintenance (and thus appeasing, not opposing, elites). However, as Elizabeth Clemens (2006) writes, organizations are also potential sites and resources for political activity outside of formal institutions, even though they are not part of the formal political system. Given these perspectives, to understand the factors that shape the capacity of *nonprofit* organizations specifically to act in the political realm, theorizing their relationship to the state (begun in Chapter 1) is useful.

Although the social movements literature was used previously to frame the discussion of the broader political-legal context in which sex worker activists have organized, this literature has had less to say about the about the capacity of nonprofits *specifically* to engage in political activism and challenge state policy. As Daniel Cress (1997) writes, despite widespread adoption of the nonprofit form by social movement actors, only a small number of scholars (Jenkins, 1987; McCarthy, Britt, & Wolfson, 1991) have noted this development, finding that nonprofit social movement organizations (such as peace, anti-drunk-driving and poor people's organizations)

often re-shape their goals to be more in line with what is defined by the state as charitable ends. And since they are prohibited by law from engaging in certain forms of resource aggregation and political advocacy, they become more conservative in their tactical repertoires (Cress, 1997). Yet despite the growth of the nonprofit sector, there remains little information about how nonprofits represent their constituents externally, in the broader political realm, and whether and how this is influenced by the regulatory environment in which they operate (Berry & Arons, 2003; Marwell, 2004).

Given this, work regarding the relationship of organizations—particularly civic associations—to the political process provides an instructive starting-point for understanding the political possibilities and constraints nonprofits face. Early observations of American society by Alexis de Tocqueville describe a proliferation of associations formed by individuals for numerous purposes, leading de Tocqueville to conclude these organizations were a uniquely democratic response to social problems and thus were necessary to a democracy, forming spaces where individuals could gather, act collectively and accomplish various goals (deTocqueville, 1835). These observations have provided the basis for scholarship on civic organizations (see for example Putnam, 1995, 2000) in America that largely holds they have the potential to foster and promote civic, and, by extension, political engagement

However, much of the literature on associations and civic engagement is largely focused on *voluntary* associations (for example, the Rotary Club or the Elks Lodge), which are quite different from the majority of *nonprofit* organizations, of which CAL-PEP and the SJI are an example. Indeed, “nonprofit” is a relatively elastic term covering a range of organizations in America serving various public purposes, such as health, human services, the arts, culture, foundations and federated fundraising organizations (Berry & Arons, 2003; Hodgkinson & Weitzman, 2001). Community-

based organizations (CBOs) like the SJI and CAL-PEP, however, are smaller non-profit organizations typically organized around and operating in a particular geographical place. Their mission is more often to attract attention to and serve the needs of disadvantaged residents of this area, and there is often a significant amount of community member participation in the daily activities of CBOs.

While voluntary associations have been praised for their capacity to gather individuals and involve them in activities (such as letter writing campaigns, etc) that foster the development of civic skills, scholars (Gronbjerg & Rathgeb-Smith, 2006) have argued that nonprofit organizations are a somewhat different case: in many cases, they are often hierarchical, professionalized, and dependent on large government grants, and, arguably, less conducive spaces for developing civic skills (for example, larger nonprofit organizations like the Red Cross etc). At the same time, many nonprofits—namely those like CAL-PEP and the SJI—were formed from radical social movements, are community-based and gather and involve individuals in their operations in ways that might also develop civic skills and conduct political advocacy and promote political participation.

Yet regardless of whether they are voluntary or nonprofit in structure, scholars such as Theda Skocpol (2003) have contended that civic associations are far more deliberate creations that have grown in tandem with and motivated by the American federal structure⁸⁷. Therefore, one cannot understand the political potential of *any* civic organization (voluntary, nonprofit or otherwise) without considering its relationship to the state and how state actions have fostered their creation and expansion. To illustrate historically, in England, the Reformation and the breakup of the feudal system contributed to the creation of the English Poor Laws of 1601, the first documented

⁸⁷ For example, Skocpol (2003) cites how the PTA—though mythologized as a local creation—was actually a national organization that was established and structured to resemble the US federal structure, and make policy demands at all levels of government.

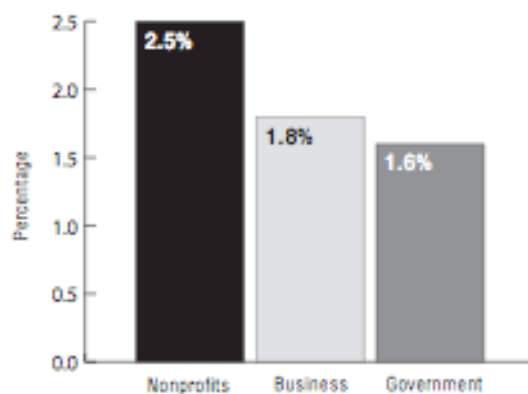
organized response to the plight of the poor by Parliament. The Poor Laws sought to stop begging by the indigent and able-bodied poor who were not deterred by the laws in the local townships; the expectation was that individuals should work and take care of their families needs, and if certain individuals could not do this, the community was obliged to respond and provide at least the minimum resources (funded by property taxes) for them to survive (Block, 2001). The early colonial settlers in America adopted and applied a similar philosophy and community/charity ethos: the early implementation of poor laws in America occurred at the state level and delegated responsibility for looking after the poor to church and county officials, commonly through local, voluntary charitable organizations (Block, 2001).

Throughout industrialization, as immigration increased and cities grew, charitable nonprofit organizations continued to flourish, aided by state incentives. Even with the ascent of the New Deal and Keynesian economic policies, Americans' misgivings about excessive government power limited the scope of government social protections and left ample room for the charitable, voluntary non-profit sector to grow (Salamon, 2003; Sokolowski & Salamon, 1999). Consequently, a variety of social, political and economic changes saw the non-profit sector grow rapidly through the latter half of the 20th century as post-war economic growth increased charitable donations and fuelled the development and expansion of foundations. The Great Society programs of the 1960s that provided money for local community development also facilitated non-profit development in host communities.

Local, community-based nonprofit development began to accelerate throughout the 1980s and 1990s with the rise of neo-liberal politics. As Theodore and Brenner (2002) write, processes of de-regulation, market liberalization, and, most notably, state retrenchment—lynchpins of the neo-liberal policy repertoire-- facilitated the devolution of government support for social services, leading to, they argue, a

“revival of the local” (p.341). Here local arenas were (and are) increasingly viewed as key institutional arenas for wide range of policy experiments and political strategies. As a result, nonprofits have become the preferred service providers in the neo-liberal era, as they are assumed to be more flexible, cost-effective and knowledgeable of local community needs (Berry & Arons, 2003; Salamon, 2001b). Consequently, with neo-liberal devolution, institutional incentives (i.e. grant opportunities) have fueled the growth of the nonprofit sector (O'Neill, 2002). According to Salamon and Sokalowski (1999, p.278), “between 1990 and 1995 the nonprofit sector in the U.S. grew by 20 percent, exceeding the growth rate of the entire economy by a ratio of almost 3:1 (the overall growth rate during this period was about 8 percent)”⁸⁸. This growth is demonstrated further by Table 5.1 “Employment Growth Rates: 1997-2001”, which illustrates employment rates in the nonprofit sector exceeded those in the business and government sectors:

Table 5.1: Employment Growth Rates: 1997-2001



Source: Independent Sector, 2004

⁸⁸ However, they note further (1999, p.278) that “this growth rate was pretty much in line with employment growth in the service sector, which grew faster than the rest of the economy. Since the nonprofit sector is, for the most part, a sub-component of the service sector, its rate of growth can be explained by the growing prominence of services in the U.S. economy.”

Along with the growth of the nonprofit in tandem with government support for it (discussed in Chapter 1), considering and specifying the vectors of political constraint CAL-PEP and the SJI face is usefully framed within a neo-institutional theory of government-nonprofit relations. This theory, advanced by Steven Rathgeb Smith and Kirsten Gronbjerg (2006), links nonprofits and state and societal systems, focusing on ways the institutional environment shapes the nonprofit sector, suggesting that the “prevalence and vitality of nonprofit organizations are largely a product of the political, legal and institutional environment” (p.235). They argue further that this neo-institutional theory contrasts civil society understandings of nonprofits noted above that tend to regard the prevalence and vitality of nonprofits as products of citizen demand and cooperative social networks, with social capital as the independent variable and nonprofit organizations as the dependent variable. And, they add, their theory is also unlike market theories of nonprofits that tend to emphasize citizen demand as the independent variable and nonprofit organizations as the dependent variable (i.e. nonprofits are the outcome of the demands of citizens—often in the minority—which government finds more efficient to meet through a nonprofit). Instead, neo-institutional theory holds that the emergence and activities of a nonprofit represents the choices of individuals shaped by their institutional environment, thus demonstrating a mutual synergism between government and nonprofits (Gronbjerg & Rathgeb-Smith, 2006).

The vectors of political constraint define the particular institutional environment CAL-PEP and the SJI operate in *today* as service providers and political actors. As described in Chapters 1 and 2, the emergence of the HIV/AIDS epidemic shifted many activists (including COYOTE members) into HIV/AIDS prevention work, and funding opportunities from agencies like the Centers for Disease Control (CDC) and state and local health departments that required incorporation as a

nonprofit created major incentives for grassroots activists to incorporate as nonprofits and engage in health service provision. All of this created a context where sex workers (and others involved in early AIDS prevention activities) could make a political choice to shift from activism to the realm of nonprofit health service provision, with its attendant regulations and legal requirements. Today, many nonprofit AIDS service organizations originally formed by AIDS activists (and others), ranging in size from large organizations like Gay Men's Health Crisis in New York, to smaller organizations like CAL-PEP and the SJI, now receive major portions of their funding from various government agencies, directly or indirectly from the CDC. And although many of these community-based nonprofit organizations continue involving the marginalized populations they serve in service delivery, what institutional factors shape their capacity to engage in advocacy *externally*, as organizations, in the broader political realm, especially given their relationship to government through grant agreements?

PART II. The vectors of political constraint: IRC Section & Data Collection

Keeping in mind Rathgeb-Smith and Gronbjerg's (2006) notion that the "prevalence and vitality of nonprofit organizations are largely a product of the political, legal and institutional environment" (p.235), this section attempts to answer this question by discussing generally how the vectors of political constraint--incorporation as a nonprofit under Section 501c3 of the Internal Revenue Code (IRC) and data collection requirements imposed by granting bodies, namely the Centers for Disease Control (CDC)-- potentially constrain the political activities of nonprofits by variously restricting their lobbying and campaign activities, and detracting resources and professionalizing their staffs.

IRC Section 501c3

Section 501c of the IRC lists 26 types of 501c nonprofit organizations, including everything from labor unions (501c5) to cemetery companies (501c15)⁸⁹. The only commonality among these organizations is that they are tax exempt, meaning they pay no taxes on income related to their exempt purposes (Berry & Arons, 2003; Hoyt, 2001). The focus of this discussion, however, is on charitable non-profits, which are regulated under Section 501c3 of the IRC; these particular nonprofits comprise the largest percentage (48 percent) of all 501c nonprofit organizations and are defined as follows:

501c(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. ("Internal Revenue Code", 2007)

What distinguishes these organizations from all other 501c non-profit organizations is that they are the only type of tax-exempt organization that can offer donors a tax

⁸⁹ Other tax exempt organizations include the following: 501(c)(1) Corporations organized under acts of Congress such as Federal Credit Unions; 501(c)(2) Title holding corporations for exempt organizations; 501(c)(4) Various political education organizations; 501(c)(5) Labor Unions and Agriculture; 501(c)(6) Business league and chamber of commerce organizations; 501(c)(7) Recreational club organizations; 501(c)(8) Fraternal beneficiary societies; 501(c)(9) Voluntary Employee Beneficiary Associations; 501(c)(10) Fraternal lodge societies; 501(c)(11) Teachers' retirement fund associations; 501(c)(12) Local Benevolent Life Insurance Associations, Mutual Irrigation and Telephone Companies and like organizations; 501(c)(13) Cemetery companies; 501(c)(14) Credit Unions; 501(c)(15) Mutual insurance companies; 501(c)(16) Corporations organized to finance crop operations; 501(c)(17) Employees' associations; 501(c)(18) Employee-funded pension trusts created before June 25, 1959; 501(c)(19) Veterans' organizations; 501(c)(20) Group legal services plan organizations; 501(c)(21) Black lung benefit trusts; 501(c)(22) Withdrawal liability payment fund; 501(c)(23) Veterans' organizations created before 1880; 501(c)(25) Title-holding corporations for qualified exempt organizations; 501(c)(26) State-sponsored high-risk health coverage organizations; 501(c)(27) State-sponsored workers' compensation reinsurance organizations; 501(c)(28) National railroad retirement investment trust

deduction on their contributions⁹⁰ (Block, 2001; Scrivener, 2001). For an organization to qualify for a tax exemption, they must serve some charitable purpose; they must not distribute their net profits, if any, to individuals who control the organization; they must devote their net earnings to the mission of the group; and they must refrain from devoting any substantial portion of their earnings to political activities (Block, 2001; IRS, 2007a; O'Neill, 2002; Scrivener, 2001)

For government, of course, there is a major incentive to offer a tax exemption to these charitable organizations: many of these organizations perform functions that, in their absence, government would have to provide. Therefore, the argument goes, since there is a moral obligation to provide the services many charitable nonprofits provide (feeding the hungry; providing beds to the homeless, etc), the government should impose as few impediments as possible to their provision and forgo the tax revenues for the services rendered (Scrivener, 2001). However, charitable nonprofits are prohibited from engaging in two types of political activity discussed in turn below: lobbying and election campaigns.

Lobbying

Regarding lobbying, the “[r]egulation of lobbying by non-profits is firmly grounded in the belief that the subsidy [tax exemption] granted through the tax code

⁹⁰ According to Stephen Block (2001), government endorsement of the tax exemption for charitable organizations has been a practice since the Founding. Consistent with English Common laws regarding philanthropy, religious organizations were first spared from the first federal income tax from 1862-1972, and the 1894 Tariff Act was the first major piece of legislation specifying entities subject to tax exemption-- namely charitable, religious, educational, fraternal, and certain savings and insurance organizations (Scrivener, 2001). By 1917, however, the government raised individual income tax rates for the war effort but noticed that following this charitable gifts decreased, so deductions for charitable gifts were increased and amendments to the Revenue Acts until 1950 permanently established tax exemptions for certain organizations. These tax exemptions for 501c organizations were implemented and have endured because of tradition (historically, certain types of charitable organizations were not taxed, so legislators were reluctant to set a precedent by taxing them) and because of their power to obtain and maintain this exemption (examples here include 501c5 organizations, like labor unions and agricultural associations) (IRS, 1980).

gives the government the authority to restrict such behavior (Berry & Arons, 2003, p.51). Prior to 1934, however, there was no specific statutory restriction on the lobbying activities of charities, although early Treasury Regulations (45, art. 17, 1919 ed.) provided that organizations “formed to disseminate controversial or partisan propaganda” were not “educational” within the meaning of the statute (Kindell & Francis-Reilly, 1997). A consequence of this rule was that contributions to these organizations allegedly disseminating propaganda were not tax deductible, and several lawsuits challenged this treatment, most notably *Slee v. Commissioner* (1930)⁹¹(Lunder, 2006). In 1934, however, Congress enacted lobbying limitations through a floor amendment, drafted by the Senate Finance Committee staff, as part of the *Revenue Act*, inserting the portion of section 501c3 that reads “no substantial part of an organization’s activities constitute carrying on propaganda or otherwise attempting to limit legislation” (Kindell & Francis-Reilly, 1997, p.411). The legislative history of this amendment is sparse, but it is widely accepted that it represents a codification of the *Slee* decision and a rejection the Treasury Department’s strict point of view embodied in the 1919 regulation noted above⁹²(Kindell & Francis-Reilly, 1997; Lunder, 2006). The 1934 Act also included a provision restricting charities’ ability to participate in partisan politics, but it was removed in conference out of concern from Members of Congress that it was too broad (Lunder, 2006).

Today, Treasury Regulations (501c3-1c3ii) describe the prohibitions against lobbying by charitable nonprofits:

⁹¹ In this case, the courts denied the tax-exempt status of Margaret Sanger’s American Birth Control League on the grounds that lobbying the legislature for changes to access to birth control constituted a public subsidy for political advocacy and did not necessarily further the organizations political purposes (“*Slee v. Commissioner*”, 1930).

⁹² The only noted objection to the amendment was from Senator David Reed, the ranking minority member and provision’s sponsor, who was dissatisfied with its formulation. He did not see why a “contribution made to the National Economy League should be deductible as if it were a charitable contribution if it is a selfish one made to advance the personals interests of the giver of the money.” (78 Cong. Rec. 5, 861 (1934)).

For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

- (a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- (b) Advocates the adoption or rejection of legislation.

The term legislation, as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

Consequently, a wide range of activities can count as lobbying, including directly contacting government officials with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or seeking to influence the public in a referendum, ballot initiative, constitutional amendment or other related activity. The IRS regards a charitable nonprofit as attempting to influence legislation if the charitable nonprofit engages in grassroots lobbying via appeals to the electorate or general public for the purposes of advocating supporting, opposing or proposing legislation (IRS, 2007a; Lunder, 2006).

Campaign Activity

Regarding campaign activity, in 1954 (then) Senator Lyndon Johnson introduced a floor amendment prohibiting charitable nonprofits from (as stated in Section 501c3, above) “participating in, or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for political office” (Section 501c3). This amendment was enacted a part of the Internal Revenue Code of 1954, and although Senator Johnson’s motives behind the law are unclear, it is suggested (Kindell & Francis-Reilly, 1997) that he proposed it either as a way to get back at an organization that had supported an opponent of his, or because he wished to offer an alternative to another Senator’s proposal to deny tax-exempt status to organizations that made grants to individuals or groups deemed subversive.

Today, prohibitions against political campaign activity by charitable nonprofits are stated in Section 501c3-1c3iii of the Treasury Regulations:

(iii) An organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local.

Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

As the IRS (2007) notes in its guidelines for 501c3 organizations, “The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking by themselves, as individuals”, stating managers and leaders of 501c3 organizations can participate in campaign activity in their own private capacity, but they must keep these private views out of any of their organization’s publications, statements, etc. Part III of this chapter discusses the various ways charitable nonprofits might engage in political activities without compromising their tax-exempt status.

Data collection

What many charitable nonprofits also share, alongside this regulation by the IRS, is a duty to be accountable to their granting organizations. Similar to tax laws, granting agreements between nonprofits and government agencies like the CDC (directly or indirectly, through the state and local health departments) shape the institutional context in which these non-profits operate and act politically. As Rathgeb-Smith and Gronbjerg (2006, p.227) write, “contracting out” to nonprofits allows governments to circumvent complicated and lengthy civil service hiring procedures, which substantially reduces program start-up costs and therefore allows government (at least in theory) to respond quickly to the emergent needs of different groups. However, for nonprofits, Rathgeb-Smith & Gronbjerg (2006) add that managing these contracts can also impose substantial burdens on nonprofits-- particularly those that are smaller and less experienced. This has happened because governments at all levels have moved in

recent years from regularly renewing grant contracts to relying instead on *performance-based* renewal, all of which has required nonprofits to submit not only increasingly high-quality grant proposals, but also engage in extensive program monitoring and reporting activities, i.e. data collection (Rathgeb-Smith & Gronbjerg, 2006). In light of this, this section looks particularly at requirements for data collection developed by the CDC that charitable nonprofit health service organizations like CAL-PEP and the SJI must fulfill, discussing how they constrain these organizations' capacity for political advocacy by detracting resources from the organization.

Since the CDC has become the major funder for HIV/AIDS prevention activities nation-wide, it also dictates how these organizations will account for their work, and, as a result, how they spend most of their time. As Bailey (1991) writes, in 1984 the CDC initiated its first attempt to collect data from community organizations in the gay community to learn about their HIV prevention programs and determine which groups might be at risk for HIV/AIDS and how best to reach them. In nine high incidence areas, the CDC assessed HIV/AIDS-related educational efforts, finding that these community-based prevention efforts directed at (and run by) groups at risk (such as gay men), that were appropriate to their lifestyle, language, and environment were more effective⁹³. The CDC thus began its community-based HIV prevention strategy in 1985 by announcing that funds were available with two goals: to forge collaboration between public health entities and community organizations; and, to support the development of local, community-based HIV prevention, education and testing interventions that, if successful, could be transferred to other localities (called "demonstration projects") (M. Bailey, 1991).

⁹³ At this time, the "San Francisco Model" as it became known, was identified as the ideal model for local HIV prevention efforts, as it utilized local health departments for planning and evaluation, medical experts for assuring the validity of scientific information, and (gay) community groups for delivery services and providing advice on messaging and information (Shadle & Ford, 1989; Silverman, 1992).

However, since their inception, these CDC-funded community-based AIDS prevention organizations were not given free reign over program development and implementation, and accountability requirements have grown since federal funding for the *Ryan White Comprehensive AIDS Resources Emergency Act* (the CARE Act)-- which funds HIV/AIDS prevention programs serving the uninsured, underinsured, women and minorities-- failed to increase at adequate rates under the Bush II Administration (Boschert, 2006). According to Robert Buchanan and William Hatcher (2007, p.2013), while CARE Act funding under President Clinton more than doubled from the first to sixth federal budgets (from \$579 million to \$1.411 billion), under President Bush, total CARE Act funding under its first six federal budgets increased from \$1.91 billion to \$2.113 billion, an increase of only 11 percent⁹⁴.

While funding for HIV service provision has decreased, government monitoring of HIV prevention programs has increased. Since the CDC has to be accountable to Congress for the money it spends, it states “Evaluation is an essential component of comprehensive HIV prevention... All programs funded by CDC are required to develop evaluation plans and activities, establish performance indicators, and target activities to those persons living with HIV/AIDS and those at highest risk for HIV acquisition and transmission” (CDC, 2007c, p.6). Evaluation activities are conducted mainly through the CDC’s Program Evaluation and Research Branch (PERB), which falls under the DHAP and “evaluates the processes, outcomes, and impacts of CDC HIV/AIDS prevention programs, activities, and policies for their improvement and accountability; develops and enhances evaluation methods and systems; and serves as a resource for building evaluation capacity” (CDC, 2002, p.1).

⁹⁴ Buchanan and Hatcher also note that for these groups, Medicaid is often not an option. HIV infection does not automatically qualify a person as meeting the disability status for Medicaid eligibility, so most low income people with HIV do not become eligible for Medicaid until they become disabled by AIDS.

But reflecting the localized way in which HIV/AIDS prevention programs have grown throughout the United States, the evaluation process has never been standardized or consistent. According to a PERB official (Telephone Interview, 12 December 2007), evaluation requirements for local HIV/AIDS prevention programs have generally varied by the grant and contract agreement. However, as the number of community-based prevention programs expanded across the nation, the CDC's capacity (as a central, federal agency) to monitor them has been challenged. The PERB official stated that for many years the CDC collected data about the work it supported through interim reports made by grantees to project officers. But, according to a CDC report (Thomas, Smith, & Wright-DeAgüero, 2006), the variety of funded programs grew over time and across a range of geographical areas, meaning the CDC's ability to monitor and evaluate grantees' performance was compromised by a "lack of standardized set of HIV prevention variables and adequate data collection systems for managing and reporting such data" (p.75). As a result, they noted, since grantees typically developed their own data collection systems, programs and processes were measured differently and data reported to the CDC was often incomplete, of dubious quality, and hence programs were not comparable across agencies or program areas.

Reflecting a broader federal interest in the activities of local, community-based nonprofit organizations, in 2004 the CDC "respond[ed] to the need for a more efficient and effective means to assess HIV prevention programs..." (Thomas, Smith, & Wright-DeAgüero, 2006, p.75) by creating program evaluation practices at the federal level that have increased data collection requirements for charitable nonprofits conducting HIV prevention work locally. Before discussing the specific response (namely the CDC's Program Evaluation and Monitoring System [PEMS], which both CAL-PEP and the SJI have engaged with to varying degrees), it is important to first

discuss its origins. According to the PERB official (Telephone Interview, 12 December 2007), “We [at the CDC] are interested in improving our own work as well, but the CDC has been hounded, especially during the current [now former Bush] Administration by Congresspeople who just don’t like what we do and try to interfere with the programs we fund and our presentations at meetings.” In one incidence, reported and documented by the Community HIV/AIDS Mobilization Project (CHAMP)⁹⁵, the Office of Management and Budget and the DHHS sent auditors to look at the CDC’s HIV prevention efforts in the DHAP. Although the auditors did not acknowledge that the DHAP’s budget *decreased* since 2000, they were curious about what the CDC had to show for their \$700 million HIV prevention budget, especially since the number of infected individuals continues to grow (Gilden, 2005, p.3). Certainly, these questions are valid; however, CDC-funded initiatives cannot be expected to single-handedly decrease the spread of HIV AIDS⁹⁶.

PEMS

In response to Congressional concerns about CDC grantee outcomes, the CDC developed a Program Evaluation and Monitoring System (PEMS), “a national data reporting system developed to strengthen the capacity to monitor and evaluate CDC-funded HIV prevention programs administered by the DHAP” that includes a

⁹⁵ CHAMP is a national initiative which seeks to build a community-based movement to challenge and develop HIV/AIDS policies by bringing together community activists, persons with AIDS, and researchers, among others. See www.champnetwork.org

⁹⁶ However, the Bush Administration’s concerns about program spending and outcomes are notable because they have not translated to CDC-funded (and other DHHS-funded) HIV/AIDS prevention efforts that mirror the Administration’s moral stance, namely abstinence-only sex education. According to a report by the Union of Concerned Scientists (UCS, 2004), despite the fact that the American Medical Association, the American Academy of Pediatrics, the American Public Health Association, and the American College of Obstetricians and Gynecologists all support comprehensive sex education programs that encourage abstinence while also providing adolescents with information on how to protect themselves against sexually transmitted diseases, the Bush administration has distorted science-based performance measures to test whether abstinence-only programs were proving effective. In place of collecting data on such established measures of program effectiveness as the number of pregnancies among female program participants, the Bush administration has required the CDC to track only participants’ program attendance and attitudes about sexual intercourse (UCS, 2004).

standardized set of HIV data prevention variables, web-based software for the data entry and management, assistance with planning and conducting evaluation, training for data collection and evaluation, and support services for the software implementation (Thomas, Smith, & Wright-DeAgüero, 2006, p.75).

According to the CDC, they plan to collect the following data from CDC-funded HIV prevention programs with PEMS: agency information (location, staffing levels, etc); program plan details (detailing the HIV prevention and education intervention, e.g. condom distribution to street-based populations); client demographics; referral outcomes (e.g. did the client with the positive HIV test see the doctor?); HIV test results; partner elicitation and notification; client use of services; behavioral outcomes (e.g. did clients increase condom use over time?); and community planning priority populations and interventions (what populations were identified as a priority for the intervention and what will be done to reach them). The CDC website notes further that

“...These data will allow more comprehensive reporting of HIV prevention activities, fiscal information, and community planning information. These data will help HIV prevention stakeholders examine program fidelity, monitor use of key program services and behavioral outcomes, and calculate and report the program performance indicators. PEMS will help CDC monitor, evaluate, and coordinate HIV prevention programs and support the rapid set-up of special studies and evaluation projects.”
(CDC, 2007b)

Collecting this data for PEMS would be no simple matter, however, for charitable nonprofits in the field of HIV/AIDS prevention. In general, the PEMS manual ran 125 pages, and the data set book, which listed all the variables required for collection by the CDC-funded agency is 228 pages in length. Of these variables (see CDC, 2005 for the complete data set), the first set (Tables A-D, N, P, S, E1, E2, and F), which ask for the grantees name, contact information, program name, and budget information, are quite straightforward and only have to be entered once. Tables G1-3, H, and I,

however, have to be filled out for every CDC-funded client-staff interaction and are very extensive. Table G1 asks for 18 types of demographic information (first and last name, age, date of birth, physical description, relationship status, etc); G2 asks for over 10 risk factors to determine the clients' risk profile (is she or he a sex worker, IV drug user, self-reported HIV status, etc); G3 asks about the client's confirmed HIV status (date confirmed, type of test taken, etc); H asks for data about each service provider-client intervention, such as intended number of sessions, where and when the sessions held, HIV prevention information provided in the session, etc; and table I asks about the client's HIV risk behavior details (which are supposed to be collected at the first encounter, final encounter, and intermittently), such as number of partners, status of partners, etc⁹⁷. Should the client also be part of another CDC-funded intervention run by the organization, this data would have to be collected again.

Concerned that PEMS would increase data collection duties and costs, in December 2005 and January 2006 CHAMP contacted charitable nonprofits and health departments in 27 states regarding their initial experiences with PEMS (S. Barry, 2006b). Overall, CHAMP agreed that all charitable nonprofits wanted to improve service provision and be accountable for their funds, but the CDC's effort to mix measuring the quantity and type of prevention services delivered, combined with the collection of extremely personal client information, was far too extreme and complex for most grantees to complete (Gilden, 2005). As well, as noted previously, many organizations already collected various forms of data for the CDC (through program officers) *and* for various foundations and state and local health departments (depending on their grants). In light of the concerns raised by nonprofits through

⁹⁷ The PEMS data set also has nine other tables that must be filled out based on the intervention. For example, Table X1 must be completed for each client who receives and HIV test as part of the intervention, which requires information about the type of test (rapid, oral, blood, etc), when it was done and the result. Table X3 collects data about attempts to locate clients, including how the provider tried to locate the client, when etc.

CHAMP, as well as various technical difficulties, PEMS has yet to be fully implemented⁹⁸.

However, PEMS provides a clear case of how data collection requirements are increasing in the era of neo-liberal nonprofit contracting, and thus have the potential to (further) constrain nonprofits working in the field of HIV/AIDS prevention. Increased data collection requirements detract resources from the nonprofit organizations delivering services, as extra funds are not often provided to meet the new data collection requirements. Although the CDC states (Thomas, Smith, & Wright-DeAgüero, 2006) that PEMS will be brought to CDC funded agencies without charge, and “for agencies already collecting data...the PEMS data and evaluation requirements can be accommodated into existing management and data collection processes” (p.78), they do acknowledge that those organizations with limited program management and data collection capacities might see PEMS as a “major challenge” (p.78), especially since *the CDC will not provide grantees additional funding for this data collection*.

These costs could be extensive: altogether is estimated that collecting data for the PEMS tables outlined above would add no less than 20 minutes to any HIV/AIDS prevention intervention, not to mention the time spent afterwards entering it into the database (Feldman, 2006, p.1). So, for example, an intervention where an outreach worker hands a condom to an individual on the street and discusses his or her risks for HIV/AIDS might take ten minutes. With PEMS, 20 more minutes are added collecting

⁹⁸ On this matter, the CDC website reads as follows: “PEMS is to be used by health departments and CBOs funded through CDC HIV prevention cooperative agreements... PEMS software was first released in the fall of 2004 to 42 health departments and 27 CBOs. It allows grantees to collect agency, community planning, and program plan data. The next release, scheduled for fall 2005, will enable grantees to enter client-level data and report to CDC. By the end of 2005, PEMS will be available to over 200 agencies nationwide. PEMS will ensure that CDC receives standardized, accurate, and thorough program data from health department and CBO grantees.” (CDC, 2007b)

data *about* this intervention. Multiply this extra 20-minute expenditure across multiple interventions, and hours can be added to the workload. Indeed, PEMS estimates a paperwork burden of 22 hours per month, and the National Minority AIDS Council (NMAC) calculated that for a nonprofit with an annual budget of \$200,000, 22 hours, times 12 months multiplied by the minimum wage (\$5.15) equals \$1359.60 per month. Adding fringe benefits (SSI, insurance, unemployment, etc), in total, PEMS could increase the organization's expenses by \$1658.71 (or more, if more hours are required and wages are higher) per year. This amounts to a "compliance burden" of nearly 1 percent per year. NMAC stated further that since most AIDS service nonprofits do not have a "profit margin" of more than 3 or 5 percent of revenue, this additional cost could claim anywhere between 20 and 33 percent of this profit revenue (Dozier, 2004, p.1).

For nonprofits receiving CDC funding, the resources to administer programs like PEMS must either come from their CDC grants for HIV prevention services, or (since maintaining service levels is an important priority) from other sources of funding organizations might have, such as donations or foundation grants. These non-government sources of funding are often less restrictive and therefore can be used for, among other things, political or advocacy work. However, they are more likely to be used for data collection requirements, which help them maintain the CDC grants that often make up the bulk of their funding.

And so as organizational budgets have grown leaner and state agencies have increased pressure on them to achieve various service delivery and data collection targets, these organizations have felt pressure to train and professionalize their staffs (Evetts, 2003). Certainly, for organizations to implement PEMS their staff must have higher levels of skill and training to negotiate the manual and required variable collection. This more professionalized and research-oriented data collection practice,

in turn, has the potential to diminish the rapport with the populations PEMS-impacted nonprofits serve (Gilden, 2005) by requiring organizations to hire and train more skilled outreach workers (who might have less of a connection to the communities they serve). All of this has raised concerns (CHAMP, 2005; Feldman, 2006) that in becoming so form-driven, PEMS actually resembles behavioral research more than simple program monitoring (collecting the information *for PEMS* becomes the intervention).

Given the complexity of PEMS and the resistance to it (described above) by charitable nonprofits, its full implementation across CDC-funded agencies has been repeatedly delayed (S. Barry, 2006a). According to the PERB official (Interview, 12 December 2007), starting January 1, 2008, the CDC began collecting a subset of PEMS variables—agency type, budget, plans for programs, etc—which are one-time data entry items. Counseling and testing data will also have to be collected and reported to the CDC through PEMS starting January 2008 and submitted by the middle of year because grant agreements currently indicate data requirements are due every quarter. When charitable nonprofits must begin reporting client-level data (the bulk of the data) through PEMS is yet to be determined. According to the PERB official (Telephone Interview, 12 December 2007), the number of client-level variables was recently reduced by half; those that remain are (for the most part) already collected by CBOs and health departments. The PERB official estimated that “Maybe one-third of the original variable list is now required from community-based nonprofit organizations. Health departments have a few more reporting requirements, but they are very much reduced overall. We don’t think it will be burdensome for agency that knows how to use computer.” Later chapters will therefore consider how burdensome CAL-PEP and the SJI’s experience with PEMS (as well as with other

funding agencies' data requirements) has been to date, and whether and how this has detracted resources and professionalized their staff.

PART III: Circumventing constraints?

In general, nonprofits have emerged and expanded in tandem with increased state support for their efforts. As such, their capacity to mobilize and advocate for the communities they serve is very much shaped by various conditions imposed on them by government agencies. Indeed, section 501c3 of the IRC and data collection requirements operate as two potential restrictions on their capacity to mobilize the populations they serve, advocate for their constituents, and challenge policy. So what might charitable nonprofits born of protest movements (like CAL-PEP and the SJI) do to continue with their advocacy efforts? Similar to the previous sections, the following pages will discuss generally the benefits and disadvantages of various strategies charitable nonprofits might employ (as outlined in the small but growing literature on the nonprofit sector and political activity) within the nonprofit institutional context to circumvent the vectors of political constraint and continue their advocacy efforts. These strategies include the “flip side” of professionalization, engagement in electoral politics, and permitted lobbying through the H-election.

The “flip side” of professionalization

The previous pages discussed how grassroots nonprofits (like CAL-PEP and the SJI) will require staff members to have higher skill levels in the face of increasingly complex and costly data collection requirements. In essence, data collection requirements potentially “professionalize” these organizations. But while this might be the case, it is also important to consider how “professionalization” can be used to help these organizations continue making radical political statements. Namely, as noted in Chapter One, professionalization can be used strategically by nonprofits to empower members of the communities they serve that are typically *blamed* for the spread of

HIV/AIDS by involving them in health service delivery and organizational operations.

Generally, the concept of “professionalization” is not associated with inclusion (or radical/oppositional politics, for that matter). As scholars (see for example Evetts, 2003) have documented, professionalization has operated in many respects as a control mechanism by closely regulating the behaviors and actions of individuals⁹⁹. Consequently, as a means of inclusion, professionalization must be regarded with caution. However, professionalization can also operate as a means of *inclusion* for community-based nonprofits like CAL-PEP and the SJI by allowing them to *hire* marginalized persons often blamed for the spread of HIV/AIDS to work within their organizations. This involvement is possible because of *how* these persons are hired--as trained, credentialed AIDS service providers, as opposed to as “prostitutes” (or “drug users,” to name another example)¹⁰⁰. This hiring practice makes a radical political statement in and of itself, especially in organizations that hire sex workers in the United States (the only western industrialized nation that continues to criminalize prostitution). Moreover, once involved in these organizations (even if it is mainly in this credentialed capacity), these marginalized populations (sex workers and others) are, undeniably, provided with a sense of community and exposure to the discourse

⁹⁹ As noted in Chapter One, many medical professionals have thus operated in an exclusionary fashion, using their credentials to exclude various individuals/groups from their field of service provision and, subsequently, from being knowledgeable and active participants in their own health care. The women’s health clinics described in Chapter One provided one such example of a community-based response to and rejection of this exclusion (Morgen, 1990, 1995, 2002; Ruzek & Becker, 1999; Ruzek, Clarke, & Olesen, 1997).

¹⁰⁰ Today, participation in AIDS prevention and education outreach often requires state certification and training. For example, in California (where CAL-PEP and the SJI are located), the Statewide Treatment and Education Program (CSTEP), and its predecessor, the Treatment Education Certification Program (TECP), provides training on medical and behavioral aspects of HIV to non-medical service providers through a four-part program (Wingfield, Leahy, & Dalton, 2002). “Training A”, a two-day program, introduces basic concepts and terms related to HIV/AIDS in preparation for “Training B”, a three-day session with a certification component geared towards persons in daily contact with HIV-positive individuals; this and covers the basics of HIV treatment education. “Training C”, geared towards HIV treatment advocates (who help individuals navigate and negotiate the health care system regarding HIV) and educators, is a five-day program focusing on advanced treatment issues. Finally, “Training D” is a series of trainings covering new and emerging HIV treatment issues.

and mission of organizations supportive of broader issues of prostitutes rights (among others), all of which might motivate their own individual political involvement.

As well, hiring from marginalized communities in this professional capacity can promote political activity by bringing previously excluded groups into the realm of AIDS service politics. Indeed, the immediacy of the AIDS epidemic forced AIDS service nonprofits to prioritize service provision over broader political activism against homophobia, sexism and universal health care (among other relevant issues). And to obtain and continue funding this, many of these organizations (such as GMHC, described in Chapter 1), succumbed to pressures to distance themselves from their grassroots in order to attain “credibility” and “respectability” by presenting themselves as professional service agencies serving the public. However, these efforts (and compromises) helped place AIDS on the radar of major governmental major health service organizations and brought a previously excluded and stigmatized group—gay men—into the realm of not only health service provision, but also health service *politics*. Similarly, for sex workers, it was their gathering as persons concerned with *HIV prevention* that has brought them into partnerships with state agencies such as local health departments and the CDC.

Engagement in electoral politics

Electoral politics also provide charitable nonprofits with an arena to advocate for issues that are important to their community, even though charitable nonprofits, as described earlier, are limited here. For these organizations, the IRS indicates that approved election-related activities must be largely non-partisan. Such activities might include creating or distributing a voter guide that does not indicate a preference towards a particular candidate; conducting unbiased and non-partisan public forums or meetings where candidates from both sides can speak or debate; holding voter registration and get-out-the-vote drives that do not indicate a preference for a

particular candidate; and selling or renting facilities or goods to a political campaign as long as this sale is not biased towards a party or candidate and is also available to the general public (IRS, 2007a). Under IRC Section 4995, any expenditure made for these campaign activities may also be subject to an excise tax if it is determined to be in violation of these rules, or, if severe enough, the organization could lose its tax exempt status altogether¹⁰¹.

Although section 501c3 quite explicitly prohibits charitable nonprofits from supporting particular candidates or causes directly, strategies for circumventing this (and therefore supporting a candidate or cause) do exist. Nicole Marwell's study (2004) considers the political campaign possibilities for charitable nonprofits. She argues broadly that these organizations are in a structural position to fill the gap left by defunct political party organizations in poor neighborhoods because they work so closely with members of the community, especially since resources under their control have expanded with welfare state privatization. In essence, she proposes a system of exchange where the charitable nonprofit serves as the fulcrum through which patronage resources (i.e. grants and contracts) are distributed and clients of the charitable nonprofit are organized as voters. Here, by engaging in electoral organizing and producing reliable voting constituencies (charitable nonprofit clients) through permitted campaign activities (like get-out-the-vote drives, and educating clients in general about where the money for the charitable nonprofit comes from), charitable nonprofits can (indirectly) pressure these political actors to make favorable contract allocations.

¹⁰¹ Lunder notes that if the expenditure is small and the violation is deemed unintentional, the tax could be issues in lieu of loss of exempt status. The tax, if issued, will equal 10 percent of the expenditure, and another 2.5 percent tax on the expenditure may be imposed on the organization's manager (up to \$5,000). If the expenditure is not recovered and timely measures are not taken to correct the mistake, an additional 100 percent tax on the expenditure will be levied, and an additional tax equal to 50 percent of the expenditure may also be levied on the manager, limited to \$10,000 (IRS FS-2006-17, p.7).

Given that government contracting to nonprofits for health and other social service delivery is a reality in the neo-liberal era, Marwell's proposal is very pragmatic; however, it is not necessarily a feasible political action for all charitable nonprofits. Many charitable nonprofits do not want to draw IRS attention for appearing to participate in unacceptable campaign activity, especially since the IRS has recently heightened its scrutiny of political activity by charitable nonprofits. The 2006 study "Political Activities Compliance Initiative" (IRS, 2006b) found that although charities are precluded from intervening in political campaigns, "the IRS has seen a growth in the number and variety of allegations of such behavior by 501c3 organizations during elections cycles" (p.2). In response, the IRS took a two-part approach, conducting an educational campaign to inform charities about the regulations of political activities and about the "fast-track process" the IRS developed to evaluate reports and allegations of potential prohibited political activity. Of the 132 organizations included in the study, only three lost their tax-exempt status, and 55 received letters of warning. Overall, the study noted the following major violations by charities, including churches¹⁰²: distributing voting materials encouraging constituents to vote for a preferred candidate; criticizing or supporting a candidate through a website or linked website; disseminating improper voter guides or candidate ratings; placing signs on the property in support of a particular candidate; giving improperly preferential treatment to candidates speaking at events; and, making cash contributions to a candidate's political campaign. While these violations might seem obvious or avoidable, this investigative action by the IRS was to alarm charitable nonprofits their activities were being monitored closely, which could severely deter any campaign activity on their part (including that of the legal variety Marwell describes).

¹⁰² Fewer than half the organizations investigated were churches. All of the church cases went through the specific procedures of IRC section 7611, which require a church tax inquiry prior to the opening of a church tax examination.

Permitted lobbying

Permitted participation in electoral politics is not the only way charitable nonprofits might circumvent the vectors of political constraint. As the following pages describe, charitable nonprofits can employ various political advocacy strategies without compromising their nonprofit status or data collection duties. The most direct strategy, which is possible for well-funded charitable nonprofits, is to create separate advocacy organizations under section 501c4 of the IRC. For example, Planned Parenthood clinics (or “affiliate organizations”) are registered under section 501c3 (with its attendant restrictions on political activity) and their focus is on offering reproductive health services, whereas the Planned Parenthood Action Fund is registered under section 501c4, which allows it to “[e]ngage in educational and electoral activity including public education campaigns, grassroots organizing and legislative activity” (www.ppaction.org).

For charitable nonprofits that do not have the resources to create a 501c4 organization (and for all 501c organizations in general), however, they may engage instead in public policy advocacy if it is done in a largely educational and unbiased manner. Such permitted activities might include (but are not limited to) providing testimony on an issue in response to a request a legislative body; contacting executive, judicial and administrative bodies on matters not related to legislation; conducting, publishing and disseminating non-partisan issue research and analysis; discussing broad social issues as long as specific legislation is not discussed; and contacting legislative bodies about legislation relating to the organization’s existence (Internal Revenue Service, 2007; Lunder, 2006).

However, the most direct, inexpensive (and risk-free) strategy for nonprofits of any size to engage in policy advocacy is to make the “H-election” under section 501h of the IRC. Enacted in 1976, as part of the Tax Reform Act (also known as the “Lobby

Law”), Congress enacted the provision IRC 501h to allow electing organizations to measure their lobbying activities against the numerical limits established by the coordinating taxing provision IRC 4911 (specified below)¹⁰³. Section 501h and Section 4911 of the IRC (described below) were passed largely in response to the growth of the non-profit sector and increasing public criticism of the lobbying limitation, namely that these organizations provided services but had no say in the policy process¹⁰⁴.

But it took nearly 14 years to complete the regulations needed to implement the provisions of IRC 501h and 4911, and the reasons for this delay have never been fully explained by anyone, including the IRS (Berry & Arons, 2003). There was little pressure on the IRS to do anything, especially since a major Supreme Court case in 1983, *Regan v. Taxation without Representation*, ruled that the limits on lobbying by charitable nonprofits were constitutional and did not deny free speech rights¹⁰⁵.

¹⁰³ Also enacted was IRC 504, which prevents organizations denied 501(c)(3) status because of excessive expenditures for lobbying under IRC 4911 from subsequently qualifying under IRC 501(c)(4) for tax exempt status (IRS, 1980; Kindell & Francis-Reilly, 1997).

¹⁰⁴ In 1973, in response to these concerns, John D. Rockefeller and friends funded business leader John H. Filer to chair The Filer Commission, which reported on American philanthropy. The final report, “Giving in America” was critical of the limitations on legislative activities by charitable nonprofits, and this was also considered the impetus for passing the H election (Kindell & Francis-Reilly, 1997). The Joint Committee on Taxation, in its general explanation of the Tax Reform Act also concurred, stating that since 1934, “neither the Treasury regulations nor court decisions gave enough detailed meaning to the statutory language to permit most charitable organizations to know approximately where the limits were... The Act is designed to set relatively specific expenditure limits to replace uncertain standards” (1976).

¹⁰⁵ According to the Supreme Court’s case summary, “Taxation With Representation of Washington (TWR) is a nonprofit corporation organized to promote its view of the “public interest” in the area of federal taxation; it was formed to take over the operation of two other nonprofit organizations, one of which had tax-exempt status under § 501(c)(3) and the other under § 501(c)(4). The Internal Revenue Service denied TWR’s application for tax-exempt status under § 501(c)(3) because it appeared that a substantial part of TWR’s activities would consist of attempting to influence legislation. TWR then brought suit in Federal District Court against the Commissioner of Internal Revenue, the Secretary of the Treasury, and the United States, claiming that § 501(c)(3)’s prohibition against substantial lobbying is unconstitutional under the First Amendment by imposing an “unconstitutional burden” on the receipt of tax-deductible contributions, and is also unconstitutional under the equal protection component of the Fifth Amendment’s Due Process Clause because the Code permits taxpayers to deduct contributions to veterans’ organizations that qualify for tax exemption under § 501(c)(19). The District Court granted summary judgment for the defendants, but the Court of Appeals reversed, holding that § 501(c)(3) does not violate the First Amendment, but does violate the Fifth Amendment.” (“Regan v. Taxation without Representation”, 1983)

However, when the IRS finally issued the regulations in 1986, controversy ensued. The nonprofit community was effectively mobilized under the umbrella organization The Independent Sector (now the Center for Lobbying in the Public Interest [CLPI]), sending tens of thousands of letters to the IRS in protest that regulations were overly restrictive and would have a “chilling effect” on charities’ involvement in the policy process, namely because certain kinds of communications were defined as grassroots lobbying (Berry & Arons, 2003; Kindell & Francis-Reilly, 1997). House Ways and Means chairman Dan Rostenkowski also requested the proposed regulations be withdrawn, representing the view from many members of Congress that they were too ambiguous (Kindell & Francis-Reilly, 1997). While the IRS did not withdraw the requirements, it publicly stated in an information release IR-87-49 (April 9, 1987) that it would reconsider key portions of the regulations (i.e. section 4911) and held two days of public consultations in 1987. The IRS established the Commissioner’s Exempt Organization’s Advisory Group, ultimately issuing a set of regulations published in 1990 that were highly satisfactory to nonprofits (Berry & Arons, 2003; Kindell & Francis-Reilly, 1997; Smucker, 1999).

Today, making the “H election” under section 501h of the IRC represents a major gain for nonprofits because, as described below, it provides institutional guidelines for charitable nonprofits to conduct advocacy on behalf of their constituents in the political area by helping them avoid the ambiguities inherent in the “no substantial part” test ¹⁰⁶(although, as elaborated below, few do make this election).

Section 501h “Expenditures by public charities to influence legislation”, states

¹⁰⁶ When a charitable nonprofit organization does not make the H-election and the IRS suspects it is engaging in a prohibited lobbying activity, the IRS determines whether they have conducted a substantial amount of lobbying based on the facts of each case. Although case law suggests that “no substantial part” of the organization’s expenditures for lobbying (i.e. the amount the organization can spend without penalty) is between 5 and 20 percent of the organization’s expenditures, there is no clear line or test. Instead, the determination is made by looking at the broad context of the purpose and activities, such as how important lobbying is to the organization’s purpose, the amount spent on the

(1) General rule

In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally-- (A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or (B) makes grass roots expenditures in excess of the grassroots ceiling amount for such organization for each taxable year.

(2) Definition: For purposes of this subsection--

(A) Lobbying expenditures: The term ``lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount: The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grassroots expenditures: The term ``grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount: The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies: This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3)

To make the H election, all a 501c3 organization is required to do is sign and submit the one-page IRS Form 5768, the “Election/Revocation of Election by an Eligible Section 501c3 Organizations to Make Expenditures to Influence Legislation”.

Section 4911 “Tax on excess expenditures to influence legislation” specifies the lobbying and grassroots expenditures and for H-electing organizations, and is summarized as follows in Table 5.2, “IRC Section 4911: Lobbying Allowances”:

alleged lobbying activity, etc. Should a non-H electing charitable nonprofit be found guilty of lobbying and lose its tax exempt status, it is subject to a 5 percent excise tax on the lobbying expenditures (Lunder, 2006).

Table 5.2: IRC Section 4911: Lobbying Allowances

If the tax-exempt purpose expenditures of the organization are	Then the total direct lobbying expenditure amounts allowed are	Then the total grassroots lobbying expenditures allowed are
Up to \$500,000	20% of exempt purpose expenditures up to \$100,000	¼ of total direct lobbying expenditure ceiling
\$500,000- \$1 million	\$100,000 + 15% of excess over \$500,000	\$35,000 + 3.75% of excess over \$500,000
\$1million - \$1.5 million	\$175,000 + 10% of excess over \$1 million	\$43,750 + 2.5% of excess over \$1 million
\$1.5 million - \$17 million	\$225,000 + 5% of excess over \$1.5 million	\$56,350 + 1.25% of excess over \$1.5 million
Over \$17 million	\$1 million	\$250,000

Source: Title 26 IRC Subtitle D, Chapter 41, Section 4911

If expenditures exceed the allowable amounts for both direct and grassroots lobbying, an excise tax will be imposed on excess lobbying expenditures, and if lobbying expenditures exceed both permitted and total lobbying and grassroots amounts, the IRC excise tax is imposed on whatever excess (for direct or grassroots lobbying) is greater.

Although the H election provides an opportunity for charitable nonprofits to circumvent the restrictions on their political advocacy activities, only 2.5 percent of all charitable nonprofits filed with the IRS chose to make the H election (Berry & Arons, 2003, p.57). Understanding the disincentives at play that keep charitable nonprofits from making this election is important to consider because lobbying is a reality of the American political system: groups and constituencies engaged in political activities affect what public officials hear, which in turn contributes to what gets done in the legislative arena (Reid, 1999).

Berry and Arons (2003) provide one of the only (and most current) studies of how lobbying laws impact charitable nonprofit's capacities for political advocacy. As part of their study, Berry and Arons (2003) also compared the political activities of charitable nonprofit service providers who made the H election with those that did not (neither group surveyed had more or less reason to lobby government, as both groups

received similar government funding). They found that non-H electors knew less about and did less lobbying and advocacy. As a consequence, those receiving services from H electors received more representation in the political process and benefited from a politically astute leadership committed to changing the system for the better. However, this advocacy was not without restraint.

Given the apparent benefits to and gains made by H-electing charitable nonprofits, questions arise as to why more charitable nonprofits do not make this election. Since making the H-election is a political choice, the first factor preventing many charitable nonprofits from doing this is a lack of knowledge about their options. In Berry & Arons' study (2003, p.59), only 54% of nonprofits surveyed knew they could make the H election, and only 32% knew they could opt for the H-election and lobby even if they received federal grants¹⁰⁷. Barry and Arons note, however, that this ignorance is understandable: government relations are commonly an afterthought in non-profit design, and the H-election is not even mentioned when an organization registers as a charitable nonprofit through IRS Form 990. Furthermore, they add, since the IRS has issued such an "illogical patchwork of policies" (2003, p.53)-- communicated through a range of statutory provisions, regulations, OMB circulars and IRS rulings-- it is a wonder even 2.5 percent of charitable nonprofits have made the H election.

The second factor preventing most charitable nonprofits from making the H-election is that do not want draw the IRS's attention and trigger an audit (DiConsiglio, 2003; Smucker, 1999). This belief is very understandable, especially for organizations serving politically unpopular constituencies (like sex workers). However, the IRS has stated clearly that the H election does not provide the basis for initiating an audit, and

¹⁰⁷ In this case, they could use other non-federal monies (such as foundation grants and individual donations) for lobbying, if these other sources permitted it.

that they in fact encourage all charitable nonprofits to make this election because it clearly enumerates what they can spend for lobbying activities (IRS, 2000)

A third major deterrent to the H election is a lack “lobby-able” resources: many charitable nonprofits receive grants from federal agencies, and although the IRS states that it is not a matter of federal tax law, federal grants cannot be earmarked for lobbying unless they are authorized to do so by the granting agency (IRS, 2000). Charitable nonprofits like CAL-PEP and the SJI receive the majority of their funding from the CDC, directly or through grants to state and local health departments that subcontract with them. Grant agreements directly with the CDC strictly limit any political or lobbying activity by the recipient nonprofit. According to the CDC’s cooperative agreement U65/CCU923903-02 (CDC, 2004) for the CDC and organization conducting HIV/AIDS prevention activities, a major qualification for these grants is stated as follows:

Does your community-based organization have a valid Internal Revenue Service (IRS) 501(c) (3) tax-exempt status or state proof of incorporation as a non-profit organization? If you answer yes, you must attach a copy of the letter from the IRS or a copy of your state proof of incorporation. If you answer no, you are not eligible to apply for funding under this program announcement.

As noted above, an organization incorporated under section 501c3 (i.e.. as a charitable nonprofit) is automatically prohibited from most lobbying and campaign activities. Furthermore, the grant agreement states that CBOs must also stating the CBO must also

Not be a 501(c) (4) organization. Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, or loan.

Federal (and other government) agency grants like this comprise a large portion of the budgets of many charitable nonprofits’ in the health service sector (this exact grant provides approximately 80 percent of CAL-PEP’s funding, for example). As a result, these organizations often have little in the way of “unrestricted” funds from other

sources (foundations, individual donations, etc) that can be used at the organization's discretion for activities like lobbying. Indeed, smaller nonprofits can reduce costs and lobby inexpensively under the H-election by, for example, including advocacy and lobbying messages in emails, writing letters to a legislator, or asking questions at town hall meetings (DiConsiglio, 2003). But even these activities take time and effort from service provision, particularly in nonprofits with small staffs.

Conclusion

The decline of the radical social movements of the late 1960s and the rise of neo-liberal politics in the 1970s has created political opportunities for activists in the nonprofit health services sector. But does this shift from activism to service provision - in partnership with the state-- necessarily preclude political advocacy by these nonprofit organizations? Drawing from the literature regarding the relationships of organizations (namely civic associations) to government, particularly Rathgeb-Smith & Gronbjerg's neo-institutional theory, this chapter has discussed broadly the exogenous factors shaping the capacity of nonprofits to engage in oppositional politics. This chapter has demonstrated that despite their local, community-based nature and the service gaps they fill for the state, many of these HIV/AIDS service nonprofits (of which CAL-PEP and the SJI are an example) are *not* exempt from federal regulation and control. Instead, this federal regulation and control illustrates more broadly, as Larner (2000) argues, that while neo-liberalism might mean "less government" (particularly when it comes to health and social service provision), "it does not follow that there is less *governance* [*italics added*]" (p.12).

In particular, charitable nonprofits like CAL-PEP and the SJI must negotiate two major forms of governance—the vectors of political constraint: registration as a charitable nonprofit under IRC section 501c3, and data collection requirements from their major funding source, the CDC. Certainly, registering as a charitable nonprofit

under IRC section 501c3 can effectively strip incorporated organizations of the ability to lobby or participate in political campaigns, and funding from the CDC (which requires incorporation as a charitable nonprofit under Section 501c3) also imposes heavy data collection requirements, which can detract resources from the organization and professionalize staff. At the same time, relationship to and engagement with the state is often a dynamic process: various strategies for circumventing these vectors also exist, which potentially allow nonprofits like CAL-PEP and the SJI to continue engaging in advocacy on behalf of their constituency, even as their main focus is on maintaining service provision.

Previous chapters about CAL-PEP and the SJI provided an opportunity to see how two particular nonprofit organizations reflect and complicate the vectors of political constraint and employ various strategies of circumvention. Certainly, as it was shown, these charitable nonprofits know their constituency's needs and could be their best advocates; they also provide a base from which a stigmatized and politically marginalized community that lacks few resources or allies could gather and organize to act politically to make claims on the state. However, since they are serving a high-needs clientele (many of the sex workers they serve are poor, criminalized, uninsured and members of sexual and racial minorities), their organizational survival also remains a priority, even at the expense of seeking long-term legal policy and legal changes.

CHAPTER 6

RADICAL INSTITUTIONALIZATION AND THE STRUGGLE FOR SEX WORKER RIGHTS

Since the political protest movements of the 1960s and 1970s faded from view, many activists have transitioned to the realm of nonprofit service provision, aided by state incentives. This thesis has provided a case study of a marginal social movement's evolution. Formed by activists involved in the COYOTE-led prostitutes' rights movement, the California Prevention and Education Project (CAL-PEP) and the St. James Infirmary (SJI) are two small nonprofit organizations located in the San Francisco Bay Area that hire sex workers (and other street-based populations, in CAL-PEP's case) to provide free, non-judgmental health and social services to their peers.

Even as they are small, highly localized case studies, CAL-PEP and the SJI's experiences illustrate much for scholars and activists alike interested in social movements and the evolution of political organizing more broadly. In essence, despite being variously funded by federal, state and local health authorities in an era of neo-liberal politics, these organizations demonstrate what has been termed "radical institutionalization": they have implemented practices (in this case, of non-judgmental sex worker-led health service provision) directly at odds with the dominant political and moral order that regulates prostitution today. Overall, these findings indicate that activists do not always lose their radical commitments when they create formal organizations and engage with the state, thus challenging Piven and Cloward's enduring conclusion that "[o]rganizations endure by abandoning their oppositional politics" (1977, p.xxi).

Instead, CAL-PEP and the SJI provide a counter-model to the co-optive associational politics assumed in the neo-liberal era, and the subtleties and nuances of how their radical commitments are maintained (and constrained) are best discerned by

fine-grained qualitative case studies of these organizations. To guide future analyses of these and *other* small, activist service nonprofits in the pantheon of nonprofit organizations, this chapter reviews this thesis' findings with regards to the following: political context and opportunities, organizational strategies and operations, and political and policy outcomes. Indeed, this is not a definitive list of evaluative criteria, but it provides guidelines for considering, as their own cases, how activist service nonprofits might also maintain radical commitments even as they partner with state agencies in an era of neo-liberal politics.

Political Context & Opportunities

Define the political environment

Even as the focus of this study has been on the particular activities and strategies of two small, nonprofit health service organizations, the findings presented in this thesis make clear that understanding the broader political-economic context in which they emerged and currently operate is important for understanding their past decisions and future prospects. Here, literature on the broader political opportunity structure (POS)—the basic premise of which is “that exogenous factors enhance or inhibit prospects for mobilization, for particular sorts of claims to be advanced rather than others, for particular strategies of influence to be exercised, and for movements to affect mainstream institutional politics and policy” (Meyer & Minkoff, 2004, p.1457)—helps set the stage for understanding the context in which grassroots activists serve hard-to-reach groups.

Indeed, prostitution is a very marginalized activity in the United States (as is the movement for prostitutes' rights), and nonprofit organizations like CAL-PEP and the SJI that serve and involve sex workers in service delivery and organizational management are very marginal players in the health service sector. Moreover, they are located in the San Francisco Bay Area, which is not “like” most the United States,

particularly with regards to sexual politics and the tendency for public authorities to adopt non-mainstream approaches to health and social service delivery. Given all of this, one might conclude there is little to learn from these organizations—particularly within the context of social movements/organizing-- as they appear so “extreme”.

However, this thesis has demonstrated that, even in the Bay Area, predominant features of the POS for COYOTE’s daughters affect many *other* activists and political actors: namely, the advent of the HIV/AIDS epidemic and the ascent of neo-liberal politics (defined by, among other things, the devolution of social service provision to a network and private and/or nonprofit service providers and the implementation of market-based urban renewal projects), and social conservatism reflected in the development of hyper-punitive crime policies. Understanding this context was and is important for analyzing activist decisions and organizational outcomes: the advent of the HIV/AIDS epidemic in the early 1980s further limited support for prostitutes’ rights and also posed immediate health and safety threats to sex workers, and state and federal crime policies employed in California and the San Francisco Bay Area since the 1980s have further reinforced and heightened the seemingly hegemonic character of prostitution as an immoral, criminal activity at the local level.

Therefore, much like the women’s health advocates and gay activists that formed the women’s health clinics and Gay Men’s Health Crisis, respectively (described in Chapter One), sex worker activists entered the realm of nonprofit health service provision in the early 1980s by forming CAL-PEP, and in the 1990s the SJI. Taken together, in this context the SJI and CAL-PEP can be understood as cases of activists capitalizing on grant opportunities created by various health (and other governmental) authorities for local, community-based health service provision that involves the target community (in this case, sex workers) as health service professionals.

But what of the SJI and CAL-PEP's capacity to advocate for and promote sex worker rights in the broader legislative arena? Was this maintained as COYOTE members transitioned to nonprofit health service provision? In response, when I began my research, I envisioned sex workers at CAL-PEP and the SJI getting up in arms, mobilizing, and making challenges to unfair laws that criminalized their activities. In reality, however, a much more complicated picture emerged that was neither one of complete abandonment of radical goals nor one of pure maintenance of a commitment to them. To understand this picture, considering only macro-structural factors (i.e. a purely POS-oriented analysis) was not sufficient, and so this thesis indicates that attending to the stories of grassroots activists and the organizations they form is also important for understanding how they responded to the broader context in which they exist. For CAL-PEP, the SJI and other nonprofits, it is therefore important to examine them closely and account for the dilemmas, ideas, perspectives and experiences of activists forming and shaping them today. The remaining guidelines below sketch briefly framework for doing this.

Organization

Specify the range of organizations in which the case studies fit.

When analyzing the activities of individual nonprofits formed by activists in any context, it is important to place them first within a range of "like" or "sister" organizations, as this provides an immediate context for understanding the *other* options activists might have exercised, and thus helps to provide a more nuanced understanding of protest movements and activist choices. To illustrate, as demonstrated in Chapter 1, this study has placed the organizations that emerged from the COYOTE-led prostitutes' rights movement along a range defined by whether they have maintained a commitment to prostitutes' rights, and whether they express this commitment (or lack thereof) through advocacy or service provision. Doing this made

clear immediately that even if one is to accuse CAL-PEP and the SJI of abandoning protest politics, a closer look reveals that among the formal organizations created by COYOTE activists, CAL-PEP and the SJI have not gone the way of their nonprofit “sister”, SAGE, even though they are limited in their capacity to advance a commitment to prostitutes’ rights beyond their organizations. Although SAGE was developed and is run by a former sex worker and COYOTE activist, it has fully absorbed and invested itself in status quo state policy: it refuses to acknowledge prostitution as work, takes money from places like the federal Department of Justice, and works closely with the police to develop anti-prostitution initiatives, such as the johns’ school. All of this indicates that when it comes to maintaining more radical commitments, formal organizations created from protest movements may vary in this regard.

Make an internal/external distinction

Once the organizations have been situated in a range, it is important to next make an “internal-external” distinction regarding the degrees to which they maintain their radical commitments. In essence, it is important to discern if what they do “on the inside” relates to what they do “on the outside”. Considering this internal-external distinction is important because, with the protest movements of the 1960s long over, it is easy to assume that as members of once-radical protest groups form service organizations (or become part of mainstream governing structures), their protest politics and radical claims disappear with them. Instead, this thesis signals to political scientists interested in political protest—particularly within the context of neo-liberal welfare state devolution—that it is important to also look for *protest as/put into practice*, particularly for and by groups with few other political opportunities.

To make this internal/external distinction, multi-method qualitative research is key: conversations with activists, organizational leaders, and time observing their

operations and reading their literature is the only way to truly understand whether they have maintained any of their radical commitments and how. In my cases, CAL-PEP and the SJI have clearly maintained a strong commitment to prostitutes' rights *internally* by explicitly acknowledging that prostitution (and other forms of sex work) are employment choices as opposed to criminal and/or immoral activities. They put this radical philosophy into practice by hiring populations (prostitutes and other street-based persons) commonly blamed for the spread of HIV and other STIs.

However, time spent at both of these organizations and conversations with their leaders and staff revealed that advocacy for prostitutes' rights *externally*, in the broader political realm, has been limited for CAL-PEP and the SJI. Both CAL-PEP and the SJI encounter two vectors of political constraint-- section 501c3 of the IRC, and data collection requirements imposed on them by various granting agencies. As demonstrated, these vectors severely curtail their organizational capacities to mobilize those they serve and engage in broader political advocacy by restricting their lobbying and campaign activities (Section 501c3) and by consuming any extra resources and limiting their capacity to hire from and engage their grassroots (data collection). As a result, even though these organizations are staffed by sex workers, they in many ways have followed the path of similar nonprofits formed by activists, such as GMHC and the WHC: they face staffing and funding challenges; they focus mainly on maintaining service provision; and aside from their mission statements, seem far removed in their daily activities from the radical activism from which they were born.

But all of this is not to say that CAL-PEP and the SJI have entirely abandoned supporting prostitutes' rights. At CAL-PEP, the organization has completed and presented numerous research and demonstration projects to health and governmental officials world-wide that have made clear the efficacy of nonjudgmental, non-criminalizing approaches to sex worker health and safety, while also engaging in

advocacy for broader AIDS education and prevention funding. At the SJI, sex workers are exposed to pro-sex worker rights discourse through posters and educational materials at the clinic, and management is planning to make the H-election (under section 501h of the IRC), which would allow them to engage in advocacy/lobbying work without compromising their tax status. And by publishing and presenting research, the SJI also demonstrates the value of nonjudgmental approaches to sex worker health and safety. Indeed, despite focusing on service provision, all of this shows that by promoting sex worker rights within the realm of (nonprofit) health service provision, both organizations employ various strategies to avoid complete de-radicalization by their encounters with the vectors of political constraint.

Specify dynamics

When studying organizational operations closely within their particular context, it is often easy to see what constrains them, but it is often more difficult to specify the conditions under which they might also circumvent these constraints. For this reason, it is crucial to remember that the interaction of (nonprofit) organizational priorities and activist strategies with the state must be understood dynamically (see for example Frances Fox Piven (1985) as an early example, and Sandra Morgen (2002) more recently). Here, while nonprofits founded by activists holding a commitment to a radical cause are limited in the broader political arena, this limitation is not total. And so while much of the nonprofit sector literature points (correctly) to the limited political capacities of these organizations, closer case studies like mine raise questions about the *dynamics* of de-radicalization: how might nonprofit organizations (particularly those that emerged from protest movements) become absorbed, to a degree, by the state, but also how might they resist this, and under what conditions?

My cases show that although section 501c3 of the IRC and data collection requirements imposed by granting agencies do limit CAL-PEP and the SJI's advocacy

for prostitutes' rights in the broader political and legislative realm, strategies of circumvention also exist and are employed in *response* to restrictions placed on these organizations through their interaction with the state (such as hiring sex workers for service delivery and having a mission statement that says prostitutes are workers, discussed above). However, not all nonprofit organizations employ these or similar strategies, and so specifying the conditions under which they do this is important.

In my cases, two conditions were key to implementing various strategies of circumvention. First, "localism" referred broadly to how the decentralized nature of the American (welfare) state fostered the provision of social services by local-level agencies, particularly in the 1980s in the field of HIV/AIDS prevention. Here welfare state devolution meant health and social service provision was increasingly funded by federal block grants to state and local governments, which, in turn, subcontracted to local community-based organizations (CBO). Certainly, localism has meant health service delivery in the United States has been incomplete, regionally varied, and precariously funded; however, it has also provided opportunities for groups to create health service projects that meet their own community's needs in ways state agencies may never be able to *and*, by extension, provided an opportunity for the continuation of more radical projects.

Second, alongside localism, "professionalism" also created conditions under which marginalized groups might develop and maintain radical service projects, despite receiving funding from state sources. For the purposes of this thesis, professionalism was broadly defined as the possession of a qualification or credential demonstrating the possession of a special form of knowledge used to serve others (Cruess, Cruess, & Johnston, 2000). And it can also be understood administratively, as the demonstration of an individual and/or organizational ability to deliver services efficiently and effectively. While requirements for professionalism may not initially

appear conducive to fostering the maintenance of radical commitments by an organization, this thesis has shown that this does not only foster exclusions. For stigmatized and marginalized groups, such as persons with AIDS and sex workers, it has facilitated their involvement in their own care by allowing organizations serving them, like CAL-PEP and the SJI, to engage in the more radical project hiring them for service delivery.

Outcomes

Consider the impact on those served and involved in these organizations

Even as CAL-PEP and the SJI are limited as advocates in the legislative arena, their capacity to gather and provide a safe space for a criminalized and marginalized population cannot go without note. And so when studying such nonprofit organizations it is important to give voice to those they serve to understand how their involvement with these organizations impacts their own lives *and* their political capacities and experiences. Future projects will focus more closely on the experiences of individuals at these organizations and how this has increased their feelings of personal and political efficacy, and the following pages sketch how this might be done.

Work by Suzanne Mettler and Joe Soss provides a potentially useful frame for such a project because it engages with the American politics literature on political participation, but goes beyond the usual “who participates and why” questions to look at how specific policies can encourage/discourage participation in civic and political life. In short, Mettler and Soss put “the people in the policy”, engaging with both the policy texts and debates *and* the lives and experiences of the people impacted by the policies. To (grossly) summarize the main message from Mettler and Soss, then, they show that large, nationalized and smoothly administered programs and policies are more likely to constitute citizens who see themselves as politically efficacious and

therefore active in political and civic life than those who participate in particularistic, variable, state-level policies. Overall, Mettler (1998) writes, “the manner in which citizens are included in a polity...depends on the institutional framework within which their subsequent participation occurs and influences the choice of political goals and strategies they pursue”¹⁰⁸(p.221). Similar themes are apparent in Soss’s work on welfare (Schram & Soss, 1998; Soss, 1999, 2000). In his work comparing Aid to Families with Dependent Children (AFDC) and Supplemental Security Disability Income (SSDI) recipients, he shows how those experiencing the casework-oriented AFDC were more likely to feel that the government would not respond “to people like them” and thus were less willing to voice their grievances to the relevant agencies as than those in the universal SSDI program.

In an era of neo-liberal politics and the HIV/AIDS epidemic, where various devolutionary policies facilitated community-based nonprofit health and social service provision, are these nonprofits encouraging their clients to engage in the political process and advocate for their interests and those of the nonprofits serving them? Initial evidence (presented in Chapters 3 and 4 of this thesis) demonstrates that although tax status and data collection discourages them from promoting political activity directly, many sex workers at the SJI and CAL-PEP commented that being at these organizations encouraged them to become more involved in various political causes, whether this meant advocating for continued funding for the organizations they use, for sex worker rights, or for other issues important to them, such as

¹⁰⁸ For example, in Mettler’s “Divided Citizens” (1998) she examines how the structural arrangements through which policies are administered shape the character and experience of citizenship for those covered by the policies. As a result New Deal policies that applied mostly to men were centralized and unitarily administered, creating a nationalized citizen, while those that applied to women were discretionary and variably administered at the state level, thus leading to a particularized politics of place for women. As well, in Mettler’s study of the GI Bill (Mettler, 2005), we see again that as a broad-based, well-administered program, the GI Bill constituted (male) citizens who became active in civic and political life.

HIV/AIDS or transgender rights. However, this sentiment was not uniform across clients of these organizations: in many cases, despite their own involvement in the sex industry and CAL-PEP and the SJI, they opposed sex worker rights, feeling it was dangerous and demeaning work. Further study could therefore probe these initial findings more closely in order to understand how nonprofit service involvement has promoted (and discouraged) individuals' broader political involvement.

Policy outcomes: consider NGO-ization

If we accept that CAL-PEP and the SJI represent a case of activist engagement with the state through the nonprofit sector, it is important to also draw conclusions about their impact on public policy. Indeed, prostitution remains criminalized despite over thirty years of activism by COYOTE and its daughters, but what implications might CAL-PEP and the SJI's work have on public policy? The incorporation of sex workers into the realm of nonprofit health service provision and their impact on policy can be analyzed from the "NGO-ization" perspective. Here authors such as Sonia Alvarez (1999) have noted (about feminist NGOs in Latin America, for example) that NGOs in general are often used by states to pick up after the fallout of welfare state downsizing by evaluating and administering self-help, social service and training programs for the poor (Alvarez, 1999). Indeed, this NGO-ization process provides a seat at the table for many groups previously excluded from policy development and implementation processes. But through this process of inclusion, however, NGOs risk becoming experts for governments and losing their position as critical outsiders who advocate for their peers and challenge state responses to their claims.

Applying this concept of NGO-ization to sex workers and policy development, it is clear that prostitutes have always occupied an extremely marginal (if not the most marginal) place in the American political process, and so it is no surprise that their protest efforts have yet to succeed and change prostitution laws. However, by taking at

seat at the table of nonprofit health service provision, possibilities arise for prostitutes to change—albeit incrementally—how government officials perceive their community (and its health and safety needs). We see CAL-PEP and the SJI taking a seat at this table through their presence at AIDS conferences and on various state, federal and local health service committees, where they frequently present research and inform these bodies about sex workers’ health and safety needs. All of this indicates that CAL-PEP and the SJI have had some impact, as NGOs, on policy.

Indeed the CDC’s (and other state agencies’) use of NGOs (nonprofits) for health and social service provision is a common feature of the American welfare state, particularly in the HIV prevention field. So one could argue that NGOs serving marginalized populations thus operate as policy laboratories (see for example Volden, 2003) for testing new and innovative service provision models, while keeping the federal government abreast of their constituency’s needs. Here CAL-PEP and the SJI are delivering health services to sex workers in a way that is very distinctive in the US and highly contradicts historical precedent: sex workers are actually involved in providing health services to their peers *and* are not required to leave the sex industry as a condition of receiving services. Moreover, CAL-PEP and the SJI receive funds from state, local and federal agencies, and the government agencies funding them know they hire sex workers for the outreach efforts. Indeed, government agencies are not funding prostitution, *per se*, but they are supporting organizations that support prostitutes’ occupational health and safety. Now, one might argue that such an outcome is possible for CAL-PEP and the SJI because their “laboratory” is the Bay Area, but given the moral outrage prostitution still generates among policymakers today (even in the Bay Area), this outcome remains very surprising, especially considering how few concessions CAL-PEP and the SJI’s foremother, COYOTE, was able to gain from the government.

Yet while CAL-PEP and the SJI might seem like radical policy implementation experiments, what they are doing through their daily operations is simply harm reduction work, this time with sex workers. As such, CAL-PEP and the SJI's efforts are similar to policy efforts such as needle exchanges, where people are not demonized for using needles but instead provided with assistance to use them safely, in a way that will not, hopefully, transmit HIV and other STIs. This strategy has been acknowledged worldwide (less openly in the US, of course!) as a sound and efficacious way of keeping the public healthy. With regards to the sex trade, prostitution is the "oldest profession" and shows no sign of subsiding: abolishing it (as SAGE desires) or decriminalizing it (as COYOTE desired) are not realistic options right now. Therefore, what CAL-PEP and the SJI do, from a policy perspective is provide the most pragmatic way for keeping sex workers safe and healthy, and in so doing provide a model that might be replicated in other jurisdictions. All of this shows that those doing illegal activities (namely prostitutes) might actually be supported in maintaining their health and safety when this is done in a way (through policy) that separates discussions of morality (i.e. whether prostitution is right or wrong) from discussions of public health.

Propose Activist Strategies

Scholars studying activist service nonprofits are generally not involved in their day-to-day operations, and thus have the time and analytic space to step back and make recommendations about how these organizations might continue engaging in the original struggles from which they were born. Indeed, for nonprofit organizations like CAL-PEP and the SJI, expecting them to engage in political activities of any sort that might compromise their nonprofit status is unrealistic and, speaking normatively, undesirable: in a political climate where prostitutes are criminalized and free, nonjudgmental health services for them are few and far between, the SJI and CAL-

PEP cannot risk losing their capacity to provide services to a marginalized, stigmatized population.

At the same time, CAL-PEP and the SJI—with their knowledge of and connection to the sex worker community—are in many ways ideal advocates for prostitutes’ rights, and so for this very reason it is important to make recommendations about what might be possible for them as *more than* service providers. To advocate for changes to prostitution (and any other) legislation without compromising their nonprofit status then, CAL-PEP and the SJI have two options: make the H-election under section 501h of the IRC and/or form separate advocacy organizations (as GMHC did) under section 501c4 of the IRC. As noted previously, the H-election (which the SJI is currently considering) would allow them to devote certain percentages of their tax-exempt income to lobbying activities without risking the loss of their nonprofit (and, hence, fundraising) status, while a 501c4 advocacy organization would operate as a separate advocacy organization focused solely on lobbying.

However, employing these strategies costs money that the SJI and CAL-PEP would have difficulty finding. Although it costs nothing to make the H-election (the organization only needs to sign and submit to the IRS the one-page form 5768), engaging in lobbying requires unrestricted funds (i.e. funds not designated for a specific purpose). Certainly, there are low-cost methods of lobbying, as Berry & Arons (2003) indicate, such as emailing politicians, or engaging in letter writing campaigns. However, more intensive lobbying efforts cost more money. For example, devoting three or four hours per week of a staff member’s time to meetings with state and local officials would require the organization to pay not only this individuals’ salary, but that of the person replacing them to continue providing services. Establishing a 501c4 lobbying organization requires even greater resources, as the

organization would need to pay incorporation fees, as well as raise funds to cover any of the operational costs related to running this separate organization (office supplies, staff salaries, etc).

Given their support for sex worker rights, CAL-PEP and the SJI have a limited universe of donors that would provide them with the unrestricted funds they might devote to lobbying or establishing an advocacy organization. Instead, the majority of their funds are from various federal, state and local health authorities and can only be used for specific purposes, namely HIV prevention and testing activities. Furthermore, it is difficult to fathom how-- given the resources they must devote to day-to-day service provision and grant compliance activities—they might develop their capacity for such additional fundraising.

At the same time, despite these barriers, both CAL-PEP and the SJI can continue to *indirectly* encourage their clientele to support sex worker (and other street-based populations') rights by exposing them to language (such as the term "sex worker") and by involving them in organizational operations and management. All of this might potentially empower and politicize sex workers gathered at CAL-PEP and the SJI by changing their own views of their activities and increasing awareness about the rights and recognition they might demand from state and societal actors.

For COYOTE's daughters that remain focused on protest and advocacy (such as SWOP), this thesis has demonstrated that sex workers advocating non-criminalizing approaches to prostitution often have more influence on and access to policy-makers when they enter the realm of health service provision, particularly as the broader political climate (especially at the federal level) is dominated by activists and political officials opposing sex worker rights. But this is not to say SWOP et al should abandon their activities altogether. Given that prostitution laws (with the exception of trafficking legislation) are made at the state level and enforced locally, activists should

continue targeting these levels of government, as SWOP did with Proposition K in 2008 (described in Chapter Two). Although this ballot measure was defeated, the emphasis by advocates that Proposition K would help protect the rights of adults to engage in private, consensual sexual behavior usefully emphasized that they were not advocating for child prostitution or human trafficking.

However, it is clear that sex worker rights activists face major barriers to organization: prostitution remains criminalized, which makes it difficult for them to organize openly; and resources are difficult to obtain, as there are few individuals and organizations willing to openly support such a cause. Therefore, to overcome these barriers, it would be worthwhile for organizations like SWOP to continue developing partnerships with and obtaining support from organizations like the American Civil Liberties Union, which, while not exclusively focused on prostitutes' rights, supports such endeavors because they touch on such issues as privacy and individual choice. Moreover, in these current economic times when many state and local governments are revisiting the high costs of incarceration and law enforcement (see for a recent example Steinhauer, 2009), organizations like SWOP would be well advised to continually emphasize the high economic costs the enforcement of prostitution laws impose on state and local governments.

Future Research & Concluding Thoughts

This chapter has reviewed findings about CAL-PEP and the SJI in terms of the broader political context in which they operate, their organizational strategies and activities, and their policy and activist outcomes. In so doing, the goal here has been to promote multi-method qualitative research projects with small, activist service nonprofit organizations. Using the guidelines sketched above, I hope scholars will seek to understand whether the radical impulses and claims-making capacities of *other* grassroots organizations serving marginalized populations are similarly maintained

and constrained when they are institutionalized into service provision organizations and partner with state agencies in different political contexts.

Future research in my case, then, will consider the development of comparative perspectives on political activism, nonprofits and engagement with the state through studies of sex workers' nonprofit peer-based health service organizations in other jurisdictions. The organizations I am considering include Maggie's Toronto Prostitutes Community Service Project; the Prostitution Alternatives Counseling and Education Society in Vancouver; the Scottish Prostitutes' Education Project in Edinburgh; and the Working Men Project in London. Like CAL-PEP and the SJI, these organizations were formed by sex worker activists in urban centers in English-speaking, industrialized nations with mature (although arguably more comprehensive) welfare states. Unlike the United States, though, these nations do not criminalize prostitution to the same degree and, arguably, provide less sex-negative political environments. It will therefore be interesting to see how the activists that created these organizations maintain a commitment to sex worker rights within these varied contexts.

In the meantime, I will conclude by noting that since writing this thesis, CAL-PEP and the SJI have continued to face challenges. Although it goes without saying that prostitutes rights is not yet a popular political cause in the United States, the recent election of President Obama may (one might speculate) signal a more sex positive federal administration and, hence, more funding for organizations like CAL-PEP and the SJI that employ harm-reduction philosophies. However, the economic downturn in the nation has limited federal, state and local budgets, even in wealthier jurisdictions like the Bay Area. As a result, the SJI has laid off staff and reduced its service offerings due to cuts to the city budget (St. James Infirmary, 2009), and at CAL-PEP both Gloria Lockett, the Executive Director, and Carla Dillard Smith, the

Deputy Director, have reduced their workdays (and, hence, paychecks) to compensate for a decline in funding (Email correspondence, Gloria Lockett, January 2009).

Certainly, one might assume that with fewer resources for even basic service provision and operations CAL-PEP and the SJI's political capacities will be further limited. At the same time, since their inception CAL-PEP and the SJI have proven remarkably resilient in the face of many challenges. And so their continued existence in the face of current adversities does not merely signal that they have become co-opted as service providers, which various state agencies depend on. Instead, their presence indicates an enduring commitment to those they serve—sex workers—*and* to the radical political struggle for sex work rights from which they were born.

APPENDIX

Would you like to talk about your experiences with [insert name of program under study]?

If you answered “yes” to this question, a Cornell University Researcher invites you to participate in a study of [**insert name of program**] and others like it!

Confidentiality is GUARANTEED: NO NAMES ASKED.

Eligibility:

You must be **at least** 18 years old
You’ve exchanged sexual services for cash
You’ve used the services at [**insert program name**]

Requirements:

Complete an interview with a female researcher at the [**insert name of program**] or in a location of your choice

IF YOU ARE INTERESTED, PLEASE CONTACT
SAMANTHA MAJIC at [**PHONE NUMBER TBA**] or
sam232@cornell.edu

CONFIDENTIALITY IS GUARANTEED

Dancing with Deviance? Examining Sex Worker- Run Outreach Programs and their Relationship to the State

Oral Consent Form

You are invited to participate in a research study of outreach programs that are developed and run by sex workers for sex workers in three states. The purpose of this study is to examine how these programs work, how they are funded, and how they shape the (political) lives and experiences of those who run them and participate in them. We ask that you read this form and ask any questions you may have before agreeing to be in the study.

Procedures: If you agree to be in this study, you will be asked to participate in an interview with the researcher—Samantha Majic—for no more than two hours.

Risks and Benefits of Being in the Study:

Voluntary Nature of Participation: Your participation is **voluntary**, and you may **refuse to participate** before the study begins, **discontinue at any time**, or **skip any questions** that may make you feel uncomfortable. Your decision whether or not to participate will not affect your current or future relations with Cornell University. If you decide to participate, you are free to withdraw at any time without affecting those relationships.

While we do not anticipate any risks for you participating in this study, other than those encountered in day-to-day life, there is always a risk that someone might overhear this interview. Because of this risk, this interview is taking place in a location you agree is safe.

There are no direct benefits to participating in this study. However, you will indirectly benefit from participating by contributing to knowledge about sex workers and the regulation of commercial sex work, which will ultimately inform policymakers and help them design better policies.

Confidentiality: The records of this study will be kept private and we will take the following steps to ensure your identity is secure:

- a) You will be assigned a code number known only to Samantha Majic;
- b) You will choose a pseudonym to be used in any published material; and
- c) Any information you provide that might identify you or other people will be altered in any written report to conceal your identity or that of other

people.

Research records (such as notes taken during the interview) will be kept in a locked file; only the researcher will have access to the records.

If you choose to have your interview recorded, the recording will be kept on a restricted-access CD-ROM in a locked cabinet that only Samantha Majic will be able to access. These recordings will be kept in perpetuity, and Samantha Majic will be the only person to view the transcripts.

Contacts and Questions: The researcher conducting this study is Samantha Majic. Please ask any questions you have now. If you have questions later, you may contact her at **1502 King St W. Toronto, ON M6K1J5 CANADA** sam232@cornell.edu 416-792-0417; 607-280-4818 (cell)

You can also contact her dissertation supervisor, Professor Mary Katzenstein, at the Department of Government, Cornell University, 319 White Hall, Ithaca, NY, 14853 or at mfk2@cornell.edu (607-255-8965)

If you have any questions or concerns regarding your rights as a subject in this study, you may contact the University Committee on Human Subjects (UCHS) at 607-255-5138, or access their website at <http://www.osp.cornell.edu/Compliance/UCHS/homepageUCHS.htm>.

You will be given a copy of this form to keep for your records.

Statement of Consent: I have read the above information, and have received answers to any questions I asked. I consent to participate in the study.

Please state if you are willing to have this interview recorded on digital audiotape. You may still participate in this study if you are not willing to have the interview recorded. If you are willing to have the interview recorded, you can stop the taping at any time.

Statement of consent to tape interview: I have read the above information, and have received answers to any questions I asked. I consent to have this interview recorded on tape.

**** YOU WILL RECEIVE A COPY OF THIS CONSENT FORM ****

*This consent form will be kept by the researcher for at least three years beyond the end of the study and was approved by the UCHS on **18 May 2006**.*

Dancing with Deviance? Examining Sex Worker- Run Outreach Programs and their Relationship to the State

Signed Consent Form

You are invited to participate in a research study of outreach programs that are developed and run by sex workers for sex workers in three states. The purpose of this study is to examine how these programs work, how they are funded, and how they shape the (political) lives and experiences of those who run them and participate in them. We ask that you read this form and ask any questions you may have before agreeing to be in the study.

Procedures: If you agree to be in this study, you will be asked to participate in an interview with the researcher—Samantha Majic—for no more than two hours.

Risks and Benefits of Being in the Study:

Voluntary Nature of Participation: Your participation is **voluntary**, and you may **refuse to participate** before the study begins, **discontinue at any time**, or **skip any questions** that may make you feel uncomfortable. Your decision whether or not to participate will not affect your current or future relations with Cornell University. If you decide to participate, you are free to withdraw at any time without affecting those relationships.

We do not anticipate any risks or any direct benefits to you for participating in this study. However, you will indirectly benefit from participating by contributing to knowledge about sex workers and the regulation of commercial sex work, which will ultimately inform policymakers and help them design better laws and policies.

Confidentiality: Unless you sign below to give us permission to use your name, we will take the following steps to ensure your confidentiality:

- d) You will be assigned a code number known only to Samantha Majic
- e) A pseudonym will be used to protect your identity, and any information that might identify you will be removed in any report of any kind.

In all cases, research records (such as notes taken during the interview) will be kept in a locked file; only the researcher will have access to the records.

If you choose to have your interview recorded, the recording will be kept on restricted-access CD-ROM in a locked cabinet that only Samantha Majic will

be able to access. These recordings will be kept in perpetuity, and Samantha Majic will be the only person to view the transcripts.

Contacts and Questions: The researcher conducting this study is Samantha Majic Please ask any questions you have now. If you have questions later, you may contact her at the following:

Samantha Majic: 1502 King St W. Toronto, ON M6K1J5 CANADA
sam232@cornell.edu 416-792-0417; 607-280-4818 (cell)

You can also contact her dissertation supervisor, Professor Mary Katzenstein, at the Department of Government, Cornell University, 319 White Hall, Ithaca, NY, 14853 or at mfk2@cornell.edu (607-255-8965)

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You will be given a copy of this form to keep for your records.

Statement of Consent: I have read the above information, and have received answers to any questions I asked. I consent to participate in the study.

Signed: _____

Date: _____

Please sign below if you are willing to have this interview recorded on digital audiotape. You may still participate in this study if you are not willing to have the interview recorded. If you are willing to have the interview recorded, you can stop the taping at any time.

I am willing to have this interview recorded on tape:

Signed: _____

Date: _____

Please sign below if you are willing to have your name used.

Signed: _____

Date: _____

**** YOU WILL RECEIVE A COPY OF THIS CONSENT FORM ****

*This consent form will be kept by the researcher for at least three years beyond the end of the study and was approved by the UCHS on **28 May 2006**.*

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