The order of tolerance. Prostitution in Montreal

Séverine Germain - PACTE Grenoble - 2010

Public spaces are the subject of many appropriations. Usually, behaviours in public spaces can be analysed along four analytic dimensions. First, the legal dimension is embodied by provincial laws and municipal by-laws, which are enacted to ensure hygiene and right behaviours in public. Second, the material dimension, which is related to urban planning, means that physical constraints upon places are able to frame behaviours. Third, the social dimension lies in the publicity of space as a social construction (Lefebvre, 1974): the different ways people appropriate public spaces build a collective normative framework of accepted uses. Lastly, public spaces wear a symbolic dimension as representations and meanings of space allow the construction of a common “us” (Elias, 1997). As a consequence, deviant behaviours can be perceived as negations of the society set of fundamental values.

Activities in public spaces can variably call into question one or several of these four dimensions according to their nature, intensity and duration (Laberge and Roy, 2001: 124-125). One can sleep on a bench for an hour because he’s tired but he cannot sleep there for a whole day. Stinchcombe (1963) claimed that for disadvantaged people, disorder means doing in public activities that would be legitimate in private but that they can’t afford (like sleeping, drinking or having sex). And yet, as pointed out by De Certeau, a neighbourhood is defined as “the space a resident appropriates around home from practices and representations” (De Certeau et al., 1994: 21), which excludes sexual activities. From this theoretical perspective, this contribution aims at questioning the norms that regulate public spaces in Montreal through the study of street prostitution in Montreal city centre. The case of prostitution seemed particularly relevant, as it became in Montreal a very mediatised controversy at the beginning of the years 2000. In Montreal, under the influence of community services and sex workers’ representatives, a pilot project suggesting a partial decriminalisation was elaborated in the second half of the nineties. This innovative project, which followed lots of official reports blaming the inefficiency of the law enforcement approach developed at the federal level, was the first one in Canada. It nevertheless caused such an outcry among the local community that the municipality immediately officially gave up under the pressure of residents’ protest. My contribution aims to describe the emergence and failure of the city of Montreal pilot project, focussing on the residents’ protest that took place in 2000. It is based on press review and an analysis of primary documents elaborated by the residents association created in 2000 following the protest. According to the Montreal residents who got mobilised, street prostitution is definitely incompatible with a neighbourhood quality of life. By proposing a non-judiciary approach to prostitution, the city of Montreal ruined the existing status quo as they suggested mediation instead of repression of prostitution-related disorders. And worse,
the residents’ protest encouraged a new policy of repression, focussed on a client-blaming approach, which finally resulted in a worsening of the street prostitutes’ situation.

**A new era of tolerance? The emergence of a non-judiciary approach to prostitution**

Prostitution has never been forbidden neither in Canada nor in Quebec. However, according to the Criminal Code of Canada, lots of prostitution-related activities are. Indeed, sections 210 and 212 respectively prohibit the existence of bawdy houses and procuring. The living on the avails, procuring and bawdy-house laws date back to Canada’s first Criminal code (1892), as did the vagrancy provision which prohibited street prostitution. In 1972, the vagrancy law was replaced with the soliciting law then replaced in 1985 by the prohibition of communication in public spaces for the purpose of prostitution (section 213). Under section 213 of the Criminal Code, either the buyer or the seller of sexual services can be charged for communicating to the purpose of prostitution. So, prostitution - the exchange of money for sex – is not illegal but it can be unlawful to engage in peripheral activities, especially in the street. The overall goal of Canadian prostitution law is therefore far from being clear.

“As prostitution is legal, the purpose of the communicating law must be to keep prostitution off the street, not curtail prostitution itself. However, the bawdyhouse law makes it virtually impossible to practice prostitution off the street. The contradiction begs the question: where should prostitutes and customers meet to arrange what is, after all, a legal transaction? And where should the services be rendered?” (Lowman, 1998:7).

The underlying assumptions of all the state projects that have followed one another since the mid-eighties were abolitionist, i.e. supporting the eradication of prostitution. However, the local experiments and by-laws that have been implemented in many Canadian cities tell a different story. Indeed, provincial laws and municipal decrees can also be used to regulate prostitution. If some municipal governments have introduced by-laws such as traffic diversion to criminalise some street prostitution-related activities, others have used by-laws to regulate off-street commercial sex, like the city of Vancouver who licensed in 1997 activities such as social escort and dating services, massage and body-rub parlours.

Moreover, some judgments made by the Supreme Court have deeply contributed to define what is legally accepted or not. “Prior to the mid-twentieth century, the common law test for indecency and obscenity focused on whether the material or activity at issue would tend to deprave and corrupt other members of society. Then, in *R. v. Brodie*, the Supreme Court emphasized the need for more objective criteria and proposed a new definition of indecency, based on the notion of “community standard of tolerance”. However, this notion was also difficult to apply objectively, so that it was revised in *R.v. Towne Cinema Theatres Ltd.* to incorporate an additional notion of harm.” (Craig, 2009:360). So in Canada, whereas the federal government has exclusive control of criminal law, the regulation of sex work seems paradoxically mostly defined by the Supreme Court’s judgments and localities’ by-laws, and thus with deep geographical differences.

In Montreal, street prostitution has been a controversial issue - with legal, social, health and
economic implications - since the beginning of the 20th century, as the city has been home to the “Red Light”. Brothels were authorised in 1907 and their number was estimated around 300 (gathering between 2000 and 3000 prostitutes) in the twenties, as Montreal tended to attract lots of Americans marked by the prohibition policy in their country. Located in the city historical centre, in the borough of Villa Maria, the “Red light” was formerly delineated by the quadrilateral shaped by Levesque and Saint Laurent Boulevards and Sherbrooke and Saint Denis Streets. Nowadays, the prostitution area is bounded by Sherbrooke Street up North, Lévesque Boulevard South, Saint Denis Street East and Bleury Street West. The borough is defined by the Hall the as «a microcosm of today’s Montreal, an open-minded community full of cultural and social contrasts». Indeed, the borough mixes residents, businesses and tourists, but also prostituted, homeless and drug dealers.

The regulation of prostitution was marked in Montreal by a status quo between tolerance and restriction, after a failed attempt to prohibit prostitution. At the beginning of the eighties, the Mayor Jean Drapeau enacted a by-law prohibiting prostitution. But it was judged anti-constitutional by the Supreme Court, as it is the federal government that has exclusive control of criminal law in Canada. In 1985 however, the new communicating law allowed the municipality to fight against related-prostitution public nuisances, but in a critical way. It must be pointed out that public consultations, parliamentary committees and intergovernmental working groups questioned the effectiveness of criminal sanctions against prostitutes. Indeed, the Special Committee on Pornography and Prostitution (known as Fraser Committee), which was appointed by the Minister of Justice in 1983 to recommend alternatives to the soliciting laws, proposed partial decriminalization of prostitution. Indeed, the Fraser Committee - concluding that the main problem with Canadian prostitution law is that it is at odds with itself - recommended in 1985 that while laws against coercive procurers and tangible street nuisances be retained, up to two prostitutes should be allowed to work out of a single location and municipalities should be allowed to license small scale brothels (Lowman, 1998). In spite of these recommendations, the soliciting law provision was replaced in 1985 by the communicating law (section 213), whose purpose was not to prohibit prostitution itself but to control the nuisances associated with street prostitution. In 1990, a review of section 213 by the Standing Committee on Justice and the Solicitor General concluded that street prostitution in cities across Canada either had not decreased or had been displaced to other neighbourhoods since the introduction of the new communicating legislation. Eight years later, the Federal/Provincial/Territorial Working Group on Prostitution would also reach the same conclusion (1998).

Criticisms toward the communicating law started emerging in Montreal too. In the middle of the nineties, “Alerte” - a community board gathering community-based services and residents’ associations - started reflecting about street prostitution in the city centre with business, institutional and community partners. Indeed, in March 1996, the so-called “Inter-borough board about prostitution” published a seven page report entitled “Street prostitution in Montreal – the emergency of a new approach” in order to promote an alternative to the inefficient traditional law enforcement approach toward street prostitution. Gathering street workers, police officers, heads of withdrawal centres, “Tandem” stakeholders and residents, the inter-borough board aimed to promote a more “human” approach in order to defuse situations that had become explosive for persons practicing prostitution without any medical support as well as for residents. Thus, the Board called for a
reinforcement of the preventive approach by street work and the development of a problem-solving board based on multi-agency cooperation.

A few months later, in September 1996, the Université du Québec à Montréal (UQAM) was host to an international conference on prostitution and other sex work. The conference claimed to be open-minded, bringing together critical persons working on issues related to prostitution: representatives from federal, provincial and municipal governments; researchers; sex workers; feminists; police and community workers. All the participants presented their positions on prostitution and a joint declaration, supported by majority of the participants, arose from the debates. The joint statement that clearly promoted decriminalization was a call for action to the federal and municipal governments and followed the City of Montreal’s announcement of the setting up of a new task force on prostitution.

Indeed, in December 1996, the municipality of Montreal officially set up a “consultative committee about street prostitution and juvenile prostitution”, a task force gathering police and community workers, community-based services and a sociologist. Since sex workers’ representatives were not included in the task force, Stella – a community group created in 1995 through the initiative of a handful of sex-workers, public-health researchers and sympathisers – and other associations decided in 1997 to set up the “Coalition for the rights of sex workers” in order to enter the Committee. Following the March 1997 manifestation in front of the City hall, and the petition letter signed by about fifty community groups, Stella, the Coalition and other groups, succeeded in getting seats in the Committee, who started working in June. Their final report was published two years and a half later, in June 1999.

The Committee was in charge of portraying the street prostitution issue in Montreal and defining some trails of solution, excluding the delicate topic of juvenile prostitution. Using the Police data, the Committee estimated the total number of prostitutes at 1000 or 1500, 500 of them were street prostitutes. The task force especially pointed out the displacement phenomenon that had happened in the eighties and the nineties and the emergence of peripheral prostitution areas such as Saint Louis Square or Sainte Catherine Street after the 1985 new legislation prohibiting communication in public spaces for the purpose of prostitution. In Montreal, the Committee suggested that the spatiotemporal shift which had occurred at the end of the eighties was mainly due to the general decrease in prostitutes’ work conditions: displaced to residential neighbourhoods (Saint-Jacques and Sainte-Marie districts), street prostitution had become more individual, practiced later on night, and therefore more dangerous for isolated prostitutes.

Emphasizing the failure of the criminalization policy and refusing to reduce the prostitution issue to street prostitution (thus excluding hidden activities such as massage parlours or escort services), the Committee reached the conclusion that adult prostitution had to be partially decriminalised (“déjudiciarisation”), i.e. that people accused of breaking laws would no longer be brought to court but socially and medically helped. It is not worthwhile to mention that “déjudiciarisation” is different from “decriminalisation” as it doesn’t mean the suppression of articles 210 to 213 of the Canadian Criminal Code but only a relaxing of police practices toward street prostitutes. For instance, “dejudiciarisation” suggests that prostitutes would no longer be charged with infractions to provincial traffic law or municipal by-law about loitering for instance. Indeed, the committee proposed systematic joint interventions by the police and street workers in
order to give prostitutes social support instead of putting them into jail. In the Committee’s mind, street workers would have accompanied police officers in the South centre to play an arbitrary role in conflicts. The idea was to avoid sanctioning prostitutes who would have respected a few norms aimed at improving the cohabitation with residents (like avoiding littering or practicing in school areas). And to deal durably with problematic situations, the Committee suggested setting up mediation mechanisms. So, without eliminating street prostitution, the pilot project aimed at limiting related public nuisances – like the inefficient communicating law – but in an alternative way to law enforcement.

The pilot project was expected to be experimented 12 months in the Saint-Jacques and Sainte-Marie districts, for an annual cost of 200,000 $. It would have been supervised by a permanent Consultative Committee chaired by an elected official. Considering the joint declaration arose from the international conference on prostitution and other sex work and more generally the position of the sex workers’ rights movement in favour of decriminalisation, the Consultative Committee in Montreal reached a compromise between the position of the prostitutes’ representatives and that of the police, in charge of the Canadian Criminal Code enforcement. However, when presented to the local community, the pilot project caused a strong outcry.

The restoration of order. Residents’ mobilisation against prostitution-related disorder

Whereas the non-judiciary approach, supported by community services and sex workers representatives, was about to be implemented for the first time, the municipality immediately gave up after the local community outcry. From February 2000, before the official presentation of the pilot project to the local community, some residents and shopkeepers expressed anxiety in the newspapers.

“If we tolerate street prostitution in our area only, we can already predict consequences. Prostitutes will come from Verdun, North Montreal, Petite-Patrie. I can imagine police officers telling them: “Go down to the south of the city to feel easy in your mind”.”

On 17th February, the neighbourhood council meeting of Centre Sud districts (Saint Jacques and Sainte-Marie) gathered around 300 residents and shopkeepers, many of them were mad about the pilot project. The protest coalition was composed of very different people: representatives of the Chinese community, the Gay Village, the School commission of Montreal, residents and shopkeepers, the municipal councillor of Saint Jacques district (opposition), gathered by the Society for Commercial development of the Quartier latin and the Community Economic Development Corporation Berri-UQAM. Business interest groups, supported by the municipal councillor of Saint-Jacques district, distributed 7000 tracts against the pilot project.

The first information meeting, which took place in Sainte-Marie district on March 14th, gathered around 400 people expressing anger and blaming the municipality for not having consulted them before. On March 18th, the municipality officially gave up the pilot project, following the consultative Committee suggestion. The persons in charge of the project would have received anonymous threats while the association Stella would have found a dead bird lying beyond
their front door the day the project was retired.

Why was the pilot project so violently rejected by the local community? As pointed out by many researches, it’s mostly the impact of street prostitution on the neighbourhoods in which it occurs which is problematic, as residents always complain about noise, traffic congestion, litter including condoms and needles, and the harassment of local female residents (see the brief state of the art in Louie, 2009). Cassels (1985:766) reported that residents were worried that prostitution-related activities would bring undesirable people into the neighbourhood and spark further crime. At the beginning of the eighties, a national population study of prostitution and pornography (Peat et al. 1984) found that if 84% of the Canadians sampled did not think that street prostitution should be legal, a certain share of them agreed that prostitution in a private place was acceptable. This study showed that the less visible the prostitution, the higher the level of its acceptability: only 10% of their respondents agreed that the visibility of street prostitution in an open park is acceptable whereas 45% agreed that it is acceptable in a private place. More recently, a research carried out in Vancouver found similar results about the acceptance of non-visible prostitution: respondents did support indoor and street prostitution in non-residential areas as well as policies that aim to increase sex workers’ personal safety but rejected street prostitution in residential areas. On the other hand, in that specific study, respondents were by a majority in favour of the decriminalisation of prostitution, as 76% thought that the sale of sex should be legal and 75% that the government should decriminalize adult prostitution in Canada.

The analysis of the arguments developed by the residents and shopkeepers who got mobilised confirms that it is not prostitution per se which is blamed but mostly related public nuisances. They rejected the pilot project because they estimated that it would cause in fine an increase in prostitution-related disorder in their neighbourhood. Choosing only one experiment area meant that this specific place would immediately become very attractive to additional prostitutes, which would cause an increase in their number and therefore in related public nuisances. And yet, residents blame prostitution for several reasons: cleanness and hygiene, as condoms and needles are abandoned on streets; public tranquillity, as prostitution cause night screaming because of arguments/fights with skinflint clients or procurers and car noise because of car trafficking and honking at prostitutes; physical and verbal violence, as residents suffer from assaults and thefts and women have more particularly to cope with harassment by clients asking for blow jobs. As a consequence, residents reproached the municipality choosing a residential area and agreed the project provided that it would take place in a non-residential area such as the former red light or the Saint Helen island, where vice has already been rooted with the casino. Rejecting the NIMBY accusation, they considered that their “backyard” was already so full of problems that it didn’t need to be targeted as the experiment area. Not distinguishing street prostitution from off-street one, the Committee’s proposal didn’t define how prostitution-related disorder would be concretely dealt with. As a consequence, the pilot project caused a strong outcry, whereas, for instance, the legalisation of lap dance by the Supreme Court – three months before – had not.

Residents’ protest was based on practical experience more than moral convictions. The ARRFM, Association des Résidents et Résidentes du Faubourg de Montréal (Association of Male and Female Residents of Montreal Faubourg), born in April 2000 to defend and promote their rights, interests and quality of life, especially reproached the consultative Committee for neglecting
the relation between prostitution and drugs.

“Since the eighties, an important street prostitution activity has been taken place and has now turned into addict-prostitution, whose size is considerably affects residents’ quality of life and safety.”

The association then suggested the watchword of “narco-prostitution” to focus on the tight connections between the two activities, as mentioned in a small report addressed in 2005 to the Soliciting laws sub-committee:

- “Street prostitution in our neighbourhood is intimately connected to hard drug selling and consuming.
- The new procurer is the pusher (drug seller). […]
- One has to take into account that a large amount of street prostitutes are drug addicts and that drug selling is under the supervision of organised crime. Prostitutes don’t keep the money earned for a long time: a 20$ fellatio is quickly turned into a cocaine or crack dose.
- Street narco-prostitution usually takes place in deprived neighbourhoods and it’s the most deprived people who suffer its impact.”

As they likened prostitutes to drug addicts, residents considered that a change in prostitutes’ behaviour was nearly impossible and therefore that mediation between prostitutes and residents was bound to fail. As a consequence, they tended to suggest a compulsory approach to street prostitution, based on three parts: “area planning”, “social care”, “public safety”. Area planning meant a working plan for the whole area and the application of the municipal by-law that bans any presence in parks between midnight and 6 am. By social care, residents meant a much more restrictive strategy than social support: a partnership between community services so that street workers could immediately take charge of “lawbreakers” (i.e. prostitutes and/or drug addicts) and consult court prosecutors and withdrawal services. Lastly, concerning public safety, residents claimed the end of what they called the “passive tolerance” of street prostitution and an increase in law enforcement in their neighbourhood. They particularly encouraged the development of the experimental “Cyclops project”, a client-blaming approach to street prostitution born in May 2000 when the police chose to target clients instead of prostitutes. The aim of the Cyclops project was to make the local community support the police by supplying information about clients, especially their number plates, so that the police could reprimand clients and threaten them to publicize their name. If the ARRFM felt very satisfied with the outcomes of the Cyclops project, the reception to the social part of the program was more lukewarm as they blamed community services for not playing the game. They accused them of maintaining their traditional risk reduction approach, which “aims to trivialize street narco-prostitution and hard drug selling and consuming in residential areas” and which is “incompatible” with the restoration of their quality of like and feeling of security. Besides, they reasserted their position in the report addressed in 2005 to the Soliciting laws sub-committee in charge of the prostitution issue.

In the end, it seems that the street prostitutes’ situation worsened in the course of the years 2000 whereas the municipal pilot project was initially aimed at improving their daily lot. Although the social part of the pilot project was discreetly implemented, the Cyclops project caused prostitutes’ discontent as frightening clients forced them into practicing in more hidden places, which in turn made their activity more risky. So, whereas prostitutes’ representatives had managed to have their voice heard at the end of the nineties, the years 2000 were the theatre of a rebalanced
alliance between local residents and the police, at the expense of prostitutes.

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Although the Canadian society is often perceived as consensual and peaceful, it is not controversy-free, as revealed by the prostitution issue in general and the Montreal case in particular. If prostitution has always existed, the Montreal experience shows to what extent the causes of disorder lie as much in perceptions as in objective situations. Street prostitution can be tolerated but under certain limits, which depend on the specific local configuration of actors involved in the problem-definition process. The transition of the municipal approach toward street prostitution, from partial decriminalisation to client-targeting illustrates very well the change in power relations within the local configuration: residents managed to marginalize the prostitutes representatives’ position in aid of their own more restrictive one, based on the image of narco-prostitution. Street prostitution is still tolerated but under new rules, which means that the order of tolerance has been revamped once again.

In Canada more generally, the prostitution controversy is so accurate that public authorities prefer avoiding any change for fear of destabilising the status quo. The Montreal experience suggests that doing nothing is politically less risky than acting. Indeed, in 2006, the House of Commons “Subcommittee on Solicitation Laws”, composed of representatives of four political parties, agreed unanimously that Canada’s prostitution laws were “unacceptable” and needed to be changed (Hang and Maloney, 2006:86). However, its members were incapable of agreeing on how to change them, as the Conservative Party members took a strict prohibitionist stance whereas the Liberal, Bloc Québécois and New Democrat Party members opposed criminalization of consenting adult prostitution but without making clear where prostitution could take place. So it seems that prostitution casts aspersions on the Canadian way of harmony.

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Séverine Germain is PhD. in political science and associate researcher at the University of Grenoble. After her PhD dissertation, which dealt with urban security policies in France and Italy, she carried out research at the International Centre for Comparative Criminology of the University of Montreal during her postdoctoral fellowship. Her main research topics are the role of the local community in the security problem definition process and the implementation of new municipal security policies. She recently published, with Cristian Poletti, « Répondre aux mobilisations sociales. Le modèle policier italien en transition » ("Answering social protest. Italian policing in transition"), Revue Française de Science Politique, vol. 59 (6), pp.1127-1145, December 2009, and « Un contrôle institutionnel renouvelé: la vidéosurveillance de voie publique » in Hélène L’Heuillet and Thibaud Zuppinger « Sociétés contemporaines et sécurité(s) », Implications philosophiques, electronic review, May 2010.