The challenges of prostitution policy revisited: harnessing a complex policy field

Every policy domain imposes its own specific demands on the politicians and officials who bear responsibility for it. In Chapter Two we delineated five domain-specific challenges that face those officials who are entrusted with regulating prostitution. In Chapter Five we added the general challenge – a challenge that is not specific to prostitution policy, that every policy maker faces to a greater or lesser extent, but that constraints and shapes the capacity and possibilities for policymaking – that prostitution is a complex policy field.

The domain-specific challenges are the following. Prostitution is stigmatised. Trading sex for money is considered to be demeaning to women and involve the unacceptable commodification of female sexuality (Nussbaum, 1998; Radin, 2001). The stigma surrounding prostitution results in public condemnation, or at the very minimum, public distrust, lack of acceptance and a generalised anxiety about prostitution’s effects on marriage and community. It also leads to sex work taking place at the margins of society, usually in designated urban spaces, undertaken by those such as low-income immigrants who are at a far remove from the general public, or by ordinary women working and living among us who conceal their work as a sex worker. Stigmatisation transforms female prostitution into an unspecified threat from an unknown other; a contagious activity that affects the morals of our daughters, sons and husbands and threatens public health, morality and the status of women (Corbin, 1990; Nussbaum, 1998, p 709; Chuang, 2010). This combination of fear, approbation and ignorance leads to an urge among authorities to control prostitution.

In addition to the stigmatised, covert nature of prostitution, and partly as a result of it, precise and reliable statistics are hard to obtain. Prostitution is an occupation that is characterised by, sometimes extreme, mobility, which makes it almost impossible to collect basic statistics.
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such as the daily number of sex workers in a specific geographically bounded location. Another reason for the lack of reliable statistics is the difficulty of precisely defining core policy categories, in particular categories such as ‘trafficking’ and ‘forced prostitution’. We return to this issue later in the chapter. The combination of cultural ignorance about prostitution and sex workers, and the lack of numbers, creates a situation in which, even in the best of circumstances, policy makers are ‘sailing blind’, without the solid base of evidence to guide their assessments and decisions that exists in many other policy domains, such as health, education and employment.

But these are not the best of circumstances. Prostitution policy is an archetypical case of morality politics. We spelled out the implications of this in Chapter Two. The topic of prostitution in society is engenders strong ideologies. As everyone considers morality their own provenance, morality politics is lay politics – everyone has an opinion about it. Morality politics occupies a peculiar position in relation to evidence: facts are instruments in the service of a moral argument; facts that contest the moral position are resisted, if necessary, adjusted, or in some instances, fabricated to fit the position (Weitzer, 2007; Doezema, 2010). This radically changes the perspective on the role of evidence in prostitution policy. Instead of a lack of facts, as suggested in the previous paragraph, evidence, with all the trappings of scientific and political authority, fulfils the function of a fantasy. Policy analysts speak in this regard of fantasmatic logic, a concept inspired by psychoanalysis to denote the need among policy makers and the general public to improve or complete an imperfect reality with utopian narratives of stability, repair and control (Schön, 1971; Stone, 1997; Glynos and Howarth, 2007; Mert, 2015). In the context of morality politics ignorance is an advantage and evidence an allure, a temptation to shape and bend policy towards some preconceived moral position. As we have seen, morality politics upsets the balance of stability and change in public policy. Where in normal circumstances stability comes from laws, constitutional structures and stable configurations of value and understanding, change is inspired by policy learning, a change of actors or strong exogenous shocks (Cairney, 2012, pp 208–9). All this is moot in the case of morality politics where fantasmatic logics induce both sudden, sharp changes in local rules and strategies and longitudinal drifts from policy goals. This is substantiated both by the frequent twists and turns in local prostitution policy and the wider regulatory drift away from legalisation towards a de facto repressive policy that attenuates and disowns the goals and assumptions of earlier policies.
Prostitution policy is hard to disentangle from immigration policy. In this world of large population movements, and with most sex workers being immigrants, prostitution policy has a close political and legal association with immigration policy. This association has a predominantly restrictive character. Nations do not like poor immigrants; they certainly do not like poor immigrants who choose to work in prostitution. Despite the right to free movement of labour within the constitutional space of the EU, nation states still try to discourage and unsettle sex worker migrants from EU countries after they have habituated to the destination country. This dynamic is reinforced by the trafficking discourse. Vance rightly encourages the observer of contemporary prostitution policy to distinguish between ‘law in the books’ and ‘law in action’. Where the first is clear about human rights, labour rights and the free movement of labour within the EU, the second focuses on criminal codes relating to police borders, on the criminalisation of prostitution even in the licensed sector, on the fight against ‘forced prostitution’, and on labour laws that disempower immigrants.

The general challenge we identified is that prostitution policy has all the characteristics of a policy field. Policy fields are characterised by multiplicity, complexity, interdependency, emergence, uncertainty and unpredictability. From the vantage point of the policy maker who operates from within a policy field, the world looks messy and disordered. The dynamic complexity of policy fields has two important implications for policy makers. First, because emergence, the relational dynamics within the system, is the main ‘engine’ of the policy field; its behaviour is inherently unpredictable. That does not mean that the field lacks any regularity; interactions between elements can settle into regular patterns. For example, the exploitative business model of brothels that can be found in almost all countries is an example of such patterned regularity. However, because of the extensive nature of the field and its open boundaries, it is always prone to destabilising shocks that ripple through the system making it inherently unpredictable. The Sneep case that shook up Dutch policy makers in 2005 is an example of such a shock.

Second, dynamic complexity means that interventions result in unforeseen, unintended consequences. As we have seen over and over again in the preceding chapters, even well-meaning policy interventions in the domain of prostitution tend to result in, mostly negative, unintended consequences. In most cases these concern the human and civil rights of sex workers and immigrant women; in other cases they extend to the constitutional integrity of a legal code or governance
system, or the social status of a group (clients of sex workers). It is not always easy to specify the causal link between policy intervention and unintended consequence. In some cases the ideological zeal of officials narrows their understanding of the possible consequences of their actions – one goal (control, the prevention of trafficking) trumps other considerations, such as privacy or fair treatment. In some cases unintended consequences (but how unintended were these really?) result from the deliberate selection of one set of interests (citizens’ comfort, employers’ freedom to act) over those of another (sex workers’ rights to freedom of movement in the city and to change jobs). Perhaps the most common unintended consequence in prostitution is policy failure. The causal mechanism is a lack of information and understanding of the world of prostitution that results in measures that do not address the concerns or incentives of the parties affected, and that are easy to evade or counteract (Wagenaar, 1995).

What does all this add up to? We have observed that prostitution policy, although hotly debated at the national level in parliament and media, is realised at the local level. This means that local officials have been entrusted with the task of translating broad laws into workable programmes, selecting the policy instruments that give hands and feet to vague and unclear policy goals and statutory language, and above all interacting with the actors on the ground to induce them to be compliant with the law, to adjust their behaviour to conform to the goals and spirit of the law. Localism is an inherent quality of prostitution policy. We encapsulate the challenge faced by local policy officials dealing with prostitution regulation as follows: How can local officials design and implement an effective and humane prostitution policy that is cognisant of the global and moral forces that shape prostitution in contemporary society? Differently put, how can they steer free from the eroding influence that morality politics has on fairness, truth and human decency, accommodate the uncertainties and ambiguities created by the lack of evidence in this sector, understand and take a humane stance towards the global forces that compel scores of poor people to try their luck in other countries, and take the ineradicable stigma that is attached to prostitution into account in their mediation between sex workers and the larger society? How can policy makers effectively navigate a complex policy field?

We believe that these challenges are not confined to the two countries that were part of our research project, but that they apply to each and every country that attempts to regulate prostitution. Stigma, morality politics, lack of data, immigration, dynamic complexity and negative unintended consequences are forces that influence the sex
trade everywhere, although perhaps not always with exactly the same potency, given the singularities of individual countries. Similarly, the national–local relationship is crucial to prostitution policy everywhere. National legislation has to be translated into local policy design to be implemented, but at the same time, as we have seen, the local exerts considerable discretion in shaping public policy. The literature on complex adaptive systems contains many suggestions for dealing with dynamic complexity, too many to discuss here in depth. One principle, however, underlies all this advice: complexity cannot be eliminated or denied. It also defies control. Control, as we have seen, is a governance fantasy. The best we can hope for in addressing these formidable challenges is to harness dynamic complexity, to take advantage of the opportunities it offers and use it for productive ends (Axelrod and Cohen, 2000, pp xi–xii), in other words ‘[S]eeking to improve but without being fully able to control’ (Axelrod and Cohen, 2000, p xvi). Harnessing complexity boils down to three broad strategies: increasing variation, changing interaction and selecting and nurturing solutions that work (Axelrod and Cohen, 2000). By increasing variation we introduce new ideas, insights and experiences into a policy field that open up unproductive routines and stagnant problem solutions. By changing interaction we effectively create new relational dynamics and thus new emergent outcomes in the field (Wagenaar, 2007). By selecting and strengthening procedures and routines that work, we enhance the governance capacity of the field (Bourgon, 2011). In this chapter we focus on the variety and interaction pillars of this three-pronged strategy. We suggest that policy makers need to organise the policy process in such a way that it provides space for the voice of the sex worker to be heard where it counts, and create operating routines to allow sex workers to influence policy design and implementation. The technical term for this form of policy design is collaborative governance. But we will also see in the next sections that in the real world of policymaking, enhancing governance capacity through variation, interaction and selection requires attention to essential additional factors such as building trust, enhancing self-organisation, managing emotions, and engaging in deliberative forms of communication.

**Introducing collaborative rationality in prostitution governance**

Before we describe and illustrate the possibilities of collaborative governance in prostitution, we need to discuss – and dismiss as inadequate – some ‘common sense’ reactions to the challenges described
in the preceding section. The first would be to formulate clear national goals and make sure, through sufficient oversight and monitoring, that local policy makers adhere to this script. This is the impetus behind the new national prostitution law (WRP) in the Netherlands. The law is supposed to create uniformity among the welter of local licensing systems. Apart from the fact that this solution fails to address any of the challenges formulated earlier, there are theoretical and legal reasons why it is likely to falter on the localism that is inherent in prostitution policy. As we discussed in Chapter Five, policy formulation and policy implementation are not strictly demarcated phases of the policy process, but are, instead, continuous, consisting of overlapping competences, actors, activities and materialities. In practice national laws act as instructions, or rather suggestions or admonitions, to lower-level officials to draw on a set of administrative routines to transform the law into a more or less workable programme. Legally, in many countries, and this is certainly the case in Austria and the Netherlands, the local level has considerable constitutional autonomy in designated areas to raise taxes, design policy, and organise and deploy police capacity. Moreover, as the WPG shows, key concepts in the national law are often vaguely formulated and open to different interpretations. Local autonomy is in itself neither a good nor a bad thing. It depends on how it is deployed. But in a moral climate in which prostitution is considered synonymous with trafficking, regulations drift into ever more repressive measures in the Netherlands, or the Viennese police make autonomous decisions such as banishing street workers to ever more remote and dangerous areas of the city, the dangers of unchecked localism in prostitution policy are clear.

A second policy reaction would be to make a serious commitment to eradicating prostitution from society, as this moral blight and affront to women has no place in a highly developed, civilised society. We possess the legal and administrative tools – prohibition and the criminalisation of clients – and we must make sure that we deploy sufficient means and are serious in enforcing these prohibitions stringently. This solution addresses the morality dimension in prostitution policy. It would satisfy all those who perceive prostitution as morally unacceptable and degrading to women and it would send a signal to men to take gender equality more seriously. Moreover, by eradicating prostitution from society, it would solve most of the other challenges. Most, but not all. Apart from the considerable and probably insurmountable enforcement problems, prohibition does not address the issue of mass immigration. Nations, such as Italy, Spain and most countries in the Global South, that have long prohibited and criminalised prostitution
still receive many immigrants from poor countries, some of whom choose to work in prostitution.\textsuperscript{142} The results are the well-known effects of driving women, whose social position is already precarious, into illegality where they are even more vulnerable to harm such as exploitation, dependency, indentured labour, and corruption by public officials. Dora’s story at the beginning of this book is a stark reminder of that perverse dynamic. The problem is that, as far as we can see, no society has ever been able to completely eradicate prostitution. It is one of those utopias, one of those fantasmatic logics that, in one form or another, inhabit every policy domain.\textsuperscript{143}

So, where does this leave us? As we argued in Chapter Three, policymaking is a practice. It is an ongoing and routinised accomplishment (Nicolini, 2012, p 3). Policymaking, in any domain, is a practical attempt to improve or accommodate a situation that is regarded as being in need of improvement. That means that policymaking is deeply embedded in the ideational-material world, to which we bring our competences, routines, habits and improvisations, our ideals and values, our worries and personalities (Wagenaar, 2004). The means we have at our disposal to deal with this ideational-material world are equally commonplace: set up a meeting, write minutes, compose a report, have an informal talk with a colleague, assign a task to a junior associate, monitor agreements from an earlier meeting, visit a brothel for the monthly hygiene inspection, process an application for license – the list is as endless as it is tedious (Freeman, 2016; Rhodes, 2015). Somewhere in that everyday reality of public administration problems get solved, or not, and policy goals reached, or not. How does this humdrum take on policymaking address any of the formidable challenges formulated before? Through, what the practice theorist Pickering calls a ‘dialectic of resistance and accommodation’, where resistance denotes a temporary failure to capture the agency of an object or person and accommodation a response to this resistance (Pickering, 1995, p 22). From the perspective of the administrator the challenges that beset prostitution policy are shorthand for a bundle of

\textsuperscript{142} This includes indigenous women within the affluent countries of north-western Europe who, for a variety of reasons, exchange sexual services for money.

\textsuperscript{143} Moreover, the prohibition solution does not address the sexual agency of women. Even in societies where gender relations are fairly equal, some women (and men) will decide, for financial or other reasons, to provide sexual services to men. Most countries, and certainly the countries that have prohibited prostitution, also harbour domestic sex workers, often at the higher end of the market, and frequented by the societal elite. In such societies the existence of this segment of the sex trade is a public secret that is shrouded in discretion.
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resistances as they manifest themselves ‘on the ground’: evasion tactics by brothel owners or sex workers, conflict with brothel owners or sex workers, a lack of coordination between different agencies, mutual misunderstanding between the main actors (often exacerbated by language and cultural differences), distrust, anger and anxiety on the part of the sex worker, aggressive media that are waiting to inflate small mistakes into major administrative embarrassments, conflicts with colleagues, a restless, angry public that demands to be heard (Wagenaar, 2006) – resistances that add up to a situation, common to much contemporary local governance, that the democratic theorist Mark Warren calls ‘pluralized ungovernability’ (Warren, 2014).

The literature also suggests accommodations to pluralised ungovernability that show remarkable similarities with the recommendations of fostering variability and interaction: government-initiated democratic participation. ‘There is a lot of political work in today’s societies,’ Warren argues, ‘that electoral democracy is unable to accomplish’ (2014, p 45). This kind of participation, he continues, opens up a number of ‘opportunities’ to increase the governing capacity of local administrations. One is that it allows for the inclusion in decision making of those affected by an issue. The second is a more direct and specific form of empowerment of those affected. The second opportunity logically follows from the first, as inclusion without the actual capacity to influence decisions is hollow.144 The challenge is of course how to realise that empowerment. The third opportunity is trickier. It is about the capacity of the administration to build more effective forms of representation than electoral representation (which, given their precarious citizenship status, are ineffective for a large number of sex workers anyway) into the policymaking process. The strength and legitimacy of electoral representation is that it is based on equality; everyone has an equal vote. But that is also its weakness. The representative chain is not only weak but also largely unspecified. Local administrations are usually not elected because of their stance on the sex trade. Invited participation allows for more effective forms of representation. ‘What matters most from the perspective of democratic representation,’ Warren argues, ‘is that the selection processes results in a body that includes the interests, values, views, and opinions of those potentially affected, as well as has the capacity for considered

144 Although many participatory schemes initiated by governments amount to exactly that: inclusion without decision-making influence. Think of the myriad information or consultation meetings, where participation is largely tokenistic and their purpose merely to placate the public (Arnstein, 1969).
advice or decisions that represent the affected’ (2014, p 55). More specifically, invited participation makes it possible for administrations to avoid advocacy-based representation (as in the Viennese case in which citizens captured the press and the police) and open up the policymaking process to influence by marginal or excluded groups.

In 2002 Wagenaar studied the implementation of the legalisation of brothels in the city of The Hague. What he, unexpectedly, found was an instance of government-initiated participation. It was imperfect (it was as much aimed at improving interagency coordination as including societal actors; it included only brothel owners and excluded sex workers and their advocates; there were such major conflicts and so much ill will on the part of the brothel owners that parties had to seek recourse to the courts) but in the end it did the trick: the city relatively quickly and painlessly introduced a licensing system for brothels and slowly and grudgingly a measure of mutual trust developed between city officials and brothel owners (Wagenaar, 2006). The example is important for the lessons it contains. Collaboration emerged out of an astute analysis of the situation at hand by the official in charge of the licensing project. He showed awareness of the sheer complexity of the situation (the licensing meant that the regulated tolerance of the preceding years had to be transformed into a coordinated administrative effort involving a dozen city agencies), as well as of the obstructive power of brothel owners. To avoid a long hard slug towards implementing a licensing system, and assure compliance with the system once it was in place, the official concluded that it was better to include the owners in the design of the licensing. The story of the, sometimes difficult, deliberations and negotiations demonstrates mutual learning (about the sex trade on the part of officials, about the desirability of closing times on the part of the owners, and about the importance of taking responsibility for your tasks on the part of all involved) (Wagenaar, 2006).

Let us call invited participation Solution CG, where CG stands for collaborative governance, and see how it stacks up against our list of challenges. First, in thoroughly pragmatic spirit, it takes the situation at hand as its starting point, not just in the sense that there is prostitution in a particular urban space and an imperative that the administration deal with it, but also that the only means that we have in our possession to deal with it consists of routine, unremarkable, practical, common sense. This answers both to the localism aspect that is inherent in prostitution policy and the intrinsic pragmatism of public policy. It is no coincidence, for example, that in their survey of collaborative governance, Ansell and Gash discovered that many of
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these collaborative local projects ‘bubbled up’, similar to the initiative in The Hague, in response to governance problems. As they observe:

Collaborative governance has emerged as a response to the failures of downstream implementation and to the high cost and politicization of regulation. It has developed as an alternative to the adversarialism of interest group pluralism and to the accountability failures of managerialism (especially as the authority of experts is challenged). (Ansell and Gash, 2008, p 544)

By including ‘those affected by the issue’, Solution CG answers to a number of other challenges to prostitution policy: lack of data, ignorance about the understanding of the immigration experience of poor women and the cultural distance created by the stigma on prostitution. Solution CG is especially strong on the problems of ignorance and lack of reliable and accurate data. Participating parties – sex workers and brothel owners – are able to contribute their experiential knowledge of the sex trade to assist in better policy design and criticise misguided or unworkable policy tools. Solution CG does not accommodate all ideological positions on prostitution, however. In the claustrophobic moral space of morality politics, pragmatism, with its conditional acceptance of prostitution, is itself an ideological position – as is every other policy approach to prostitution.

However, before we discuss the possibility of collaborative governance in prostitution policy, we need to address the question of who the partners are in such a collaborative relationship. In the The Hague case sex workers did not play a role in the deliberations over the design and introduction of a licensing system. In complexity terms, by not including sex workers the officials did not optimise the requisite variety in the policy field that is a condition for successful learning and adaptation. This deprives policy makers of the opportunity to be exposed, in a non-antagonistic setting, to knowledge, experiences, affects, personal histories and solutions that lie outside the reigning administrative frameworks. We are aware of the practical difficulties of involving sex workers in arrangements for policy design. Pervasive stigma and its sedimentation in law and implementation practices, results in mutual distrust, personal isolation and high mobility, and makes sex workers hard to reach. The experiences in Vienna with the design of the new Viennese Prostitution Act (Chapter Three) are case in point. A one-off hearing of individual sex workers by the authorities did not add up to a stable mechanism for securing the latter’s input into the
routines of policy design in Vienna. There was increased variation but at the system level the traditional interaction mechanisms did not change and there was insufficient selection of positive learning mechanisms to effectively counteract the usual interactions in the policy field between politicians, citizens and the media (Axelrod and Cohen, 2000, pp 156-7). In the end the opportunity to learn from sex workers’ experiences in designing a licensing system for brothels was limited. To benefit from the experiential knowledge of sex workers these collaborative relationships require the existence of stable, autonomous, self-assured partners. While most countries have sex worker organisations, we need to look more closely into the organisation and relational dynamics of such organisations to assess their capacity for collaborative governance.

**Sex worker advocacy and the state**

Governance scholars agree that societal interests participate most effectively in policy networks when they are organised. This understanding is partly theoretical and partly practical. Theoretically it derives from the sway that political pluralism holds over theories of the policy process. This, largely American, approach states that numerous interest groups attempt to influence the political agenda and decision-making process, while the state acts an arbiter between such groups. Practically, the internal dynamics of policy networks are easier to navigate when the participants represent organisations or organised interests (Rhodes, 1996).

Like most occupational groups sex workers organise themselves to exert influence to protect their rights and campaign for safe work conditions and sex workers’ wellbeing. However, due to the stigmatised nature of prostitution, self-organisation in sex work differs from that in other occupations. Two events, both dating from the mid-1970s, mark the beginning of contemporary sex workers’ self-organisation. In 1973 COYOTE (Call Off Your Own Tired Ethics), seen by many as the first contemporary sex worker advocacy group, was founded in San Francisco (Gall, 2014). COYOTE’s strategy was a combination of political campaigning and the provision of services to sex workers. It supported the creation of many similar groups in other American cities. On 2 June 1975, around 100 sex workers in Lyon occupied the Saint Nizier church in the centre of the city. The occupation was a reaction to the prison sentences that 10 of their colleagues had received for soliciting, and the culmination of a period of protest and (unsuccessful) negotiations with the authorities about repressive policies, police harassment and corruption in the municipal administration regarding
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the governance of prostitution (Mathieu, 2001, p 108). The occupation received support from unions and political organisations in France, attracted widespread positive media coverage, and grew into a rallying point for sex worker rights organisations in France and abroad. Both COYOTE and the more loosely organised French groups were ignored, and in the French case repressed, by government authorities. However, both were successful as vehicles for consciousness raising and self-affirmation within the community of sex workers (Mathieu, 2001, p 122).

These early initiatives were followed by the foundation of the International Committee for Prostitutes’ Rights, and the first international conference for sex workers in 1985 in Amsterdam. The HIV/AIDS crisis in the 1980s, although it identified sex workers as one of the sources of contagion, proved to be a window of opportunity for the formation of sex worker advocacy groups and the possibility of collaboration with government authorities. Protecting the health of their colleagues through the promulgation of safe sex practices became one of the main goals of many emerging sex worker advocacy groups. Long-standing, effective sex worker rights organisations such as the New Zealand Prostitutes’ Collective (NZPC), the Scarlet Alliance in Australia and the Rode Draad (Red Thread) in the Netherlands (now defunct) were all founded in the 1980s. Similarly the fight against HIV/AIDS initiated numerous advocacy organisations in Asian countries. At the same time public health authorities in several countries began to see that the involvement of community organisations, with their experiential knowledge of the work circumstances that increased and decreased the risk of HIV/AIDS and the means to design and support prevention measures, were a valuable ally in the fight against HIV/AIDS. Although the police attitude to prostitution scarcely changed, self-organisation and the positive experience of collaborating as a trusted partner with public health professionals proved to be an important form of self-definition and group affirmation (Beer and Tremblay, 2014, p 291).

Sex worker self-organisation is shaped by a number of characteristics in which prostitution differs from other occupations. Every occupation is to greater or lesser extent regulated, by state agencies that impose national regulation on the occupational group and through self-regulation by trade bodies or professional organisations. These regulations guarantee the quality of the product, organise appeal procedures in cases of conflict, specify sanctions in cases of dysfunctional or dishonest professionals, and in general promote adequate workplace conditions and labour rights. Because of the stigmatised, and in many
cases criminalised, nature of prostitution, its regulation has a wholly
different character from that of other policy fields. First, as we saw in
the Chapter Five, regulation of prostitution is not about the quality
of the service or the adequacy of workplace conditions. And, second,
trade bodies and professional organisations do not play a role in the
regulation of prostitution; prostitution is regulated by the state, and
the policy instrument of choice is criminal law or authoritative forms
of regulation (Gall, 2014, p 222). As we argued in Chapter Two,
the legalisation of prostitution does not make the stigma go away.
To improve the conditions under which they work sex workers are
therefore forced to address the wider climate of hostility towards
prostitution and sex workers. This almost automatically compels them
to unite in sex work advocacy organisations that address the issues of
stigma, criminalisation and the personal isolation that follows from
that. That also suggests that social protest and pressure group tactics
that aim to improve general civil, political and human rights are the
strategy of choice for sex work advocacy groups (Gall, 2014, p 224).

Gall argues that unionisation, the route of choice for workers to
create independent interest representation, is an inadequate strategy
for sex workers. First, although improvement of workplace conditions
is an important goal, the causes of substandard workplace conditions
in prostitution do not lie solely with the ‘employer’, the brothel
owner, but are also, if not largely, the result of the criminalisation of
prostitution by the state. The combined effect of stigmatisation and
criminalisation is that sex workers are relegated to an informal economy,
where they work in isolation and in competition with each other,
suffer precarious labour relations (with the attendant high mobility),
and earn much of their income in the cash economy. Second, most sex
workers are self-employed. This does not preclude unionisation per se,
but, in combination with the other characteristics of sex work, makes
it more difficult (Gall, 2014, p 222). Gall thinks that ‘[Sex workers’]
“right to do business” as entrepreneurs and their view of themselves
as individuals does not sit easily with the solidaristic and collectivist
underpinnings of unionization’ (Gall, 2014, p 223). We should add,
third, that the fact that many sex workers are (recent) immigrants, who
do often not master the language of the arrival country, and whose
social bonds are mostly with family in the country of origin or the

145 In the Netherlands brothel owners have set up a number of umbrella organisations.
However, these do not regulate the business but act as advocacy groups, similar to
employers’ organisations.
146 Moreover, not all sex workers work in brothels.
community of nationals in the arrival country, augments the difficulties of collectivisation. Gall therefore concludes that:

[B]ecause of the difficulties and obstacles facing all sex worker organizations (including unions) and the need for any sex worker organization to confront the extra-workplace political and legal regimes that regulate sex work, both union and nonunion forms of sex worker collective self-organization in the workplace have coalesced around a form and modus operandi of extra-workplace pressure-group activity that I call ‘independent collectivism’. A key aspect of independent collectivism is that it is independent of operators, employers, the state and any other third parties. Thus, it is an organization composed of, by, and for sex workers only. (Gall, 2014, p 224; parentheses in original)

This is an important argument, well supported by empirical evidence. If it were true, it does not bode well for the possibilities for collaborative governance in prostitution policy. Collaborative governance requires an attitude of openness to the other party, a willingness to listen to the other’s arguments. In theoretical terms, collaborative governance requires agonism instead of antagonism. Independent collectivism, with its disposition of independence, struggle, protest and resistance, sits closer to antagonism and resistance than to agonism. Yet, we also think that the argument overstates its case. First, solidarity and collectivism, just as well as individualism, protest and resistance, are not individual traits but dispositions and practices that are conditioned by the way situations are structured. The political climate in which sex workers operate determines the possibilities of constructive collaboration. Gall’s own work bears this out. The cases of self-organisation from the US and Canada all involve advocacy groups, usually locally organised, in opposition to the political regime and the local police. In Australia the Scarlet Alliance rapidly managed to become a national group, recognised by federal and provincial governments, and was subsequently awarded contracts to provide health and education services to sex workers. The same story can be told about the NZPC (from interviews with Hendrik Wagenaar). The difference is that in the first two countries prostitution is criminalised, the social climate, fuelled by sensational media items, is hostile to prostitution, and the police, either hostile or indifferent to sex workers, are entrusted with the implementation of the law. In Australia and New Zealand on the other hand, prostitution is decriminalised, the political and social climate is more accepting of
prostitution, and the police act more as a partner towards sex workers than as an enemy.

Second, research on sex worker organisations shows that they are able to combine advocacy and independence with a service provision task. It is widely observed that advocacy organisations operate in a perennial tension between services and politics. Members feel that the degree of formalisation that is required to fulfil service tasks, often funded by the state, conflicts with the broader goal of changing societal attitudes towards sex work and fighting police corruption. Also, formalisation implies some form of registration and record keeping, which members perceive as endangering their anonymity. Moreover a real danger exists of being co-opted by the state through subsidies and grants, where the conditions that are attached to the funding allow state agencies to impose their agenda on the advocacy group (Beer and Tremblay, 2014, p 299). Members of the NZPC trenchantly express this tension:

In the beginning, the NZPC resisted the formality of things such as group registration and membership lists because it wanted to create a more fluid movement that people could move in and out of easily. These kinds of formalities were seen as barriers to becoming part of a move for change, as many sex workers were reluctant to be formally identified as such. A flat structure was preferred where everyone would have a part to play and the idea of having formal meetings did not initially appeal to the group. (Healy et al, 2010, p 46)

However, evidence from Canada, the US, New Zealand and the Netherlands demonstrates that it is possible to establish a sufficient level of trust between the sex worker organisation and government agencies to establish a productive working relationship (Healy et al, 2010, p 47). The state is never a monolithic entity; while it might not be possible to develop trust with some agencies or officials, others prove to be more open and pragmatic in their relations with sex worker organisations. For example, while its relationship with the mayor of Amsterdam was openly antagonistic, the Rode Draad always had a cordial and reciprocal working relationship with officials from the tax authority and the Ministry of Social Affairs and Labour Relations (personal observation, Hendrik Wagenaar). Similarly, the NZPC established a good working relationship, which eventually included funding, with the New Zealand Ministry of Health (Healy et al, 2010, p 48). Since then the NZPC has managed large and complex public health contracts for the ministry (interviews with Hendrik Wagenaar). The latter is a
splendid example of harnessing the complexity of a policy field: the introduction of the NZPC as a full partner increased variation, changed interaction patterns and created a new effective management routine that improved the delivery of public health services to sex workers in the fight against HIV/AIDS. Surveying evidence from Canada, Beer and Tremblay observed that sex worker organisations were able to develop both community and advocacy capacity: ‘With stable funding, community-based nonprofit organizations both expand the arena of social service provision and act as potential sites of civic engagement’ (Beer and Tremblay, 2014, p 300). In fact, in a political favourable climate the benefits of funding might outweigh its risks. As Beer and Tremblay conclude, ‘research indicates that resources are central to social movement organizations sustaining themselves over the long term, and this longevity is necessary to mobilize an autonomous voice for disenfranchised populations in local and national politics’ (Beer and Tremblay, 2014, p 301). The conclusion is that there is no necessary contradiction between state support and advocacy, and that in fact, the existence of a stable, politically recognised sex worker organisation might be a potent force in the battle for acceptance of prostitution as a legitimate occupation. However, does this mean that sex worker organisations and state agencies are able to jointly engage in the more demanding enterprise of collaborative governance? It is to this question that we turn in the next section.

**Governance capacity and collaborative governance**

The key word in modern theories of governance and public administration is *capacity*. The challenge of any governance system is to build and maintain effective governance capacity to tackle the numerous challenges that governments face. These challenges are such that the traditional management of societal sectors by hierarchically organised and siloed government bureaucracies that provide services to meet universal needs no longer suffices (Healey et al, 2003, p 60). Different authors describe these challenges in different ways, but they generally boil down to the following. The first relates to the increasing complexity and pluralisation of politics and social life. Political complexity, as we saw, is characterised by a general dispersion of power and a high degree of interdependence (Bourgon, 2011, p 21). The causes of political complexity are the globalisation of a range of issues such markets and trade, migration, urban development, environmental issues and security. These processes of globalisation reduce both the territorial effectiveness of public administration and, partly as a consequence,
the democratic effectiveness of national or local electoral democracy (Ansell, 2011, p 4; Warren, 2014). A second challenge is what Warren calls the ‘general post–modernization of culture’ (Warren, 2014, p 47). This trend expresses itself in a less deferential attitude towards authority, a widespread disaffection with politics (Norris, 2011) and a tendency for civil society groups to create associations, parallel to the institutions of the state, that organise for purposes of advocacy, knowledge creation and self-government (Warren, 2001). When seen as a threat to traditional government this dense civil society environment results in highly adversarial politics (Ansell, 2011, p 4), but when regarded as a resource, it might open up new opportunities for political innovation (Bourgon, 2011, p 25; Wagenaar, 2014). The upshot of these trends is a state of ‘institutional incapacity’ (Warren, 2014, p 46); at all levels of government we witness disjunctions between government agencies’ capacity to deliver on their political promises through traditional policy instruments, citizens’ capacities to understand and govern their own social and physical environment, and the tendency of an increasingly beleaguered state to bear down on citizens with authoritative forms of regulation and surveillance (Norris, 2011).

The remedy for this institutional incapacity is generally seen as a form of government that actively involves citizens and communities (Healey et al, 2003, p 63; Ansell, 2011; Bourgon, 2011; Warren, 2014; Ansell and Torfing, 2016). Governing capacity is seen as residing in the ability of government institutions to leverage the problem-solving power of civic associations and effectively collaborate with stakeholders in identifying, framing and solving collective problems. This forms an alternative to three traditional forms of governance: adversarial politics, in which the party in power makes decisions by imposing its will on minority parties; coalition politics, where parties, none of which can expect to gain an outright majority, make decisions by bargaining among themselves; and managerial governance, in which management processes, often but not always outsourced to corporate actors, function as means for collective problem solving and service delivery.

What is collaborative governance? In broad-brush strokes collaborative governance is a mode of governance in which public agencies engage with various stakeholders to jointly deliberate about public problems (Ansell, 2011, p 167). Collaborative governance differs from the more generic term ‘governance’ in that it requires more stringent, more demanding standards of working together. Or, to put it differently, collaborative governance requires quite a bit of reflection on the design of the collaborative relationship. Just inviting people over and sitting around a table in a meeting room will not necessarily result
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in a productive exchange of ideas. Ansell and Gash express this in the following, more demanding definition of collaborative governance:

A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets. (Ansell and Gash, 2008, p 544)

This definition covers various types of collaborative arrangements, from conflict resolution platforms in which parties who are locked in intransigent conflict try to find mutually acceptable accommodations (Innes and Booher, 2010) to the kind of long-standing contractual relationships that the NZPC in New Zealand or the Scarlett Alliance in Australia holds with public health agencies (Healy et al, 2010; Gall, 2014). But whatever the nature of the arrangement, to designate it as collaborative, to allow it to build effective governing capacity, it needs to have the following characteristics.

First, it is essential that actors from civil society who are affected by the policy, who are stakeholders in other words, are involved in the governing arrangement. But this in itself is not sufficient. To infuse the collective problem-solving situation with genuinely new insights and knowledge, it is particularly important that peripheral, marginal or vulnerable groups are involved. Innes and Booher stress the importance of increasing variation in the stalled policy field. Contrarian and disadvantaged stakeholders are necessary to break open the unproductive understandings and dysfunctional policy arrangements that make collaborative governance necessary in the first place and to benefit from the reciprocity and creative potential of genuinely inclusive relationships (Innes and Booher, 2010, pp 101, 102). Inclusion of marginal groups is much more difficult and much less common than one may think, as the example from The Hague demonstrates. There are often good reasons to exclude these groups. They may be hard to find or to organise; they speak, dress, and behave differently from other stakeholders; there are often difficult language issues and cultural misunderstandings between groups; there may be well-founded mutual distrust; and often peripheral groups bring a long history of humiliation, marginalisation and pain to the negotiating table (Forester, 2009). Inclusiveness must be actively sought (Ansell and Gash, 2008, p 556). All these considerations apply to the inclusion of (immigrant) sex workers. But, as experience
with collaborative governance and policy mediation suggests, these obstacles can be overcome (Forester, 2009; Innes and Booher, 2010). Inclusiveness is essential to securing legitimacy (this forum represents all stakeholders), diversity (a precondition for dealing with social and technical complexity (Axelrod and Cohen, 2000, p 32; Innes and Booher, 2010, p 36) and mutual recognition as genuine participants in the policy process. Recognition is particularly important for the most peripheral and vulnerable partners, as they feel isolated in their struggle to get heard.

Second, the collaborative arrangement needs to be authoritative – that is, it must be aimed at, and have a mandate for, decision making. It must be exclusive in the sense that it cannot be a sideshow to the ‘real’ political process of decision making. The time and energy that participants put into the process must result in genuine influence. This will provide an incentive for sceptical or reluctant participants to join the collaborative forum (Ansell and Gash, 2008, p 557). Authority is also signalled through the membership and longevity of the collaborative arrangement. If participants with a true mandate to make decisions represent government, the administration signals to the outside world that it takes this forum seriously as a governance body. Similarly, the longer the collaborative forum is in operation, the more it will communicate that this is an important element of the administration’s governing capacity.

Third, a condition for authority is that the collaborative arrangement has a formal and not a casual character. This implies a minimum of organisation and institutionalisation, such as agreeing on rules and procedures for meeting and decision making, a contractual arrangement with accountability procedures for situations where services are delivered, transparency (meetings are reported), an insistence on exclusivity (no forum hopping) and the sharing of resources. For example, marginal groups might need training in basic skills such as chairing a meeting, drawing up minutes or reading balance sheets (Fung, 2004). Sometimes governments decide to fund sex workers’ organisations, not only to make it possible for them to spend time on working with government agencies, but also as a token of their recognition as valued partners in the desired governance arrangement.

So far, our description of design has been static, aimed at the proper structure and organisation of collaborative governance. But what is it that the parties in a collaborative arrangement actually do? The fourth, key element of collaborative process consists of engaging stakeholders in the twin processes of joint problem definition and joint-fact finding: exploring how each party perceives the central issues at hand and
discovering the facts that the parties can agree about. This is more than just having each party state how they perceive the problem or list what they consider key evidence. In almost all policy conflicts, problems, definitions and relevant evidence are the most contested aspects in the adversarial relationship. The fact that parties are willing, with an attitude of sceptical acceptance, to listen to the other is itself a major achievement. By opening up, if ever so slightly, to the other’s point of view, parties begin to discover what unites them as well as what divided them. They discover what worries, needs, values and goals they share. Joint problem definition has three effects. As an inquiry into the nature of an intrinsically complex problem it leads to a joint reconstruction of each stakeholder’s conception of the problem (Ansell, 2011, p 172). When done well that experience can be transformative:

During the course of deliberation, people may discover new information and new perspectives about what is at stake in the decision before them. This may lead individuals not only to modify their choice of means for achieving ends, but to reconsider those ends. (Reich, 1985, quoted in Ansell, 2011, p 172)

Moreover, by jointly reflecting on the nature of the problem, the parties involved begin to own the transformed problem definition. Parties begin to see that the problem is too complex and unpredictable for any one party to fully comprehend, let alone, control. Participants discover – perhaps the better term is experience – their mutual dependency in harnessing the problem. This can also be seen as a form of social learning, in which the transformed understanding of the problem forms the basis for an inquiry into new ways of problem solving and reframed standards and criteria of what constitutes a successful solution. Joint problem definition also has important relational effects. Participants reframe their relationship away from a contest of emotionally held positions and preferences towards what Ansell calls a ‘position of shared uncertainty’ (Ansell, 2011, p 174). Joint problem definition is at the core of the process of breaking down stereotyping, the untested ascription of reprehensible views or negative character traits to opposing parties, and other barriers to communication that prevent exploration of mutual gains in the first place. It is at the heart of a process of building trust, mutual respect, shared understanding and commitment to the process. Put differently, in collaborative terms ‘authentic dialogue’ may begin to occur.
Authentic dialogue is a technical term that signifies a process of communication that observes the requirements of accuracy, comprehensibility, sincerity and legitimacy (Innes and Booher, 2010, pp 97-9). Authentic dialogue can only be achieved in situations of face-to-face dialogue. It represents the hard-to-capture communicative process that forms the beating heart of every collaborative dialogue. It is a necessary condition for mutually learning new ways to think and act together. To get a sense of what the process of authentic dialogue entails in practice, it is perhaps useful to quote Innes and Booher at some length:

Authentic dialogue requires collaboratively adopted ground rules that will enable a productive dialogue. The rules typically include an injunction against criticism of others; acceptable ways of dealing with the press; avoiding repetition; and not dominating the conversation. Dialogue is apt also to require admonitions about listening respectfully. Many people come in with their own ideas and spend meeting time rehearsing to themselves what they want to say, rather than listening, much less keeping an open mind. Changing these habits might require training exercises.… Some participants assume that since collaboration is about finding common ground, they should not bring up anything controversial. But without sincerity and without the questioning of given knowledge and assumptions, a dialogue cannot be collaboratively rational. It will not break through the socially constructed and often disempowering assumptions that may be the cause of the problem’s intractability.… There are nonetheless stakeholders who are confrontive [sic] and fight for positions rather than listen. Some are highly emotional and angry. While process managers need to try to get these individuals to speak in terms of interests rather than positions and avoid attacking others, it is equally important that they not gloss over the conflict. Sometimes managers may even have to surface and address hidden conflicts to assure the dialogue does not result in what many critics are concerned about – a lowest common denominator agreement, with peer pressure stifling unpopular voices.… Hidden differences can lead to an agreement that is thin and fragile rather than one that has engaged the deep issues and bound the stakeholders together in reciprocal arrangements. (Innes and Booher, 2010, p 100)
When done properly the stakeholders in a process of collaborative governance may begin to reformulate how they understand the problem and in the process reformulate what they want to achieve. This often unleashes the creative potential that the combination of inclusiveness and authentic dialogue may bring to the collaborative forum. By learning to let go of favoured solutions and by opening themselves up to the knowledge and experiences of others, stakeholders may arrive at solutions that address shared interests. The most important part of this process is that this is a joint achievement. The learning about the issue at hand is shared: from each other and with each other. As Innes and Booher state: ‘The goal of collaborative dialogue is not to choose who or what is right, not even what is true or best, but to find actions that all or most can support and that are workable ...’ (2010, p 100).

Finally, fifth, successful collaborative governance requires leadership. In the literature on collaborative governance leadership is usually discussed in terms of facilitation. Facilitative leadership helps to navigate conflicting parties through the ups and downs of conflict resolution. Facilitative leaders engage in ‘assisted negotiation’ by mediating, or when the parties are stuck in a conflict and cannot reach a consensus, drafting a solution in non-binding arbitration (Ansell and Gash, 2007, p 554). ‘Leadership is crucial for setting and maintaining clear ground rules, building trust, facilitating dialogue, and exploring mutual gains’ (Ansell and Gash, 2007, p 554). In addition facilitative leadership is essential in empowering the weaker stakeholders in the collaborative platform, both to protect the democratic rights of the weaker parties to influence decisions that affect them, but also to guarantee the requisite diversity that is required to ‘think outside the box’ and arrive at genuinely creative solutions.

In a wider perspective of collaboration leadership is important in a different way. All newcomers in an established policy subsystem have to ‘prove’ themselves to the established stakeholders. They have to demonstrate that they are reliable, trustworthy, representative of their constituency, and that they possess resources that provide added value to the subsystem. This applies a fortiori to self-organisations of marginal groups who strive to find partners in the world of governance, in particular when that group also has to bridge the gender divide. Initially such advocacy groups, whose members dress and speak differently and are not able or willing to use the behavioural codes that guide the subsystem’s interactions, are met with reserve if not downright suspicion. In such situations a leader who is able to communicate with a wide range of stakeholders is a huge asset. Such a leader creates the necessary bridging capital that is required for effective functioning in
the subsystem. At the same time, while the advocacy group is opening up to the values and interests of other stakeholders, it is essential that the group recalibrates its balance between advocacy and accord. This can be a genuinely agonising process in which some members feel that the soul and identity of the organisation are at stake. In such a crucial phase of the advocacy organisation’s development, effective leaders are able to reformulate the value commitments that fix the nature of the enterprise. They recommit the organisation to its distinctive aims, methods and role, both in the original community of stakeholders and in the wider policy subsystem. In terms of the advocacy organisation’s position in the policy subsystem, the role of leaders is to ‘develop a close alignment between meaning and action’ by articulating an organizational mission around which the original members can unite (Ansell, 2011, p 67).

Is collaborative governance in prostitution policy possible?

Is collaborative governance, in the demanding sense as described above, possible in prostitution policy? And, if so, under what political or cultural conditions? At first blush the prospects are not hopeful. The case in The Hague excluded sex workers, and although it brought about a functioning licensing and monitoring system, and created a shared sense of what it takes to responsibly manage and govern commercial sex in a city and a modicum of trust between brothel owners and authorities, it was one of those ‘thin and fragile’ arrangements that are the result of a deficient collaboration process (Wagenaar, 2007). Moreover, the arrangement was exclusively focused on producing an administrative arrangement and ignored the workplace conditions of the sex workers. A study by Genevieve Fuji Johnson paints an even bleaker picture. The focus of her study was the ‘governance capacity’ of policy communities that dealt with prostitution policy across Canada. Fuji Johnson was particularly interested in the inclusion of ‘organizations that support sex workers in terms of recognizing their agency, advancing their human rights, and responding to their needs/assets’ (2015, p 1). The focus of the research was on how these organizations interact with each other and with municipal governments and police services (Fuji Johnson, 2015, p 2). Fuji Johnson distinguishes five types of interaction: collaborative, agonistic, siloed, antagonistic and emergent. In her careful description of policy communities in the domain of prostitution policy, she distinguishes between non-state and state organisations. Non-state organisations comprise support/
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education/advocacy organisations by and for sex workers, service organisations, ally-support organisations and pragmatic prohibitionist organisations. State organisations consist of the various agencies of the municipal government and the police department. In addition she includes third sector agencies such as community mental health centres.

Fuji Johnson finds that there is a considerable amount of interaction between sex worker organisations both within and between municipalities, interactions ‘that most closely approximate collaboration’ (2015, p 3). However, she characterises none of the interactions between non-state and state organisations as collaborative. The best she found was a form of agonism, best described as a ‘form of relational realism in the context of competing interests’ (2015, p 14). These relationships are not based on trust and not aimed at consensus building, but display a form of pragmatism to respond to particular problems. Only in the city of Vancouver did Fuji Johnson find agonistic forms of interaction between municipal organisations and non-state actors. In all the other jurisdictions she studied she found relationships that were either siloed (mutual awareness but little interaction), antagonistic (open conflict and hostility between non-state and state actors, with the latter attempting to dominate the first), or emergent (nascent attempts at productive communication).

Fuji Johnson’s is a qualitative study, so we cannot draw any conclusions about the distribution of distrust in the population of local policy subsystems from it. Yet, the picture she paints is bleak indeed. State agencies and sex worker advocacy groups seem unable to engage in productive collaboration; implicitly at least, she attributes this state of affairs to the unwillingness of state actors to include sex worker organisations within their governance arrangements.

However, it would be wrong to dismiss the possibility of collaborative governance in prostitution policy out of hand on the basis of these examples. First, there are few examples of research into collaborative governance in prostitution policy and, as is the norm in this field (Ansell and Gash, 2008, p 544), these are all qualitative case studies. The problem with case studies is that the political-cultural context of the case is usually not considered. For example, a truncated form of collaboration was made possible in The Hague because of the consensual, coalition politics that characterises the political culture of the Netherlands, while Canada has a much more antagonistic, majoritarian system. We have also seen that in some cases sex worker-led organisations have entered into long-standing contractual relationships with state agencies to deliver essential services to the community of sex workers (Majic, 2013; Beer and Tremblay, 2014;
Gall, 2014). For example, while city officials in The Hague were wrangling with brothel owners to implement a licensing system, the city of Rotterdam had invited the Rode Draad to provide policy advice to the city administration regarding municipal prostitution policy.

In 1999 the Rode Draad was invited to become a participant of the municipal Prostitution Advisory Commission in Rotterdam. Members of the commission, each representing an organisation with some authority and mandate in the domain of prostitution policy, came from the police, the tax authority, social work, public health, the city administration responsible for prostitution policy, and the Rode Draad. Council members did not participate in the commission for fear that they would impose their political agenda on its activities. The commission met once a month and its tasks were to formulate policy advice, to design policy solutions, to monitor the situation ‘on the ground’ in the city, and to signal instances of trafficking and exploitation. For example, the Rode Draad had observed that illegal, coerced prostitution took place in Turkish coffee houses in the city. This is an excellent example of what Bourgon calls ‘adaptive capacity’, the ability to react swiftly and effectively to unexpected emerging situations (Bourgon, 2011, p 60). Almost adventitiously the commission achieved a considerable amount of policy coordination, another instance of the adaptive and resilient capacity that such a collaborative arrangement brings to the governance system (Bourgon, 2011, p 60).

The Rode Draad participated in the commission from 1999 to 2008. To make this possible it received a small subsidy and an office from the city administration. One of the contributions of the Rode Draad was to emphasise the privacy of sex workers in any situation in which sex workers were asked to report on the state of the field. Finally, the Rode Draad operated a low threshold information and support centre in the city that was managed by a sex worker (source: Sietske Altink). The arrangement was terminated when the Rode Draad lost its subsidy and had to close its operations. Municipal prostitution policy had by then taken a repressive turn as we saw in Chapter Five, and the commission was replaced by one of the chain management arrangements aimed at enforcing anti-trafficking measures. In hindsight the Rode Draad successfully managed the precarious balance between advocacy and service; the city did not always follow the advice of the Rode Draad, yet this did not affect the mutually respectful relationship in the commission.

Perhaps the most successful example of collaborative governance in prostitution policy concerns the NZPC in the prostitution policy subsystem in New Zealand. In the final section of this chapter we
will discuss some elements of the collaborative relationship with state agencies and reflect on the contextual characteristics that make it possible. We admit that this is yet another qualitative case study, but such is the state of the art in this field, and the study hopefully generates insights that allow for more systematic testing. The NZPC was not only one of the driving forces in the passage of the 2003 Prostitution Reform Act that decriminalised prostitution in New Zealand, but in the late 1980s it was already involved as a provider of services and government adviser in New Zealand’s fight against HIV/AIDS in the sex worker community. When the Prostitution Reform Act was passed by the New Zealand parliament the NZPC and its leadership were already well-known and trusted members of the policy community. It was therefore not a large step for government agencies to turn to the NZPC for advice and guidance. What follows is an observation by a public health officer, taken from a review of public authorities’ experience of implementing the Prostitution Reform Act (Bruton, 2010). The interviewee in question, an occupational health nurse, was charged with monitoring brothels under the new legal regime, whereby inspectors receive information from the NZPC about possible infractions of hygiene or safe sex rules:

Most interviewees [public health inspectors] also highlighted the importance of the role of NZPC. Several alluded to the professional support for sex workers provided by NZPC and the assistance and information they provided to regulatory officers: ‘Um, we’ve kept in contact with the NZPC and I’ve tended to feel that is probably the best way to go because I’m not an expert in the industry … I think the NZPC are the people who have got an actual good grasp of what the realities are.’ (Brunton, 2010, p 185)

What does this quotes illustrate? First, it shows that the NZPC managed to find and sustain the right balance between service delivery and advocacy. The NZPC has successfully held contracts with public agencies for the delivery of public health services since the late 1980s. Second, it demonstrates that government agencies and the NZPC have succeeded in building collective governance capacity, in which the former provide legitimacy and accountability and the latter credibility and effectiveness (Bourgon, 2011).

The organisation of the NZPC allows it to act as an advocate for sex workers while at the same time providing services and maintaining a working relationship with government agencies. With its head office
in the nation’s capital, the NZPC is set up as a dispersed organisation with local offices in every town in New Zealand that has a prostitution scene. The staff composition of the local offices reflects the ethnic composition of the local sex worker population. This guarantees that the organisation is representative of the sex worker population. The offices have low thresholds; as one of us (Hendrik Wagenaar) observed, sex workers can walk into the offices freely and spend time relaxing and chatting with others. The NZPC creates trust with its clientele by providing some essential services such as STD checks, general health advice, practical advice and representation in workplace disputes with brothel owners. New Zealand has a system of labour mediation boards; the NZPC represents sex workers who bring their case to the mediation board. The close ties between the NZPC and the sex worker population allows the NZPC to be informed about the situation ‘on the ground’ in the prostitution scene in New Zealand’s towns and cities. This in turn has given it authority among government officials and brothel owners. But the role of the NZPC in New Zealand society goes much further than the capacity for governance and service delivery. The professionals and politicians we met were unanimous in their admiration about the moral leadership of the NZPC and its two directors, Catherine Healy and Calum Bennachie, in normalising the image of prostitution as work and of sex workers as regular citizens with the rights that accrue to all New Zealand citizens.

What have we learned from these examples? First, collaborative governance in the pragmatic sense as described here is probably more prevalent in prostitution than one might surmise from the current antagonistic atmosphere that prevails in the field. In fact, collaborative arrangements emerge precisely in situations of policy failure through the high costs of the politicisation of regulation and persistent implementation failures (Ansell and Gash, 2008, p 544). Policy failure is of course not a guarantee for the emergence of collaborative governance, but it creates the incentives and need among stakeholders to try something else. Second, the emergence of collaborative arrangements in prostitution policy is probably facilitated by the pre-existing political culture. Both the Netherlands and New Zealand have a culture of cooperation, striving for consensus and respect for minorities.147 Even if actors in these two countries are

147 Several of our interviewees in New Zealand pointed out the importance of the Treaty of Waitangia for shaping political culture in New Zealand. The treaty was signed by representatives of the British Crown and various Māori chiefs. It established British sovereignty over New Zealand but also recognised Māori
locked in conflict, they have deeply ingrained cultural models available to suggest an alternative course of action. But more adversarial political cultures also contain local pockets of opportunity for setting up collaborative experiments. Fuji Johnson describes how in the deeply divided community of Downtown Eastside in Vancouver a spate of murders of sex workers, many of whom were members of ethnic minorities, acted as a catalyst for formerly antagonistic parties to enter into a more collaborative relationship. Fuji Johnson observes how the neighbourhood, for all its problems was also a ‘nexus of strength, persistence and organization’ that contributed to political mobilisation of residents and sex workers (Fuji Johnson, 2015, p 266). In addition, a Commission of Inquiry concluded among other things that ‘a clear correlation [existed] between law enforcement strategies of displacement and containment and increased violence’ (Fuji Johnson, 2015, p 267). The combined effect of community mobilisation and a report that condemned the police and the city administration for racist and counter-effective policies was that the authorities began to actively reach out to the community of women and sex workers in Downtown Eastside. Police, sex workers and advocacy groups were able to converge on a policy framework of harm reduction that resulted in various concrete policy measures, such as jointly negotiated Sex Work Enforcement Guidelines that emphasise safety, respect and dignity of sex workers, and a still fragile but nevertheless more positive relationship between sex workers and the police (Fuji Johnson, 2015, pp 267–9).

Finally, the examples also show that collaborative arrangements are fragile and reversible when political attitudes towards prostitution change. The repressive turn in local prostitution policy in the Netherlands led to the dissolution of the Prostitution Advisory Commission in Rotterdam and its replacement by an enforcement group. When the Rode Draad lost a major subsidy after it criticised
the city administration of Amsterdam about its choice of advisers on prostitution policy, it had to close its doors after operating for 27 years as an internationally recognised centre of expertise on prostitution policy and advocacy for sex workers. Currently another advocacy group is trying to represent the interests of sex workers in the Netherlands. While the signs look promising (Amsterdam’s city administration has indicated that it wants to talk and the Ministry of Justice has granted the group an annual subsidy), the city administration engages in blatant forum hopping, underhandedly exploring with the Minister of Justice the possibilities for sidestepping national privacy regulation to introduce a sweeping registration and information system for sex workers, the same type of system that has been rejected by the Dutch Senate as contrary to EU privacy regulations.¹⁴⁸

¹⁴⁸ The minister has recently declared that the city is free to introduce a registration system within the bounds of national privacy regulation.