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Making the vulnerable more vulnerable? The contradictions of British street prostitution policy

Phil Hubbard and Jane Scoular

Introduction

Over the last decade there has been considerable – and, some would allege, overdue – political debate in Britain concerning the efficacy of prostitution law. Pivotal in such debates have been two major consultation exercises (Home Office, 2004; Scottish Executive, 2005) that considered the reform of prostitution laws that had remained largely unchanged since the 1950s. The impetus for such reform included, inter alia, concerns relating to the negative impacts of sex work on physical and mental health (Sanders, 2004); the complex interaction of street drug and sex markets (May *et al*, 2000); the decreased tolerance of street sex work in gentrifying communities (Pitcher *et al* 2006); a heightened anxiety about the participation of children and minors in the sex industry (Phoenix and Oerton, 2005) and a perception that existing vice laws were being implemented in an *ad hoc* fashion – if at all – with many police forces seemingly unwilling to enforce statutory vice laws (as evidenced in official statistics for soliciting, with arrest, prosecution and conviction rates in England and Wales having dropped from around 10,000 in 1990 to less than 3,000 by 2002). Though less overtly acknowledged, in the background lurked another significant anxiety: that the non-British workers employed in commercial sex include a significant population of trafficked women (see Hubbard *et al*, 2008).

Setting out alternatives to the maintenance of the status quo, both consultation exercises concluded that reform would be advantageous, with recommendations made for the reform of existing laws, particularly in relation to street prostitution and kerb crawling. Subsequent to the completion of these policy reviews, and their tentative recommendation of Zero Tolerance approaches for street working, five street sex workers were murdered in Ipswich (2006). These shocking murders raised serious questions about the whether sex work has any place on Britain's streets, with the media devoting considerable attention to questions of where sex can – or should – be sold. The idea that off-street work is inherently safer and more civilised than street work has hence been explicit in recent policy and media debates, despite the mixed evidence concerning the working conditions and safety within the indoor scene (Sanders and Campbell, 2007).

The events surrounding Ipswich therefore appear to have stiffened governmental resolve in relation to prostitution policy, with notions of

liberalization largely disappearing from the official policy discourse and overwhelmed by rhetoric which makes a more emotive appeal to ‘saving’ street workers from exploitation as a means of legitimizing what are effectively more punitive prostitution policies. In this chapter we review recent policy debates in England & Wales and Scotland (the two having different legal systems) with a view to drawing out the fundamental contradiction at the heart of ongoing policy shifts: namely, that policies introduced with the intent of increasing sex worker safety and decreasing exploitation may actually be making women workers less safe. In so doing, we draw on the arguments of those sex worker advocates who have suggested that forms of regulation focusing on the repression of street work are unlikely to make prostitution safer or less exploitative (e.g. Goodyear and Cusick, 2007) as well as the conclusions from our own studies of sex working (see Pitcher et al 2006; Scoular and O’Neill, 2007; Hubbard et al 2008). Considering the geographical imprints of prostitution law, we also wish to emphasise the likely spatial outcomes of ongoing policy reforms, arguing that any crackdown on street prostitution Britain will simply result in a *spatial shifting* of sex work, with more and more prostitution occurring in off-street spaces that are beyond the gaze of the state and law - and where exploitation by managers, pimps, and clients may be rife.

The policy context

The history of prostitution law in Britain has been documented from a number of standpoints, with the wealth of material meaning a detailed overview is impossible here. Suffice to say there has been considerable attention devoted to the transition from the regulation of prostitution by the church (through the bawd courts) to a secular control focusing on questions of vagrancy and indecency defined and controlled by the secular state (Self, 2003). Two key episodes of legislative reform figure prominently in this historiography. One concerns the state’s attempts to classify and discipline the prostitute through penitentiaries, lock hospitals and magdalenes from the eighteenth century onwards (Walkowitz, 1980; Bartley 2000). In the nineteenth century, for example, the Scottish ‘movement’ sought to ‘rescue’ women by providing voluntary places in lock hospitals and asylums (Mahood, 1989), while the English Contagious Diseases Acts of the 1860s allowed for the arrest and compulsory medical inspection of any woman presumed to be a ‘common prostitute’. Critics (most notably, Josephine Butler) noted the double standard that existed here, with clients free to spread sexual infection while women were incarcerated; the subsequent Criminal Law Amendment Act (1885) thus switched attention to issues of protection, introducing new powers to penalise exploitation of the under-

16s as well as banning brothel-keeping, following the lead of the General Police and Improvement (Scotland) Act 1862 that had given the police powers to enter properties where prostitution was thought to occur. Irrespective, incarceration was seen as the means by which women could be shown the error of their ways and be transformed into morally-upstanding citizens.

The second period that exercises considerable fascination for historians of sex work is that surrounding the proceedings and report of the Wolfenden Committee on Prostitution and Homosexual Offences (1954-1957). Given the recommendations of the 1928 Street Offences Committee on changing the solicitation laws had not been acted upon, and media furore over the sheer number of street prostitutes to be found on the streets of London, reform was seen as somewhat overdue. As Self (2003) details, the Home Office was keen to stifle any call for legalisation, encouraging Wolfenden to consider increased fines, imprisonment for repeated offences and dropping any reference to annoyance in soliciting laws. Recognising this might lead to displacement to off-street working and the growth of a 'call girl' system, members of the Committee discussed the possibility of regulated brothels. In the event, the Wolfenden report recommended punitive measures designed to prosecute street offences (again following the example of the Criminal Justice (Scotland) Act of 1949, which had introduced a system of fines for street soliciting). These new powers were justified primarily in terms of public nuisance, with the statement that 'there must remain a sphere of private morality and immorality which is, in brief and crude terms, not the law's business' apparently underlining the liberal credentials of the committee (Wolfenden Committee, 1957, para 60). In this manner, Wolfenden reiterated the view espoused by the 1928 Street Offences Committee that prostitution legislation should not seek to enforce any particular pattern of behaviour:

If it were the law's intention to punish prostitution *per se*, on the grounds that it is immoral conduct, then it would be right that it should provide for the punishment of all the men (clients) as well as women (prostitutes). But that is not the function of the law. It should confine itself to those activities which offend against public order and decency or expose the ordinary citizen to what is offensive and injurious, and the fact is that prostitutes do parade themselves more habitually and openly than their prospective clients, and do by their continual presence affront the sense of decency of the ordinary citizen (Wolfenden Report, 1957, 14).

This distinction between prostitution as a public offence and prostitution as a private *consensual* transaction was important in subsequent legal debates

which demonstrated the law's recognition of sexual self-determination while conversely strengthening the legislation that could be enacted against women publicly selling sex.

The legislation introduced in England and Wales in the 1950s (1956 Sexual Offences Act and 1959 Street Offences Act) thus had the twin aims of preventing 'the serious nuisance to the public caused when prostitutes ply their trade in the street' while simultaneously penalising the 'pimps, brothel keepers and others who seek to encourage, control and exploit the prostitution of others' (Wolfenden Committee, 1957, 17). In practice, this created a paradoxical situation where, although prostitution was not illegal, it was difficult and sometimes impossible for prostitutes to work without breaking these laws. The elimination of reference to annoyance in the 1959 Street Offences Act clauses referring to solicitation meant that all women working on the street would be subject to cautioning and arrest irrespective of complaints from local residents or businesses. Once charged in court as a 'common prostitute' though, the new legislation stipulated that prostitute women need not be cautioned again, and, under section one of the 1959 Street Offences Act, could be charged with loitering or soliciting in a street or a public place for the purpose of prostitution.

Given the police were empowered by the 1959 Act to penalise each and every instance of street soliciting, the predicted move from street work to 'call' and 'escort' work followed, and numbers arrested for street solicitation dropped accordingly. But street work did not entirely vanish, with the failure of the law to penalise kerb-crawlers and male importuners meaning that clients continued to take to the streets in search of prostitutes. Predominantly, street prostitution relocated from the commercial core to inner city areas where it became part of the 'local scene', largely tolerated by the police in the interests of containing perceived public nuisances. In this sense, the enforcement of the 1959 Act created *de facto* 'red light areas' in most British provincial cities, and while this allowed police to exercise a level of control over the street scene, in time it created new localised nuisances in the form of increased volumes of kerb-crawling traffic (Benson and Matthews, 1995).

In the wake of complaints about neighbourhood blight caused by excessive traffic and late night noise, and noting a rise in street prostitution in the late 1970s recession, the Criminal Law Revision Committee report *Prostitution on the Street* (1984) recommended several modifications to the 1959 Act and the introduction of a new offence when a man solicited a woman in a manner 'likely to cause her fear'. The 1985 Sexual Offences Bill accordingly adapted these recommendations, and made it an offence for a man to solicit 'a woman for the purposes of prostitution from a motor vehicle in a public place' or 'in a street or public place in such manner as to be likely to cause

annoyance to the woman solicited or any other persons in the neighbourhood'; a modification in the House of Lords added the requirement that the behaviour needed to be persistent (in the absence of a cautioning system). However, the criteria for prosecution normally require proof that the kerb-crawlers acted persistently or in a manner likely to cause annoyance to the solicited woman or to other persons in the neighbourhood.

Kerb-crawling legislation has subsequently been the source of much controversy, and while it was designed to bring equality in terms of how women soliciting men and men soliciting women are treated, the number of men found guilty of kerb-crawling has been miniscule in comparison to arrests and cautions for soliciting. Indeed, studies of law enforcement suggest police are most concerned with responding to pressure from residents and local politicians who wish to reduce the 'nuisance' experienced by people living in areas of street prostitution, fuelling periodic and widely-publicised 'crackdowns' on kerb-crawlers, but little routine enforcement. In fact, the idea that commercial sex is inevitable and cannot be prevented (or *eliminated*) through the application and enforcement of established legislation appears to have been a key factor shaping police practices and attitudes towards prostitution. The police regularly conceded it was difficult to ensure that those charged with soliciting will not return immediately to the same activity in the same area (given that many can only pay off their fines by returning to work), while kerb-crawling legislation has been frequently adjudged as a poor deterrent for those looking to buy sex (with powers to disqualify drivers difficult to enforce) (Brooks-Gordon, 2006).

Given the seeming intractability of street working, co-operation between police and local authorities often resulted in the informal designation of zones for street working designed to reduce the potential for public nuisance. While attempts to establish these often floundered in the glare of adverse publicity (as was the case in Sheffield City Council's attempt to designate a zone in 1992) or residential opposition (as in Cardiff in the late 1980s), unofficial 'Toleration Zones' were established in Edinburgh (from 1986 onwards) and later in Bolton, Plymouth, Aberdeen, Northampton and Preston. Yet the Home Office remained reticent to sanction such Toleration Zones, identifying street prostitution as a form of anti-sociality that could – and should - be 'designed out' through environmental modifications. Such measures included the use of closed circuit television cameras in areas of street soliciting, traffic management schemes designed to close off the 'scenic routes' often taken by kerb-crawlers, and lighting schemes designed to 'reclaim' the streets from sex workers. By explicitly supporting such preventative measures, Home Office thus responded to criticism of existing vice laws by advocating the increased use of multi-agency solutions:

Police success has come when they have worked with local authorities to design out prostitution through street lighting and traffic management designed to make the area as unattractive as possible to prostitutes and their clients (MacLean cited in Hansard 1994, column 289).

This type of solution, embracing the logic of Zero Tolerance policing, implied that environmental responses might be sufficient to tackle a complex social problem. Specifically, rather than trying to address the causes of prostitution, provide alternative jobs for women wishing to leave the industry, or increase pay and conditions within the industry, this behavioural discourse implied that street prostitution could be eliminated through measures reducing the *opportunity* for selling sex on the streets – an assumption that holds little weight if one considers the histories and geographies of prostitution (see Hubbard, 1999).

Reforming prostitution law in England and Wales

Published in July 2004, the Home Office consultation document, *Paying the Price*, provided sex worker advocates some room for optimism that ideas that sex work could be ‘designed out of existence’ might be balanced with some consideration of the needs of sex working women. Taking its lead from the major cross-party Parliamentary Group on Prostitution (1993-1996), chaired by MP Diane Abbott, *Paying the Price* stressed that the legislation relating to street prostitution was not working well, not least because of its fragmented and incoherent approach, and noted the problems that inconsistent law enforcement was causing for prostitutes and affected communities alike. Drawing selectively on police and academic research (and apparently rejecting the various recommendations of the Vagrancy and Street Offences Committee, 1974-76, and the Criminal Law Revision Committees of 1984 and 1986), *Paying the Price* spelt out some of the pros and cons of alternatives to the status quo – including the introduction of managed zones, the full or selective decriminalisation of sex work or the legalisation of prostitution through state licensing.

Significantly, many of the responses to *Paying the Price* by key stakeholders indicated the major differences of opinion existing as to how the law might be best reformed. From some quarters, there was support for formally-designated and regulated zones: at the time of the consultation, Liverpool City Council was actively seeking to establish a managed zone (see Bellis et al, 2007), and argued that there needed to be a legal basis for the creation of

such zones. The Association of Chief Police Officers' response to *Paying the Price*, on the other hand, directly opposed such moves:

ACPO is unconvinced that 'Zones of Toleration' and the licensing of brothels is the way forward, as they continue to permit the abuse and exploitation of women. However, we will listen carefully to the arguments and contribute positively to the debate. Meanwhile we will continue to promote a policing policy that attacks those who abuse and exploit, and work with partners to support those who have been victimised by prostitution (ACPO, 2004, 12)

Some sex worker advocacy groups - such as the UK Network of Sex Work Projects - were critical that the report stopped well short of advocating outright decriminalisation. Others were critical of the focus on the notions of harm and the assumption that prostitution is always and inevitably coercive. Sanders (2005), for instance, argues that in his introduction to the document, the Home Secretary David Blunkett stressed 'prevention is of prime importance', ignoring the benefits that accrue to sex workers under certain circumstances (such as freedom, time and money). The use of the term 'prostitute' in preference to sex worker was also taken as evidence that sex work was not being conceived as part of the service economy, but as part of a criminalised 'underworld'.

Despite flagging up possible liberalisation of certain prostitution laws, *Paying the Price* was thus read by Sanders as embodying New Labour's preoccupation with enforcement and nuisance. Kantola and Squires (2004) analysis of dominant UK discourses in policy documents concurs, suggesting that discourses of nuisance and immorality continued to outweigh those which prostitution was conceptualised as 'sex work'. What is also evident is that the document placed much more emphasis on the role of clients and kerb-crawlers, affirming Brooks-Gordon and Gelsthorpe's (2003) view that 'the punter and the pimp [are] aligned as coercive and abusive characters from whom the public should be protected'. Campbell and Sanders (2007) concur, and note that 'men who buy sex are only present as exploiters and transmitters of disease who are to be tackled through criminalization and "rehabilitation"'. Significantly, *Paying the Price* says nothing about men who sell sex to men.

Published in 2006, *A Coordinated Prostitution Strategy and a Summary of responses to Paying the Price* considered responses to *Paying the Price*, making a number of key recommendations. First and foremost, the strategy outlined the need for more opportunities for women to leave prostitution, underlining the idea that prostitution is an exploitative industry that no woman would freely choose to work in. Launching the strategy, Home Office Minister Fiona

MacTaggart reported that ‘Prostitution blights communities and the lives of those who participate... We will not eradicate prostitution overnight, but we must not condone this exploitative industry. I want to see a tough approach to kerb-crawling, combined with much better work to prevent children being drawn into prostitution and giving those involved a route out’. Particular emphasis was hence placed on the undesirability of street prostitution, with the strategy stressing the possibilities for *disrupting* the street sex market through a combination of punitive policing of clients (i.e. reducing demand), Anti Social Behaviour Orders for problematic workers, the provision of exit routes for those working on the streets and prevention work with vulnerable young people (i.e. reducing supply). Advocating vigorous prosecution of kerb-crawlers, the strategy suggested that court diversion schemes should be in place for first-time offenders, despite the mixed evidence for the success of John’s schools and rehabilitation programmes (Campbell and Storr, 2001). The Strategy also proposed creating a new penalty for the offence of loitering or soliciting for prostitution, encouraging the courts to direct women into compulsory programmes of drug or alcohol rehabilitation.

The Strategy’s insistence that street prostitution ‘is not an activity that we can tolerate in our towns and cities’ hence curtailed any discussion of selective decriminalised or managed zones. Speaking specifically about ‘managed zones’ for prostitution, Fiona MacTaggart stated ‘I cannot accept that we should turn a blind eye to a problem that causes misery for people living in or near red-light areas. There is no evidence that decriminalisation or licensing prostitution would achieve our objectives of reducing exploitation, improving the safety of those involved, and making local communities safer’. As such, the government’s message was clear: street prostitution is exploitative, antisocial and has no place in British cities. Rather than liberalizing sex work legislation, the ground was being prepared for a further shift towards prohibitionism.

Reforming Scottish prostitution policy

Overall, statutory regulation of prostitution in Scotland has been described as less strict than that in England and Wales, in the sense that there have been no Scottish laws banning kerb-crawling per se and less harsh penalties for under-age prostitution. In some cases, local authorities (and police) claim this has left them unable to deal adequately with the nuisances caused by inconsiderate and persistent street prostitution. Yet the laws that were on the statute book also created difficulties in situations where local authorities were seeking to address the health risks associated with prostitution and minimise the violence to which women involved in street prostitution (in

particular) may be exposed. Indeed, attempts to do this by establishing managed zones with on-site health support, adequate lighting and CCTV surveillance (as in Aberdeen and Edinburgh) were viewed in some quarters as simply encouraging an illegal activity. In some instances, local residents and businesses became aggrieved that the police were not applying the law in a strict and consistent manner, and while some support managed zones in principle, few support the creation of managed zones in their neighbourhood (Pitcher et al, 2006). Pressure for legal reform came from other directions too, with some feminist campaigners and academics highlighting the double standards implicit in Section 46 of the Civic Government (Scotland) Act, which criminalised the female seller and not the male purchaser, concretising the perception prostitution is a female problem (Scottish Executive, 2004).

In response to calls for legal reform, and with particular reference to the demise of the Edinburgh managed zone, a Member's Bill - the Prostitution Tolerance Zones (Scotland) Bill (SP Bill 67) - was introduced by MSP Margo MacDonald MSP in 2002. This Bill sought to give local authorities power to designate areas within their boundaries as prostitution Tolerance Zones – within which loitering, soliciting or importuning by prostitutes would no longer be an offence under Section 46 of the Civic Government (Scotland) Act 1982. Before designating a Toleration Zone, the Bill suggested the local authority would be required to carry out consultation with local interests in accordance with the provisions of the Bill, publicizing their draft designation and code of conduct in at least one local newspaper. It was also suggested a designation would need to be renewed every three years. Section Five of the Bill suggested rights of appeal against a designation similar to those which exist under the Town and Country Planning (Scotland) Act 1997. In all other respects the bill proposed leaving prostitution laws as they stood.

According to the Local Government and Transport Committee first stage report on the Bill (2003), this bill recognised that 'while street prostitution is not desirable, it is endemic in a number of areas of the major cities of Scotland, and thus presents a number of challenges to local authorities and the police and other public services.' The objective of the Bill was defined as enabling the police, health boards and local authorities to ensure that prostitution is practised in as orderly, secure and tolerable a manner as is possible; to minimize the opportunities for criminal behaviour; and to promote public health:

The Bill aims to manage the practice of prostitution in a way that allows local authorities and health authorities in particular to target services to try to minimise the worst effects of prostitution in respect

of ill health...One of the reasons for introducing the Bill is to allow attempts to be made to manage services for prostitutes. We are not introducing the Bill because we want to encourage the practice of prostitution. The Bill will enable us to meet the need for those services (Margo McDonald, 2003, LG col 3880).

Given informal tolerance zones had existed in Scotland previously, it might have been expected that this private members bill would have received assent. Some of those who submitted expert testimony to the Local Government Committee were highly supportive; for example, Neil McKeganey, Professor of Drug Misuse Research at Glasgow University argued 'whilst I can understand the objections of local residents to the siting of a tolerance zone there really does not seem to me to be a single credible argument against such provision' (Explanatory Notes 2002, paragraphs 29). The bill also drew considerable support from the example of the Edinburgh, which was adjudged overwhelmingly successful in terms of minimizing the impact of HIV and reducing violence on the street (incidents fell to as little as 11 attacks in one year, whereas other cities in the UK were experiencing this number each week) (SCOT-PEP 2003). The experience of Aberdeen was also significant: Brenda Flaherty of Aberdeen City Council reported there had been less of a problem of violence against prostitutes since a zone had been in operation [LG col 3790], while Assistant Chief Constable Shearer of Grampian Police stated that the unofficial zone in Aberdeen had 'certainly resulted in a reduction in prostitution in the rest of the city' [LG col 3717].

However, the consultation exercise revealed some concerns among stakeholders about the efficiency of Tolerance Zones as a means of managing prostitution. The most vehement criticism came from The Women's Support Project (Glasgow), Greater Easterhouse Women's Aid (Glasgow) and the Rape Crisis Centre (Glasgow), who allied with Glasgow City Council's view that:

The establishment of tolerance zones away from the general public may seem like a short term pragmatic approach to those who have not experience of working on these issues or attractive to those who seek to normalise and regulate prostitution as part of a modern sex industry ... [but] The Bill does not address the practical, financial and legal consequences of establishing them. The Council therefore rejects the proposal that local authorities should have the power to establish and manage tolerance zones within their locales and would not support the introduction of any such legislation (Glasgow City Council evidence to Local Government Committee on Prostitution Tolerance Zones (Scotland) Bill, Nov 2003)

Additionally, Glasgow City noted in their submission that the Bill would be to shift responsibility for 'policing' red light districts from the police to the local authority, concluding and this would be a negative move. In the light of such criticisms, the Local Committee and Transport Committee did not support the bill, suggesting 'the evidence received on the impact of prostitution tolerance zones on crime levels was inconclusive'; 'that the existence of a tolerance zone could adversely affect crime levels in the area'; 'women who are not prostitutes would be vulnerable if they entered a prostitution tolerance zone' and noting 'the establishment of toleration zones could lead to 'significant expenditure for...the police' (Local Government Committee Stage One report on Prostitution Tolerance Zones (Scotland) Bill, 2003).

A revised version of the bill was placed before the Committee in September 2003, but the bill was ultimately withdrawn by Margo McDonald on the assumption that the Scottish Executive's Expert Group on Prostitution, announced in Autumn 2003, would provide an alternate framework for impending reform, and be able to explore more full-reaching approaches such as the legalisation of sex work. The Expert Group consisted of a body of legal and health professionals, academics, police and local authority officials, chaired by former Strathclyde Assistant Chief Constable Sandra Hood, and charged with reviewing 'the legal, policing, health and social justice issues surrounding prostitution in Scotland and to consider options for the future' (Scottish Executive 2004). Alongside the aforementioned criticisms of the existing legislation, the Expert Group sought to address more general concerns that penalties in the form of fines and custodial sentences have no rehabilitative function and serve to undermine the efforts of assistance and protection services. The Group also sought to explore the extent to which policy addressed the needs and concerns of communities affected by prostitution – an issue persistently raised by residents affected by the closure of the Edinburgh toleration zone and the displacement of prostitute women from Coburg Street towards Leith Links.

In light of the recognised problems with extant legislation, the Expert Group presented a report on street prostitution in Scotland: '*Being Outside: Constructing A Response To Street Prostitution*' (Scottish Executive, 2004). Exploring possibilities of decriminalisation, legalisation and management through the creation of toleration zones, the report identified several options for modifying existing soliciting legislation, including repeal of existing legislation section 46 of the 1982 Act in favour of common law provisions such as use of breach of peace legislation for any public nuisance caused by soliciting or kerb-crawling or, as an alternative, a new offence

being created of buying or selling sex in ways that cause demonstrable fear, alarm or offence.

Being Outside was published shortly after the Home Office's *Paying the Price* consultation document, and replicated its over-reliance on strategies encouraging women to leave prostitution (Scouler and O'Neill, 2007). More positively, perhaps, *Being Outside* recommended a clearly defined local operational process of policing street prostitution, within a national strategic framework. It also recommended a certain minimal level of services across the country. Following the group's report, deputy justice minister Hugh Henry pledged (on 1 November 2004) to end the anomaly of only prostitutes being criminalised for their activities, hinting at a strong governmental support for a new law focusing on the nuisance or harm caused by the seller or purchaser of street prostitution, with specific legislation targetting kerb-crawling

Following a public period of consultation, the Scottish Executive published *Street prostitution: the Scottish Executive's response to the expert group* (2005) stating its support for legislative reform and promising to issue new guidance to local authorities on their powers and detailing how they, together with police, health and social work staff should deal with street prostitution, including offering support for the women involved. Draft guidance, spelling out the role local authorities could play a role in 'the reduction and ultimate elimination of street prostitution', was subsequently prepared by *Routes Out* for the Scottish Executive.

In September 2006, the Scottish Executive introduced the Prostitution (Public Places) (Scotland) Bill focused on the 'alarm, offence or nuisance' arising from street prostitution-related activities, whether caused by seller or purchaser. Broadly in keeping with the Expert Group's recommendation, the Explanation Memorandum stated that the new law would allow the police to focus on the genuine nuisance caused to communities by prostitution, allowing the police to focus on the nuisances caused by kerb-crawling as well as soliciting when occurring in public places. The legislation stated that the objective test for 'alarm, offence or nuisance' was whether a 'reasonable person' would consider the behaviour to be offensive or alarming (Smith, 2006). Significantly, the Bill suggested that people in private cars could not be considered as loitering, and that it was the act of soliciting a worker, not driving around an area per se, that would cause alarm. While the expert group appointed by the Executive recommended a complaint should be required before any prosecution, the Bill proposed leaving such judgments to the discretion of police officers.

Taking oral evidence from the police, sex worker projects (SCOT PEP,

Routes Out), politicians and academic experts, the Local Government and Transport Committee considered the Bill in October 2006, raising a number of concerns. Written evidence was also taken from a range of organizations, identifying some significant concerns about the new legislation. For example, the UK Network of Sex Work Projects suggested that ‘the name of the Bill is problematic, stigmatizing and could act as a barrier to exiting for women who have been involved in street sex work...to be charged with an offence under the proposed Bill will leave someone with a “prostitution” offence on their record’.

In committee deliberations, however, considerably more attention was given to the idea that loitering in a car in a red light district would not be prohibited, with evidence needed that a worker was approached by a client (or vice versa) for an offence to occur. In both written and oral evidence to the committee, Assistant Chief Constable John Neilson identified instances where the new law would fail to reduce nuisance:

Two thirds of the transactions that take place in Glasgow occur in motor vehicles. If a person who is in a motor vehicle cannot be loitering, what will happen to two thirds of transactions? Nobody will be charged and nobody will be rehabilitated. The tool will be ineffective, because a person who is in a motor vehicle cannot be loitering, although a person can loiter on a bus...My opinion is that the bill gives us no powers and will frustrate the powers that we have (John Neilson, Minutes of Local Government and Transport Committee, 31 Oct 2006, col 4195).

On this basis, the Committee pressed the Deputy Minister for Finance and Public Service Reform to amend the Bill (*Edinburgh Evening News* ‘Radical changes to vice bill considered’ 19 Dec 2006) and to ‘expand the scope of the loitering offence’ to include those loitering in private cars. The Committee did ‘not accept that it would be impossible to find a form of words’ to do this. The Committee’s report hence identified ‘a number of major problems with the Prostitution (Public Places) (Scotland) Bill’ which ‘could call into question whether the Bill will actually address the problems faced by communities affected by prostitution, and whether it can, and will, be enforced (Local Government and Transport Committee report, published 7 Jan 2007).

The outcome was a substantially amended Bill that removed any reference to alarm, offence or nuisance from the soliciting offence, attempting to find a form of wording that might criminalise loitering in a car for the purposes of prostitution. The Bill [as amended at Stage 2] states ‘a person (‘A’) who, for the purpose of obtaining the services of a person engaged in

prostitution, solicits in a relevant place commits an offence.’ Section 1(9) of the Bill provides that a ‘relevant place’ is: (a) a ‘public place’ as defined in section 133 of the 1982 Act; (b) a place to which the public are permitted to have access (whether on payment or otherwise); or ... (c) a place which is visible from a place covered by (a) or (b). The Explanatory Notes (para 16) published along with the Bill state that the inclusion of (b) means that the legislation would apply in ‘sports venues, rail and bus stations, theme parks et cetera’. This amendment makes it an offence to solicit to obtain the services of a prostitute without any evidence of this causing offence, and irrespective of whether loitering in a private car or on foot. This effectively enables the prosecution of someone who is loitering in such a manner or in such circumstances it may be ‘reasonably be inferred that the individual was doing so for the purposes of soliciting someone engaged in prostitution’.

On February 28 2007, MSPs approved the new law by 103 to 4, giving Scottish police similar powers to those of police in England and Wales for prosecuting kerb-crawlers, with fines of up to £1000 possible. Referring to the Act, Deputy Finance Minister George Lyon stated ‘It will send an unequivocal message to those who purchase sex on our streets that their behaviour will no longer be tolerated. We believe that it will act as a deterrent to those who seek to do so’ (cited in ‘Kerb-crawler bill passed by MSPs’ BBC News, 29 Feb 2007). However, the Act received criticism in some quarters, with Independent Lothians MSP Margo Macdonald suggesting it was ‘an absolute travesty of what the Expert Group sought to do’:

As was shown a few months ago when five women were murdered in Ipswich, the general community, while they may not like the idea or the behaviour associated with prostitution, accepts that street prostitutes are owed a duty of care by all of society (cited in Swanson, 2007)

McDonald suggested ‘balanced, well-researched, well-proven arguments’ had been thrown out (*Edinburgh Evening News* ‘MSPs ignored the advice on prostitution’ 9 Jan 2003); likewise, commenting on the Act, Marina Barnard (2006) stated that it appeared ‘less about improving the lot of prostitutes, which was an explicit focus of the Expert Group, than efforts to control it through the mechanism of public nuisance’. As in England and Wales, the government raised the possibility of liberalisation only to retreat from this position to advocate more punitive policies.

From protection to prohibition?

The twists and turns in governmental policy as it relates to street prostitution are, as this chapter has suggested, difficult to follow and, at times, riddled with contradiction. Yet what is clear is that policy-makers, bowing to all number of public and not-so-public pressures, have ultimately rejected the recommendations of most sex work organisation and advocates by dismissing notions of decriminalisation and legalisation – no matter how partial – in favour of a blanket condemnation of street prostitution as dangerous, exploitative and anti-social. In this sense, a process of reform that begun noting the need to offer protection to street sex workers – and has been given impetus by the Ipswich murders – has ultimately introduced policies which make street sex workers' lives more rather than less problematic. Indeed, evidence from Sweden, where prohibitionism was introduced in 2000, suggests that the increasing criminalisation of purchasing sex on the street and higher penalties for kerb-crawling means that those women who remain on the street will have fewer clients, be less discriminating and have less time to negotiate sex. Ultimately, this may mean that street workers are forced to relocate indoors, working in premises where they appear hard to reach for support services, largely unsurveyed by the police and law, and often vulnerable to sexual exploitation, violence or intimidation (on Sweden, see Kulick, 2003; Hubbard et al, 2008).

From many standpoints, however, policy-makers' decision to crackdown on prostitutes' clients is perfectly understandable given the idea that prostitution represents unacceptable gendered exploitation has become such an insistent media discourse. In this sense, it is not surprising that the media's frequent conflation of prostitution, trafficking and child sexual abuse is mirrored in policy debates. Related to this is the increasing demonisation of those men who purchase sex on the streets – something now rarely seen as harmless or normal, but as a marker of deviance and perversion:

In an age of gender politics and political correctness, the cheeky married man who wants a cheap thrill from oral sex on the street is an easy target. He can legitimately be constructed as a threat to all innocent women and a hazard to creating "safe" communities. Yet the stereotype does not hold up to much assessment... Most men apprehended for kerb-crawling offences do not have criminal records, are in full-time employment and are upstanding members of the community and of families. Although in some markets sex workers experience violence, most commercial sex interactions happen without incident, condom use is high and sex workers complain more about intense policing and a lack of monitoring than about the clientele (Sanders, 2007, 18).

As Sanders' work makes clear, those who buy sex do so for many different reasons and are drawn from all walks of life. Condemning such men for buying sex makes little sense in a context where both men and women's right to purchase sexual services electronically is largely unquestioned; where 'adult entertainment' is increasingly in the mainstream and where the fundamental rights of people to enjoy a sex life are central to notions of sexual citizenship (Phoenix and Oerton, 2005).

In its attempt to deliver 'safer communities by reducing both the demand for and supply of street prostitution', British government has hence developed policy which 'consolidates moral authoritarianism' by criminalising and responsabilizing the women and men involved, and which fails to recognise that the buying and selling of sex will always occur (Phoenix and Oerton, 2005, 76). Both North and South of the border, the state has kicked the idea of toleration zones into touch, introducing more more punitive kerb-crawling and soliciting legislation that discourages both clients and workers (Pitcher *et al*, 2006). This means that prostitution is increasingly invisible in its traditional street forms, with clients using contact magazines to locate sex workers off-street, or frequenting the few remaining sites where sex workers furtively solicit for business (principally in areas where there remains a strong connection between prostitution and local drug markets). Writing nearly a decade after his initial audit of sex work in London, Matthews (2005) notes a dramatic decline in street prostitution in areas such as Soho, Streatham, Finsbury Park, Paddington and Kings Cross. At the same time, he suggests, 'nearly every High Street in London now has a brothel, while telephone boxes and local papers are full of advertisements advertising sexual services in one form or another' (Matthews, 2005, 7). Indicatively, the off-street trade has not only grown in size and scope, but has become more apparent across London into the suburbs and Home Counties. As a consequence, (male) pimps and managers may actually be profiting from the crackdown on street work, with street workers increasingly seeking employment for escort agencies rather than risking working independently. A related phenomenon is the movement of street workers into upmarket 'lap-dancing' bars which are seemingly acceptable to Westminster City Council as a legitimate part of the night-time economy (Hubbard *et al*, 2008).

Another important trend here is for sex to be bought and sold online via the Internet, which is currently subject to little regulation. Though it is tempting to conclude Internet work may be safer and more lucrative than street prostitution, a crucial point that needs to be made about Internet-based sex work is that it makes women visible, but grants men anonymity: it has effectively fully privatised men's viewing and access to pornography, sex shows, prostitution, and voyeurism. This increased privacy and anonymity

gives men more protection from social stigmatization and law enforcement activities (such as crackdowns on kerb-crawling), and thus may facilitate the sexual exploitation of women. Consequently, the gradual disappearance of prostitution from the streets does not necessarily indicate the battle against exploitation is being won, merely that more prostitution is occurring beyond the gaze of the state and law. Indeed, the murder of two prostitutes in a massage parlour in Shrewsbury (UK) in 2006 challenges assumptions that off-street work is safer than street work, with critical voices alleging the law remains complicit in creating spaces where male violence and even murder can be carried out with impunity (Kinnell, 2006). For some commentators, the key debate is accordingly not about criminalising particular spaces of sex work or legalising others: it is about moving prostitution out of the criminal justice system all together and focusing on the public health and social care we can provide to break the cycle of violence (Goodyear and Cusick, 2007).

Conclusion

Slowly but surely, sex work – at least in its visible and more traditional forms - is disappearing from Britain's streets. Various explanations can be posited for this, not least the rise of Internet and mobile telephony which allow consumers to buy virtual sex, safely and legally, from their own home. In this chapter, however, we have suggested that recent legal reform has exacerbated and accelerated this process, resulting in the gradual erasure of street sex working as a visible and significant form of sex work on Britain's streets. The positive aspects of this decline should not be underplayed, as there have been some real gains for those residents who felt their life has been blighted by street sex working (Pitcher et al, 2006). But we should also be wary of the consequences for the women (and men) employed in the sex industry, with the wholesale displacement of sex work from street to off-street locations needing to be considered in terms of its implications for the safety and well-being of workers and clients alike. Just because sex is being sold off-street rather than on street does not mean that policy-makers can rest easy that they have solved the problems of gendered exploitation that they feel beset this form of work. Sex workers can still be financially exploited, injured or killed when working off-street – particularly when premises are not surveyed or acknowledged by the authorities. The government's reluctance to offer any positive system for regulating indoor sex work while continually focusing on eradicating (and hence displacing) street sex work, potentially exacerbates this situation. Far from being neutral with regards to off-street working, this apparently *laissez-faire* approach has delineated a private sphere of non-intervention, creating an unregulated market in which private forms of commercial sex are, by omission,

sanctioned and as such have very much proliferated since the time of Wolfenden. We hence conclude by arguing for policies that recognise that sex will always be bought and sold, and which do not seek to criminalise it or simply push it out of sight, but allow it to occur as safely, as orderly and as fairly as possible.

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