

Rethinking and Intersectionally Deconstructing Contemporary Sex Workers Rights in England and Wales

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Abstract

Sex work and the laws that surround the selling of sexual acts have been always been plagued by debate, and these discussions are becoming increasingly more volatile. This paper attempts to breach the widening chasm between the two sides and explore the various tensions that exist. Through an exploration of intersectional methods, the theory surrounding legal deconstruction, and newer legal models in England and Wales such as the Merseyside model, this paper illustrates that dismantling the law is not enough. It is instead vital to continually investigate creative ways to use law to protect and support all sex workers, and especially those who reside in the periphery.

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1. Introduction

In her acceptance speech for the 2004 Sydney Peace Prize, Arundhati Roy stated, '[T]here is really no such thing as the voiceless. There are only the deliberately silenced or preferably unheard'.² Nevertheless, while Roy's statement seems to encapsulate many of the issues raised by sex worker rights activists, it must be pushed further. This is because, as Alana Massey has noted, '[T]he problem with offering a voice to the voiceless is that the voiceless often turn out to be far more capable than their spokesmothers expect'.³ With this in mind, this paper seeks to expand upon, and contribute to, what is sometimes seen as an over-analysed tension within feminist legal theory: that which exists between legal reform and deconstruction. In doing so it hopes to illustrate that while there increasingly appears to be no middle ground between decriminalisation and legal reform, there is in fact space to argue for something different.

Through an exploration of the way in which both theory and the voices of the 'voiceless' relate to the laws and legal reforms surrounding the rights of sex workers in England and Wales, this paper aims to illustrate that feminist legal theory need not chose between total legal dismantling, or decriminalisation, and ensuring safety and rights for sex workers. While there is some truth to Carol Smart's statement that feminist legal theorists must avoid the 'siren call of law [that is often] so deaf to core concerns of feminism',⁴ they must also refuse to be seduced by the 'romance of negativity'.⁵ Instead, feminist legal theorists must constantly question which brand of feminism the law is deaf to, and in turn find a way of listening and empathising with both the centre and the periphery, whilst simultaneously challenging and refusing complacency. Although decriminalisation is currently portrayed as the white knight riding in to save sex workers from the law's inherent inequality, it inflicts un-discussed harms. Consequently, in systems where decriminalisation is enacted, the voiceless often remain that – voiceless.

² Arundhati Roy, 'Peace and the New Corporate Liberation Theology' (*University of Sydney News*, 4 November 2004) <<http://sydney.edu.au/news/84.html?newsstoryid=279>> accessed 4 January 2015.

³ Alana Massey, 'Keeping Sex Workers Quiet' (*Jacobin Mag*, 11 December 2014) <<https://www.jacobinmag.com/2014/11/keeping-workers-quiet/>> accessed 14 November 2014.

⁴ Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 160, 2.

⁵ José Esteban Muñoz, *Cruising Utopia the Then and There of Queer Futurity* (New York University Press 2009) 12.

Legal deconstruction is utopian, much like decriminalisation and, although it is important to be idealistic in what is pushed for, romanticism does inflict harm. Consequently, while this paper is grounded in deconstruction theories, especially newer models of deconstructive approaches to law such as Dean Spade's 'Critical Trans Politics',⁶ it is also informed by intersectional methods like Yuval-Davis' 'transversal politics'.⁷ It is this theoretical basis that allows this paper to argue that there is definitely room to agree with some of the principles of decriminalisation, whilst simultaneously acknowledging that dismantling the law is not enough. Sex workers have a right to safety and these rights can, at this point in time, only be protected through employment of an intersectional and education rooted approach to policing.

This argument will be illustrated through an exploration of the laws on sex work in England and Wales in contrast to the voiced needs of sex workers that live there, with a particular focus on sex worker views of the Merseyside Model: an approach to policing sex work adopted in 2006 by the police in Merseyside following a spate of sex worker killings. The model is yet to be rolled out across England and Wales; it is currently only in full force within Merseyside. Its focus is the provision of holistic support to sex workers who have been victims of crime; the core tenet of this being that all crimes against sex workers should be classified as hate crimes.⁸ While the positives of hate crimes and anti-discrimination laws are largely refuted by theorists who employ post-structural approaches to law and rights,⁹ what is most significant about this model is that it has received praise from a host of different sex worker groups and individuals.¹⁰ This is particularly poignant as it returns to the 'who' question touched upon previously. The vast percentage of sex workers neither want nor need total deconstruction, and while many do campaign for decriminalisation, they largely do so in

⁶ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (South End Press 2011).

⁷ Nira Yuval-Davis, 'What is 'Transversal Politics'?' (1999) 12 *Soundings* 94.

⁸ Andrew Boff, 'Silence on Violence: Improving the Safety of Women' (*Policing of Off Street Sex work and Sex-Trafficking in London: Greater London Authority 2012*) <<http://glaconservatives.co.uk/wp-content/uploads/downloads/2012/03/Report-on-the-Safety-of-Sex-Workers-Silence-on-Violence.pdf>> accessed 20 March 2015, 6.

⁹ See Craig Willse and Dean Spade, 'Freedom in a Regulatory State: Lawrence, Marriage and Biopolitics' (2004) 11 *Widener Law Review* 309, 318, 327.

¹⁰ See 'Merseyside Model Campaign' <<http://ruthjacobs.co.uk/directories/cry-for-the-merseyside-model-interviews/>> accessed 06 April 2015.

tandem with a push for legal recognition and greater legal protection.¹¹ Of course the law may never be able to truly engage with the outermost suburbs of the periphery, but it must try. This is because the current solutions on offer – decriminalisation, legalisation, and the Nordic Model – are simply not capable of addressing the complexity of the problem.¹² It is therefore time for legal theorists to be creative.

To explore this line of reasoning, this paper will first begin by outlining the current laws that regulate sex work in the UK and the regular violence that is inflicted upon sex workers structurally, culturally, and directly as a consequence.¹³ It will then return briefly to the theoretical element of this discussion simply to provide some clarification of the multifaceted ideas that this paper is based upon. From this vantage point, the relationship of this theory to legal practice moving forward will be analysed, with the final section providing an exploration of the potential that the Merseyside model holds due to its intersectional approach. The conclusion reached is somewhat akin to the views of Levi and Shay, who are of the opinion that:

[L]aw reform is only one piece of the puzzle. It cannot achieve everything, but it is sometimes a necessary precondition to reaching other goals, and at a minimum, is not a causative element for diminished opportunities and status.¹⁴

Before delving into analysis, I wish to briefly clarify the use of two key terms that will be in operation continuously throughout this paper – ‘sex worker’ and ‘sex work’. Due to the limited scope of this paper, the term sex worker will be used solely in reference to those who engage in the practice of selling physical sex acts in exchange for money, as opposed to those who partake in porn or other visual sexual acts. My reason for the use of this term as opposed to others is analogous to key theorists on materialist feminism and sex work such as P.

¹¹ Massey (n 2); Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex work and the Law in India* (Princeton University Press 2011) 221.

¹² Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ [1988] *Feminist Review* 61, 81.

¹³ See Johan Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, vol 14 (Sage 1996).

¹⁴ Jennifer Levi and Giovanna Shay, ‘The Dangers of Reform: A Review’ (2012) 29 *Women’s Review of Books* 30, 31.

Kotiswaran,¹⁵ K Cruz,¹⁶ and also Rosie Campbell, the Chief Executive Officer at Leeds-based support agency Genesis.¹⁷ This is because *work* is quite simply what one does to generate revenue, and thus selling sex for money simply equates to the term sex work. Nevertheless, this paper does not endorse the stance that the sale of sex is always comparable to other forms of work.

2. The Current Situation for Sex Workers in England and Wales

In spite of this supposed incomparability, it is important to state that this paper is built around the premise that the act of selling sex need not be in and of itself fundamentally dangerous or damaging to those who do it. While this may seem a somewhat contentious statement to make given the vast amount of literature that pushes society to believe that sex work is a 'dangerous manifestation of global gender inequalities',¹⁸ sex work as a form of work does not necessarily have to encourage violence, nor should it always be bound up in violence. In fact, the reason we assume it must be is arguably based around the history of sex work and social binaries of normal/abnormal, healthy/unhealthy, and pleasurable/dangerous. In other words, societal norms reinforce the idea that selling sex is always harmful because of rigid ideas about what is a healthy sexual encounter, and the ingrained idea that the sale of sex will always foster chauvinism.¹⁹

In spite of this, the figures do speak for themselves in regards to the dangers of selling sex at this current point in time. Across England and Wales, 'fifty to sixty violent incidents are reported to the National Ugly Mug [NUM] scheme every month',²⁰ and sex workers are

¹⁵ Kotiswaran (n 10).

¹⁶ Katie Cruz, 'Unmanageable Work, (Un)liveable Lives: The UK Sex Industry, Labour Rights and the Welfare State' [2013] *Social & Legal Studies* 1.

¹⁷ Ruth Jacobs, 'The Policing of Sex Work in West Yorkshire: An Interview with Rosie Campbell OBE' <<https://whatcandoaboutit.wordpress.com/2014/09/18/the-policing-of-sex-work-in-west-yorkshire-an-interview-with-rosie-campbell-obe/>> accessed 17 March 2015.

¹⁸ See Elizabeth Bernstein, 'Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns' (2010) 36 *Signs: Journal of Women in Culture and Society* 45, 45. See also Julia O'Connell Davidson, 'The Rights and Wrongs of Prostitution' (2002) 17 *Hypatia* 84, 89.

¹⁹ O'Connell Davidson (n 13) 91.

²⁰ The NUM scheme is simply a third party reporting service that allows women to anonymously provide information of crimes that they have experienced as well as details about the customer who perpetrated the harm so as to protect other women. In most cities it works in tandem with projects that support sex workers and the police, and there is an underlying aim to encourage reporting. See Alex Feis Bryce, 'The Majority of Sex

eighteen times more likely to be murdered than women of similar ages, races, and ethnicities.²¹ Based on what is known about the low reporting of violent crime against women,²² it is also reasonable to assume that NUM's figures are possibly underestimated. Nevertheless, while it is undeniable that there is a deep patriarchal violence ingrained in much of the sex industry as it stands, if sex work's lack of fundamental and inherent violence is accepted, what these figures highlight is that the root of the violence lies not with the actual act of selling sex. Instead, the violence exists, and stems from, legislation and the way that it fosters a stigma towards those who sell sex.

2.1 *The current law in England and Wales*

This line of reasoning is furthered with a brief look to the laws in existence in England and Wales. Notably, the legal system in these areas is rooted in common law, and consequently, the laws around sex work are far from straightforward. To make matters worse, the regulation of sex work is incredibly confused and the more recent amendments, namely the *Sexual Offences Act 2003*, have done little to improve this.

Although the act of selling sex is not fundamentally illegal, the vast majority of associated activities that sex workers regularly engage in *are*. These range from openly soliciting, loitering in a public place with the intent of exchanging sex for money,²³ keeping, maintaining, or assisting in the management of a brothel, renting of a space which is being used as a brothel - which constitutes any premises that is used by more than one woman for the purposes of selling sex²⁴ - to certain types of public nudity.²⁵ In fact, few of the necessary

Workers Enjoy Their Job - Why Should We Find That Surprising?' (*The Independent*, 3 March 2015) <<http://www.independent.co.uk/voices/comment/the-majority-of-Sex-workers-enjoy-their-job--why-should-we-find-that-surprising-10083175.html>> accessed 11 March 2015.

²¹ Boff (n 7).

²² See Liz Kelly and others, *A Gap or a Chasm?: Attrition in Reported Rape Cases* (Home Office Research, Development and Statistics Directorate London 2005) xi <<http://www.ncjrs.gov/App/AbstractDB/AbstractDBDetails.aspx?id=242198>> accessed 12 January 2015.

²³ *Sexual Offences Act 2003*, s 51(a).

²⁴ *ibid*, s 55. For further clarification see CPS, 'Prostitution And Exploitation Of Prostitution: Legal Guidance: The Crown Prosecution Service'

<http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution/> accessed 5 April 2015. For specific case law see *Winter v Woolfe* [1931] KB 549; *Gorman v Standen*, *Palace Clarke v Standen* (1964) 48 Cr App R 30; *Stevens v Christy* [1987] Cr. App. R. 249, DC.

²⁵ See CPS, 'Nudity in Public - Guidance on Handling Cases of Naturism'

<http://www.cps.gov.uk/legal/l_to_o/nudity_in_public/> accessed 18 March 2015.

acts sex workers regularly undertake are wholly legal. Even when a sex worker may try to work in a way that facilitates greater safety, such as working with another woman in the same property, they are subject to penalties.²⁶

It is arguably a consequence of the difficulty in navigating what is and is not legal, and the curious shades of grey that exist in between, that many sex workers and police do not know how to work together or combat crimes that have occurred against sex workers. As Andrew Boff notes, '[P]olice officers said they feel they are in an impossible position. For if a woman reports a crime and in so doing reveals she is working in a brothel or is here illegally etc., then the police are compelled by the law to act on this evidence of criminality'.²⁷ This results in the common belief amongst sex workers that the police cannot, and will not, help them.²⁸

2.2 Domestic Law and the International Zeitgeist

What arguably worsens the situation for sex workers within England and Wales is the way in which domestic laws are influenced by the general international disposition to view sex work and sex trafficking as largely one and the same. This is due to a host of different issues. Firstly, there is the fact that a prominent and powerful group of largely white, middle-class feminists, who J. Halley refers to as 'governance feminists',²⁹ publicly promoting the idea that, due to the constructed nature of gender and sexuality, no sex work can ever be consensual.³⁰ This in turn has led to ambiguities in a number of key international legal documents, such as the UN Trafficking Protocol which, as J. Doezma notes, is 'inadequate to serve as the basis for political strategies to protect the rights of sex workers and migrants'.³¹ In short, the focus is largely on criminalisation and combatting demand because the consensus for many years has been that

²⁶ Sexual Offences Act 2003, s 55.

²⁷ Boff (n 7) 34.

²⁸ See Ruth Jacobs, 'In the Booth with Ruth - Maria, Prostitution Survivor'

<<http://ruthjacobs.co.uk/2013/04/16/aria-prostitution-survivor-interview/>> accessed 17 March 2015.

²⁹ See Janet Halley and others, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism' (2006) 29 *Harv JL & Gender* 335.

³⁰ Kathleen Barry, *Female Sexual Slavery* (NYU Press 1984); Catherine A MacKinnon, 'Trafficking, Prostitution, and Inequality' (2011) 46 *Harv CR-CLL Rev* 271.

³¹ Jo Doezema, 'Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol' (2002) 10 *Gender & Development* 20, 20.

this is the most 'feminist' strategy. While this may not seem a wholly problematic stance to take from the surface, it quite simply silences the voices of those who, for whatever reason, say that this is what they choose to do; and more importantly what they need to do to survive.³² As Kotiswaran affirms, some 'sex workers perceive themselves as breadwinners who resort to sex work as a survival strategy, parallel to any other occupation'.³³ Again, this clearly draws upon Smart's earlier comments about the deafness of the law and the issues of engaging with it.

We see this problem in England and Wales with the increasing number of projects like the Human Exploitation and Organised Crime Command, commonly referred to as SCD9, a Metropolitan Police Service led initiative designed to 'help' sex workers. The supposed aim of SCD9 is to monitor London's off-street prostitution, with a particular emphasis on assisting those who have either been trafficked or coerced.³⁴ Yet the figures speak for themselves regarding the supposed successes of this project. SCD9 has organised two large-scale protection operations, entitled Operator Pentameter One and Two, whereby raids took place throughout London. While a total of 822 raids were conducted over the course of both operations, only 167 possible victims of trafficking or coercion were identified, and out of the 528 individuals who were initially investigated, only five were found to be guilty of trafficking.³⁵ Moreover, while only eleven trafficked victims were identified, in the process of the raids seventy-six women were charged with breaking brothel laws; which, as previously mentioned, means they were simply selling sex in a location with more than one woman present.³⁶ From this indisputably aggressive response, it is understandable why sex workers do not trust the police and feel like there's a choice that has to be made; either 'you chose to do this job: get out and do it, or get a life'.³⁷ Though their intentions may be well placed, the

³² See Julie Ham, 'Moving Beyond "Supply and Demand" Catchphrases: Assessing the Uses and Limitations of Demand-Based Approaches in Anti-Trafficking' (GAATW 2011) 22 <http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf> accessed 15 December 2014. Here Ham simply states that '[T]he idea that women's consent can be ignored perpetuates gender inequality'. See also Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the Native Subject in International/Postcolonial Feminist Legal Politics' (2005) Social Science Research Network ID 779824 19 <<http://papers.ssrn.com/abstract=779824>> accessed 9 October 2014.

³³ *Kotiswaran* (n 10) 215.

³⁴ *Boff* (n 7) 11.

³⁵ *ibid* 16.

³⁶ *Boff* (n 7) 16.

³⁷ Ruth Jacobs, 'In the Booth with Ruth - Kate, Escort' <<http://ruthjacobs.co.uk/2013/03/26/in-the-booth-with-ruth-kate-escort-interview/>> accessed 17 March 2015.

authorities' refusal to listen to sex workers only deepens the latter's affliction, despite their being the very group the law is trying to protect. It could therefore be argued that similarly negative outcomes will occur alongside any legal alteration whose focus is on ending demand through criminalisation.

Significantly, there is an increased awareness that this type of 'criminal law focused' approach, domestically and internationally, does not work. In fact, the Global Alliance Against Traffic in Women has quantifiably stated that 'simple demand-supply analogies do not help clarify complex issues' and harms sex workers.³⁸ We can see this mindfulness being publicly propagated in the UK as recently as November 2014, where an amendment to the *Modern Slavery Bill* proposed by Fiona MacTaggart MP, which would have criminalised the buying of sex, was thrown out of the House of Commons. This was largely due to John McDonnell MP, who rebutted MacTaggart, stating that 'the answer is not to criminalise any of their activities, but to tackle the underlying cause by not cutting welfare benefits and ensuring people have an affordable roof over their heads and giving them access to decent, paid employment'.³⁹ Nevertheless, the violence that criminal law inflicts upon sex workers remains and there is evidently no easy answer or solution as to how to resolve this. Kotiswaran has noted, 'feminists, irrespective of whether they are abolitionist or not, all display an unwavering faith in the power of the criminal law'⁴⁰ – this paper will now question whether this is always a negative and if there is a way to look beyond the criminal system.

3. The Law, Deconstruction, and its Potential for Sex Workers

3.1 *The Theory of Deconstruction*

In a bid to answer this question, I first turn to the reasoning of the theorists who remain adamantly opposed to criminal law and legal regulation. The fundamental logic of those who favour decriminalisation is fairly frank, and also in many ways somewhat difficult to counter, especially in regards to sex worker rights. Simply put, due to the law's genesis being steeped

³⁸ *Ham* (n 31) 67.

³⁹ English Collective of Prostitutes, 'Victory: Amendment to Criminalise Sex Workers' Clients Defeated' <<http://prostitutescollective.net/2014/11/05/victory-amendment-criminalise-Sex-workers-clients-defeated/>> accessed 22 December 2014.

⁴⁰ *Kotiswaran* (n 10) 14.

in violence, dominance, and control, it will always be exclusionary and focused on controlling the vulnerable. Even when promoting equality, the particular variety of equality advocated is not one that everyone can or wants to adhere to.

One of the focal points of much of deconstruction theory comes from M. Foucault; his work truly exemplifies the fundamental issue of engagement with the law. The following passage is illustrative of this engagement:

It seems to me that the real political task in a society such as ours is to criticize the workings of institutions that appear to be both neutral and independent [...] so that one can fight against them. If we want right away to define the profile and the formula of our future society without criticizing all the forms of political power that are exerted in our society, there is a risk that they reconstitute themselves.⁴¹

Key here is the notion of reconstitution and the problems that come with it. An idea put somewhat more simply by R. Kapur states, 'as more and more people come to be included in the liberal project, the less inequality we will see (but the more will exist)'.⁴² Given that much of the law, especially in the UK, is rooted in liberal assumptions of equality that are utopian in their universalism, there is little to find fault with here. In short, it could be argued that simply creating more legislation, especially that which is rooted in criminal law, will only further the harm that sex workers experience on a daily basis. Consequently, it would appear that enacting more laws is not the best way to protect sex workers.

Support for this relating to sex work can be found in the critique that has arisen over the pursuit of formal labour equality and legalisation. The fundamental premise of labour rights can be found in John Locke's statement, 'every man has a property in his own person. This nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his'.⁴³ Yet as J O'Connell Davidson explains, 'this dictum allows for the commodification of a person's bodily capacity to labour' due to the fact that the labour in question, in this case the sale of sex, continues to be rooted in controlled patriarchal

⁴¹ Noam Chomsky and Michel Foucault, *The Chomsky-Foucault Debate: On Human Nature* (The New Press 2006) 41.

⁴² Ratna Kapur, 'In the Aftermath of Critique We Are Not in Epistemic Free Fall: Human Rights, the Subaltern Subject, and Non-Liberal Search for Freedom and Happiness' (2014) 25 *Law and Critique* 25, 28.

⁴³ John Locke, cited in *Davidson* (n 17) 85.

capitalism.⁴⁴ Consequently, the pursuit of labour rights in the sex worker equality movement can be argued to achieve very little for those who sell sex and continue to be restrained in an oppressively patriarchal system – something that finds particular support with reference to the controls placed on those who work in strip clubs following ‘legalisation’. Inequality remains, and so too does its dear friend structural violence.

3.2 Legal Deconstruction and Sex Work

In spite of this, I question what total decriminalization without legal reforms actually proposes in the way of protecting those who experience said violence. It is vital to remember that sex workers are not simply discriminated against by the law, but also by deeply entrenched negative viewpoints and stereotypes. While it is one thing to understand that there are fundamental oppressions in existence within the law, as many who promote decriminalization do, there is little that this view can concretely offer those who reside in the periphery such as those who are persistently exploited, and those who wish to exit sex work. As Davidson notes, ‘the sex radical position on prostitution (favouring decriminalization), which embraces despotic subjecthood as a delightful and ideal condition, is surely every bit as politically dangerous as abolitionist ideas’.⁴⁵

4. Sex Work and the Intersectional Alternative

It is the supposition of this paper that an intersectional approach to reforming the laws around sex work in England and Wales is the best way to avoid disengagement and perpetuation of voicelessness that evidently comes from both abolitionist and deconstructionist approaches. This is simply because true intersectionality actually advocates for many of the key tenets of deconstruction, but does so whilst listening to the needs of sex workers.⁴⁶

⁴⁴ Davidson (n 17) 85.

⁴⁵ Davidson (n 17) 92.

⁴⁶ See Aristeia Fotopoulou, ‘Intersectionality Queer Studies and Hybridity: Methodological Frameworks for Social Research’ (2012) 13 *Journal of International Women’s Studies* 19, 24. Fotopoulou illustrates how the study of intersectionality is actually fundamentally about deconstruction and categorical thinking.

There are of course flaws with intersectionality and these largely stem from the reliance on categories. For example, Nina Lykke urges the importance of avoiding 'black-boxing the concept (of intersectionality) by always contextualising and situating it'.⁴⁷ Yet it is my contention that in recent years, intersectionality has emerged and distanced itself from the overt reliance on categories; nowhere is this more evident than in Nira Yuval-Davis' approach. Drawing upon L McCall's taxonomy of intersectionality⁴⁸ which highlights the existence of three 'types' of intersectionality - the Intracategorical approach, the Anticategorical approach, and the Intercategorical approach – Davis advocates for one that 'combines the sensitivity and dynamism of the Intracategorical approach with the socio-economic perspective of the Intercategorical perspective'.⁴⁹ By this she means a method that attempts to understand and consider both micro-level marginalisation (the Intracategorical approach), and also more macro structural issues (the Intercategorical approach).

4.1 Transversal Politics in Practice: The Merseyside Model

As it stands, the Merseyside Model is in many ways the only model that currently embodies anything close to what Yuval-Davis' transversal politics advocate. This is simply because it is not one-dimensional in its approach. Firstly, 'all offences reported against those involved in prostitution are prioritised in terms of police resources and are treated as Hate Crimes [and this occurs alongside] provision of a specialist Independent Sexual Violence Advisor (ISVA) [...] offering specialist services for individuals in (sex work)'.⁵⁰ Furthermore, as Rosie Campbell notes, 'any force cannot say they have adopted the Merseyside Model until they take a

⁴⁷ Nina Lykke, 'Intersectional Analysis: Black Box or Useful Critical Feminist Thinking Technology' in Helma Lutz, Maria Teresa Herrera Vivar and Linda Supik (eds), *Framing Intersectionality: Debates on a Multi-faceted Concept in Gender Studies* (Ashgate Publishing Ltd 2011) 206.

⁴⁸ Leslie McCall, 'The Complexity of Intersectionality' (2005) 30 *Signs* 1771, 1773–74.

⁴⁹ See *ibid* for an in depth discussion on the Inter, Intra, and Anticategorical approaches. In short the Intercategorical approach focuses on the views of the marginalised, the Intracategorical approach focuses on the intersection of different social categories, and the Anticategorical approach takes the stance that because everyone comes from multi-dimensioned positions categories need to be deconstructed. See also Nira Yuval-Davis, 'Beyond the Recognition and Re-Distribution Dichotomy: Intersectionality and Stratification' in Helma Lutz, Maria Teresa Herrera Vivar and Linda Supik (eds), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies* (Ashgate Publishing Ltd 2011) 158.

⁵⁰ Home Office, 'Effective Practice in Responding to Prostitution - Publications - GOV.UK' 16 <<https://www.gov.uk/government/publications/effective-practice-in-responding-to-prostitution>> accessed 16 April 2015.

primarily protection and empowerment based approach'.⁵¹ This is because it is understood that 'the hate crime policy which is part of the Merseyside Model is critical, but on its own it won't work'.⁵² There is consequently a need for a systematic addressing of how crimes against sex workers are dealt with, which, given the high levels of violence sex workers are subject to, is of fundamental importance in furthering any other demands for rights that they may have.

In effect, the Merseyside Model appears to be 'deconstruction via reform', the ideal advocated by R Hunter in regards to feminist judgments.⁵³ What furthers the significance of this model is the way in which sex workers and sex worker unions have praised it: 'as I see it, the general population recoils at hate crimes. The definition would help to form opinion, which is a must'.⁵⁴ Even more significantly there have been qualitative improvements in Police-sex worker relationships and prosecution of perpetrators. In the first eighteen months 'there was a 400% increase in the proportion of people giving consent to share full details with the police'.⁵⁵ Moreover, there is now 'an eighty-three percent conviction rate for all cases going to court (including violence and sexual assault)'.⁵⁶

Notably, the model is not without some flaws. For example, the propagation of a certain element of protection, or 'special treatment', may further the idea that sex work can never be comparable to other forms of work. This is perhaps a somewhat weak argument. More importantly, the model does not eradicate any of the detrimental legislation and case law that continues to harm women who sell sex, namely the SOA and *R v. Linekar*;⁵⁷ a case that established a very high threshold for rape against a sex worker by setting the precedent that refusal to pay did not violate consent.⁵⁸ Furthermore, it is possible to return to deconstruction's reproaches of law reform for there is much written on the problems of relying on hate crime legislation. The work of Craig Wilise and Jane Spade is demonstrative, highlighting two main drawbacks. Firstly, they argue that 'hate crimes legislation is part of, and reflects the weaknesses of, the overall assimilationist, inclusion-focused [...] agenda', due

⁵¹ *Jacobs* (n 16).

⁵² *Jacobs* (n 16).

⁵³ Rosemary Hunter, 'The Power of Feminist Judgments?' (2012) 20 *Feminist Legal Studies* 135, 146.

⁵⁴ *Jacobs* (n 36).

⁵⁵ Home Office (n 49) 16.

⁵⁶ *ibid.*

⁵⁷ [1995] QB 250.

⁵⁸ *ibid.*

largely to its reliance on fixed categories.⁵⁹ To access the benefits of hate crime legislation, individuals are forced to conform; they are forced to fit into the box of a victim and the structures that cause the problem are not challenged. Secondly, and arguably less significantly, there is also the contention that criminalising something does not lead to further deterrence.⁶⁰ Moreover, the Merseyside model does not do anything to tackle the roots of why many women sell sex – namely poverty and necessity. Although some women do make the unrestricted choice to sell sex because they enjoy it, this is rare. As important as it is in creating systems that help protect these women through criminal justice, so too is challenging the deep, structural violence that exist through non-criminal measures.

Yet while these are all valid points to consider, my contention is that the Merseyside Model remains a significant model worthy of consideration. This is because it seeks to challenge the persistent and repeated violence that occurs both directly, but also structurally, by forcing the police to seriously engage with the crimes, and more importantly with the sex workers themselves. It seeks to educate those to whom sex workers should be able to rely upon, and this will only improve the way that they are treated within communities; especially if this message is passed through the various policing levels and is relayed to communities by neighbourhood policing teams. The Merseyside Model is merely one component of much-needed reforms to the laws around sex work. However, while it does not solve the complex debate currently raging between those who side with decriminalisation and those who favour the Nordic Model, it paves the way for a more intersectional approach. There will always be a risk of what K Knapp refers to as ‘intersectional invisibility’,⁶¹ however, provided that the Merseyside Model does not remain stagnant and continues to actively work alongside the requirements of sex workers, this will not limit its value.

⁵⁹ Jane Spade and Craig Willse, ‘Confronting the Limits of Gay Hate Crimes Activism: A Radical Critique’ (2000) 21 *Chicano-Latino L Rev* 38, 44.

⁶⁰ *Spade and Willse* (n 58) 40. See also Michael Massing, ‘It’s Time for Realism’ [1999] *The Nation* <<http://www.thenation.com/article/its-time-realism>> accessed 17 March 2015; and Jens David Ohlin, ‘Applying the Death Penalty to Crimes of Genocide’ [2005] *American Journal of International Law* 747.

⁶¹ Gudrun-Axeli Knapp, ‘Intersectional Invisibility: Inquiries into a Concept of Intersectional Studies’ in Helma Lutz, Maria Teresa Herrera Vivar and Linda Supik (eds), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies* (Ashgate Publishing Ltd 2011) 193.

5. Conclusion

Judith Butler once asserted that ‘a life is not liveable unless it is apprehended as precarious’,⁶² and truer words are hard to find. This paper has sought to illustrate that the most effective way to counter the precarity that exists for sex workers is through an intersectional approach, and through adopting models like the Merseyside Model which can truly help in projecting the voices of the ‘voiceless’. While there are definite theoretical enticements to total decriminalisation, simply put, this approach does not actually listen to what sex workers want and need. These individuals do not want to feel as though there is no recourse to safety and they do not want the very real crimes against their bodies to be disregarded or treated like any other crime. While there are undeniable problems with the simplistic promotion of rights and equality, this is not to say that we should end our search for a way of challenging these issues – not while they persist in making society less just and more volatile. By exploring law’s possibilities, we can work towards reducing the precarity of sex workers’ lives.

⁶² Judith Butler, cited in Katie Cruz, ‘Unmanageable Work, (Un)liveable Lives: The UK Sex Industry, Labour Rights and the Welfare State’ [2013] *Social & Legal Studies*, 17.