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Almost Abolitionism: The Peculiarities of Prostitution Policy in England and Wales

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Introduction

This chapter will explore the current UK approach to abolitionism by examining how a popular Northern European prostitution agenda has been translated into the English context. We argue that while neo-abolitionism has, over the last decade, had a noticeable impact on prostitution policy and practice in the UK, this has its own peculiarities. Whilst mimicking the abolitionist tone of Sweden, governments in mainland Britain have thus far stopped short of criminalising all purchases of sexual services and decriminalising the activities of those who sell sex - who are deemed to be 'victims'. Rather, governments have opted to modify the existing liberal regime by creating bespoke measures which seek to combine increased punitive sanctions for some clients with efforts to promote the exiting of women by the imposition of enforced rehabilitation. This has led to what we term as almost abolitionism: which describes a fragmented process of problematisation, whereby prostitution is both a public nuisance and sexual offence. Consequently, while only some forms of sex purchasing are illegal, the activity as a whole is increasingly pathologised and sex workers, represented universally in policy discourse as women, oscillate between being constructed as both victim and offender.

Sidestepping the liberal/illiberal arguments that tend to dominate in this field, this chapter will provide a critical analysis of these developments. While it is important to keep in mind the critical work on abolitionism elsewhere (as discussed in this collection as a whole), the account is not based on generalisation from neighbouring states. Rather, and drawing upon England and Wales as a case study, we explore the local drivers and local impact of the distinctive interventions. More specifically, we critically analyse two key reforms introduced by the Policing and Crime Act 2009, which reflect how this abolitionism has taken hold in England and Wales: the strict liability offence of paying for the sexual services of a prostitute subject to exploitation (s14) and Engagement and Support Orders (hereafter

ESOs) to facilitate exiting and ‘rehabilitate’ on-street sex workers (s17).¹ In relation to the latter we explore the findings of an empirical project which explored the effects of a ‘compulsory rehabilitation’ policy. In conclusion, we argue that this almost abolitionism – whilst reflecting the rhetoric of radical feminism and gender equality – results in a fundamentally responsabilizing, punitive and coercive response to commercial sexual activity. This, in turn, eschews alternative feminist conceptualisations of prostitution as sex work and excludes any recognition of the complex causal factors of both prostitution and trafficking.

From Nuisance to Neo-Abolitionism? The Development of Prostitution Law and Policy

A system of liberal governance, with a focus on prostitution as a public nuisance, has characterised the English approach to prostitution for almost a century. Emanating from the Wolfenden Committee, this public nuisance approach confines state intervention to the public aspects of prostitution, imposing a punitive regime upon the public acts of soliciting (Wolfenden 1957). From a liberal perspective, it was considered that being paid/paying for consensual sex was not *per se* harmful. Such an approach clearly reflects a liberal feminist standpoint that women have the right to determine how to use their bodies, and to do so without interference from third parties (Jagger 1991; Nussbaum 1999). Consequently, the liberal approach 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’ (Hubbard and Scoular 2009: 150, Matthews 1986). However, this also established and maintained a gender-asymmetry—with the woman who sells sex, rather than her male client, being the main focus of attention.

Accordingly, the law criminalises the more public side of prostitution and also the involvement of third parties. Offences include: loitering or soliciting in a street or a public place for the purpose of prostitution (s1 Street Offences Act 1959); soliciting another person in a street or a public place for the purposes of obtaining their sexual services as a prostitute (S52A Sexual Offences Act 2003); inciting or controlling prostitution for the purposes of gain (S52 and S53 Sexual Offences Act 2003); and managing or assisting in the management

¹ Acts of Parliament contain numbered sections, which provide the detail of the law. Throughout this chapter, sections are referred to as ‘sX’. Hence, the offence regarding the purchasing of sexual services is contained in section 14 of the Policing and Crime Act 2009.

of a brothel (S33A Sexual Offences Act 1956); along with the use of anti-social behaviour orders to deal with street prostitution (Jones and Sagar 2001).

An impetus to reform the law of prostitution, however, developed again in the early part of the 21st Century, which can be linked to multifarious factors, including: the increasingly global and diverse nature of sex work, the concerns pertaining to trafficking and exploitation, changing sexual and socio-economic norms and gender roles, in addition to the outdated nature of the law. While aspects of the law were updated in 2003 (see the Sexual Offences Act 2003), a wholesale reform was considered necessary (Home Office 2000: 117). Consequently, this reform moment presented an opportunity for the implementation of more progressive regimes, for example the reconstruction of prostitution as work and a focus on labour laws. However, a neo-abolitionist perspective increasingly dominated the process (Home Office 2004; 2006; 2008).

Represented most evidently by the Swedish Sexual Purchase Act 1998, neo-abolitionism ostensibly flips the asymmetrical approach to prostitution, and draws upon a radical feminist rhetoric. Although in Sweden an array of legal provisions remain in place - for example offences relating to procuring/pimping and trafficking and regulations outlawing the use of accommodation to provide sexual services – the key distinguishing feature is the simultaneous criminalisation of purchasers and decriminalisation of sellers (see Florin 2012; Skilbrei and Holmström 2011, 2013). Male demand for sexual services is constructed as the ‘root cause’ of prostitution and trafficking (Ekberg 2004: 118), and therefore must be quashed. In contrast, women who engage in prostitution are victims who need support to exit, and hence should not be criminalised. Consequently, the ‘burden’ of criminal justice interventions shifts from sellers on to buyers.² As is well known, this is based on the presumption that ‘sex work is the quintessential expression of patriarchal gender relations and male domination’ (Weitzer 2013: 10). Thus, the eradication of prostitution is considered to be fundamental to the promotion of gender equality. Hence, through the schema of neo-abolitionism prostitution is fundamentally gendered, thus the real and complex diversity of commercial sex is ignored.

² The title of recent All-Party Parliamentary Group report is: *Shifting the Burden: Inquiry to Assess the Operation of the Current Legal Settlement on Prostitution in England and Wales* (APPG, 2014).

The subsequent influence of this neo-abolitionist agenda upon English law and policy is by no means serendipitous. Neo-abolitionist campaigners have attempted to universalise their understanding of commercial sex as an affront to human dignity and gender equality, and to ensure that the criminalization of demand for sexual services and purchase of sexual services (i.e. the Swedish position) is adopted at national and international levels. To this end, the Swedish women's movement, activists and governmental ministers (see Ekberg 2004) have made some progress in this respect. A number of jurisdictions have already implemented or are considering adopting the Swedish approach.³ Moreover, the campaign has also been further strengthened by a recent resolution of the European Parliament which asserts that prostitution is 'intrinsically linked to gender inequality in society and [has] an impact on the status of women and men in society and the perception of their mutual relations and sexuality' (European Parliament 2014: para E). While this body does not have law making power (any legislative change would need to come from the European Commission), it does carry significant symbolic and political weight. Press accounts, for example, note that the passing of the resolution 'formally establishes the EU's stance on prostitution and puts pressure on member states to re-evaluate their policies on sex work', pushing them towards the Nordic model (Oppenheim, 2014). Indeed, the proposer of the motion, The British MEP Mary Honeyball, has since been encouraging states 'to be radical and ambitious enough to go Swedish' (Osborne 2014).

The Evolution of Neo-abolitionism in England and Wales

Whilst not as yet filtering through to legislation, in England and Wales numerous parliamentarians across the parties have explicitly expressed support for the Swedish model, as evidenced by the recommendation of the All-Party Parliamentary Group on Prostitution and the Global Sex Trade (APPG 2014). At the same time, the concerns embodied within the neo-abolitionism agenda are not new to the UK. Indeed, the subject of male licentiousness, concerns of sexual slavery and abolitionism have certainly been on the campaigning agenda since the Victorian era. National associations (such as the Ladies National Association under the leadership of Josephine Butler) campaigned against cruelty of the Contagious Diseases Acts regime of forced testing for sexually transmitted diseases. Nevertheless, it was only

³ The policy has subsequently been mirrored, to some extent, by Parliaments in Norway and Iceland (leading some to refer to it as Nordic), and in part, or in tone, by South Korea, France, Finland, Israel, the United Kingdom, Northern Ireland and the Republic of Ireland.

during the recent reform push that such issues were placed centre stage. Commencing with the publication of a Home Office report *Paying the Price*, a radical feminist perspective can be seen to dominate. Accordingly, prostitution was constructed and problematised as being inherently gendered, exploitative and victimizing:

Prostitution can have devastating consequences for the individuals involved and for the wider community. It involves the abuse of children and the serious exploitation of adults – many of whom are trafficked into and around the UK for this purpose.

(Home Office 2004: 5)

Consequently, throughout the reform process the phrase ‘commercial sexual exploitation’ was invariably employed to signify sex work. For example, during the parliamentary debates, Labour MP Fiona McTaggart stated that there is a need to protect ‘...women from the exploitation inherent in every single occasion of purchasing and of prostitution’ [House of Commons 2009a: col. 549]. Hence, the need for a dual approach – which attempts to eradicate prostitution through reducing both demand and supply – was promoted:

Prostitution may be driven by economic necessity but it can only exist because there is a demand for it. A coordinated strategy designed to reduce its prevalence must address demand as well as tackle the factors that lead individuals to become involved in its supply.

(Home Office 2004: 12)

This approach, however, excludes ‘the possibility of seeing the sale of sexual services as anything other than abusive and harmful’ (Munro and Scoular 2013: 36). Herein we see the promotion of a radical feminist standpoint to the exclusion of other feminist perspectives, particularly those that conceptualise prostitution as labour (see further Carline 2011, 2012). Subsequently, various forms of regulation that could support individuals to work more safely and experience less exploitation (whether physical, economic and/or social (Sanders 2005; Sanders and Campbell 2007; Sullivan 2010)), were excluded as antithetical to the zero tolerance approach (Home Office 2006).

‘Almost Abolitionism’: Prostitution Policy and Neo-liberal Responsibilization

Nevertheless, while the rhetoric of neo-abolitionism is currently very strong internationally, policies do not simply jump across borders. Rather the process of policy transfer involves

particular governmental processes, which operate in distinctive regulatory cultures. Moreover, it is important to appreciate the distinctiveness of the Swedish law. Few states will be able to achieve as complete a problematisation as Sweden, where a unique combination of ideas, alliances and actions *produced* the Swedish abolitionist model. National anxiety regarding an apparent ‘influx’ of ‘trafficked’ women from Eastern Europe and associated fears regarding Sweden’s entry to the European Union (EU), a history of paternalism in social policy, a hegemonic and politically influential feminist movement, and decades of social science work on the much neglected client: all help to make sense of the country’s unique approach (See Kulick 2005; Scoular 2004, also Swanstrom this volume). Even in neighbouring Scandinavian countries, which have enacted similar laws (such as Norway and Iceland and Finland which enacted only a partially ban) and share similar political traditions, *empirical* researchers highlight significant differences, putting paid to any notion of a universal ‘Nordic model’ (Skilbrei and Holmstrom 2011). Such variation is even more pronounced in countries with different political cultures, greater diversity in feminist thinking and where sex work rights organisations are more established and better represented in the political discourse. Thus, there is an inevitable multiplicity in the manifestation of neo-abolitionist tendencies.

Accordingly, while in England and Wales the scene was set for the adoption of an asymmetrical neo-abolitionist approach - criminalising those who purchasing sex, whilst decriminalizing the sale of sex - the resulting reforms produce their own unique form of abolitionism. During the reform process which culminated in the Policing and Crime Act 2009, we argue that the radical feminist perspective was co-opted by the state and transposed upon the pre-existing liberal/public nuisance framework, in a manner which only worked to extend the state’s coercive reach. Hence, despite the official rhetoric that all women involved in prostitution are victims, the resulting reforms increasingly criminalise not only the buyers, but also the sellers of sex (Cusick and Berney 2005; Scoular and O’Neill 2007; Soothill and Sanders 2004). This ‘almost abolitionism’ is explored in further detail in the following two sections, as we examine the impact of two offences implemented in order to deter demand and facilitate exiting in England and Wales: ss 14 and 17 Policing and Crime Act 2009. In so doing, we highlight the significant differences with the ‘Nordic’ approach. However, key to this analysis is the consideration of how, in England and Wales, the neo-abolitionist agenda has involved the proliferation of neoliberal responsabilization.

As Scoular and O'Neill have argued (2007), the development of prostitution law and policy in the UK can be situated within the context of 'progressive governance', whereby power is dispersed and decentralised. They note that 'these new matrices of power are increasingly organised around specialist and expert forms of knowledge which seek to manage crime prevention and control through strategies of self-governance and responsabilization' (Scoular and O'Neill 2007: 767). Whilst the concept of, and a concern with, 'responsible citizens' is not a modern phenomenon, it has been argued that "'responsibility' has been colonised in public life and political rhetoric by neoliberal discourses of responsabilization' (Trnka and Trundle 2014: 136).

As is well known, neoliberalism promotes 'a set of ideals and practices that involve a shrinking state mandate, deregulation and privatisation, a faith in markets to govern social life, and an increased emphasis on personal choice and freedom' (Trnka and Trundle 2014: 137). This connects with the notion of the responsible citizen, whom is constructed to be autonomous and independent, and empowered to 'fulfil their human 'potential' (Trnka and Trundle 2014: 138). However, ideal citizens are also responsible citizens. Citizens may have rights and freedoms, but they also have responsibilities, and a good citizen must exercise their autonomy responsibly (Clarke 2005: 451). As Clarke notes: '[c]itizens must manage their lifestyles so as to promote their own health and wellbeing. Members of communities must eschew anti-social behaviour so as to promote harmony, inclusivity and civility' (2005: 451). Within this neoliberal framework, citizens are subject to pervasive surveillance technologies, from both 'above and below: that is, by the state, the media, public groups, and individuals' (Trnka and Trundle 2014: 139), which entrenches responsibility within the subject.

Accordingly:

Responsibility becomes a form of reflexive prudence, and individuals and collectives must increasingly conduct moral evaluations of their actions in relation to their potential effects, calculating and designing their life course in ways that attempt to mitigate harm and risk, and maximise benefit to themselves and others.

(Trnka and Trundle 2014: 136. See also Giddens, 1999)

As we will explore further below, through these processes of neoliberal responsabilization, the causes of and the solutions to prostitution are fundamentally – and problematically - individualised. Indeed, due to the mono-dimensional construction of clients and sex workers, both the (male) purchasers and the (female) sellers of sex are subject to techniques of

responsibilization. The male purchasers' demand for sexual services is constructed as causative of not only prostitution, but also trafficking. He therefore needs to be educated as to the realities of the sex industry, and disciplined should he fail to cease purchasing sex. On the other hand, women are only perceived to sell sex because of their dire economic and life circumstances, accordingly, she has to be empowered (or coerced) to reform and improve her life. Consequently, she is expected to exit sex work and required to engage in state approved employment. Throughout this process, however, the state fails to acknowledge the impact of structural injustices and its own role in their continuation.

Shifting the Burden? Deterring Demand, Reducing Supply and the Police and Crime Act 2009

Whilst the female sex worker has tended to dominate the policy focus, since the 1980s male street clients have been increasingly seen as dangerous in the English context. Media anxiety surrounding the multiple murders of women by the 'Yorkshire Ripper' (Ward Jouve 1986) in particular, created considerable fear and anger, which Walkowitz (1992) argues fuelled an anti-violence campaign, and paved the way for increased legal surveillance and criminal penalties to be attached to certain purchasers. Thus, the Sexual Offences Act 1985 created the offence of kerb crawling, which though never used to any great extent, created a new category of offender, who was positioned somewhere between a sex offender and public nuisance. This new offender became a target for new interventions, such as the experiments with kerb-crawler rehabilitation/ diversion schemes for clients (Bindel 1998), and further criminal sanction. Hence, certain groups of clients have been subjected to increased policing and criminalisation (Brooks-Gordon 2010; Brooks-Gordon and Gelsthorpe 2003; Sanders 2005; Sanders 2009a; Sanders and Campbell 2008). However, in *Tackling the Demand*, the Home Office set out the more was needed in order to eradicate prostitution: 'To truly tackle the problem of commercial sexual exploitation more needs to be done to target those who contribute to the demand, those that pay for sex' (Home Office, 2008: 9). Similarly, during the parliamentary debates, the then Home Secretary stated: '...it has been clear to me for some time that tackling the demand side of the equation is one of the best ways we have of fighting back against the misery of prostitution and human exploitation' (House of Commons 2009a: col 524).

To this end, the Policing and Crime Act 2009 brought in two provisions. With respects to on-street prostitution, s19 further extended the reach of the criminal law, by replacing the offence of ‘kerbcrawling’ with a generalised soliciting offence. Significantly, there is no longer a need for the conduct amounting to soliciting to be persistent, which arguably undermines the nuisance based rationale of the law. Accordingly, the offence is transformed into what is known as a status based crime, whereby the offence is not premised upon any positive act or behaviour of the offender, but occurs due to the existence of a certain state of affairs. Moreover, and pivotal to the policy agenda of deterring demand, s14 criminalised paying for the sexual services of a prostitute who has been exploited by a third party.

Ostensibly introduced to deal with the issue of trafficking, and turning the focus of the criminal law on to off-street prostitution, s14 is similar to the Finnish regime, which has adopted a partial ban, outlawing the purchase of sexual services from trafficked victims (see further Skilbrei and Holmström 2011; 2013). Hence, the liberal approach to prostitution is *prima facie* retained by this new offence – as ostensibly it only criminalises purchasing sexual services from exploited individuals, with exploitation being defined to encompass deception, threats both physical and otherwise, and also coercion. Hence, while this is clearly not limited to women who have been trafficked, the section is seemingly restricted to non-consensual forms of prostitution, thus drawing upon liberal notions of consent and autonomy. However, peculiarities exist and the liberal sentiment of s14 is undermined by the radical feminist construction of prostitution which was drawn upon throughout the reform process, as mentioned above (see further Carline 2011, 2012). Concomitantly, the circumstances which potentially fall within the scope of the offence are significantly expansive in scope. A Home Office circular, published at the time when the offence came in to force, for example, states that threats to stop the supply of drugs or alcohol, and threats to end the relationship, or withdraw love/affection, would fall within the section’s remit (Home Office 2010a).

Moreover, under s14 the client’s knowledge regarding the exploitation is irrelevant, hence the crime is one of strict liability, which is a controversial move. The imposition of a strict liability is contrary to basic criminal law principles which require fault - and therefore a level of knowledge – whether this be assessed objectively or subjectively (Archard, 2003; Ashworth and Zedner, 2008; Hart, 2008). However, and once again drawing upon a radical feminist rhetoric, those in favour of the offence stipulated that the crime must be one of strict liability, in order to effectively deter clients. To this end, it was argued that the offence would

cause the sex buyer to contemplate how their behaviour funds the sex industry and perpetuates the exploitation of women (House of Commons 2009b: col 25) and to act with ‘vigilance and circumspection’ (House of Commons 2009d: col 289). Significantly, however, no evidence was provided to support the contention that the offence would operate as an effective deterrence. Indeed, research does not suggest that it will (Von Hirsch et al, 1999). Further difficulties arise as the offence is premised upon the assumption that men who buy sex are ignorant of the realities of the sex industry, as well as lacking knowledge of the law. For example, during the Policing and Crime Act parliamentary debates, Vernon Coaker MP surmised that many men simply think: “‘I’ll purchase the sex.’” They do not think “‘Is this somebody who is exploited?’” (House of Commons 2009c: col 110). This conceptualisation is not, however, supported by empirical research into clients (Sanders 2009a; Sanders 2005). Moreover, the offence produces a significant incongruity, whereby the maximum punishment for a person who pays for the sexual services of someone who is deceived or coerced into prostitution is a mere fine of £1000.

Hence, the extent to which this offence responds effectively to the harm of trafficking is debatable. Nevertheless, s14 was deemed to provide an effective solution. MP Alan Campbell, for example, stated:

People who are serving on this Committee will look back on the measure in the future, when strict liability is working, when we would have reduced the demand for prostitution, helped women out of prostitution and helped to tackle some of the worst examples of exploitation and trafficking, and be proud of the work that they have done on the Bill.

(House of Commons 2009d: col 304)

These claims of effectiveness were unsubstantiated throughout the reform process and significantly doubted by numerous bodies, including the Metropolitan Police (see House of Commons 2009d: col 294). Recent research suggests that the offence has had a limited impact (Kingston and Thomas 2014). According to the findings of a Freedom of Information request regarding the use of s14, the offence ‘had not been used by the majority (81%) of police forces across England and Wales’ (Kingston and Thomas 2014: 262. See also House of Commons 2014). This lack of implementation, Kingston and Thomas suggest, may well reflect a reluctance amongst the forces to utilise the criminal law to deal with trafficking. The failure of police to respond adequately to violence against women – particularly when the

women are involved in prostitution – is, unfortunately, not uncommon (Dellinger Page 2010; Kingston 2013; Kingston and Thomas 2014: 262-264). Research also demonstrates a significant lack of awareness with regards to trafficking, with examples of the police charging trafficked victims with immigration related offences (Kingston and Thomas 2014: 264, discussing CSJ 2013). However, the limited use of the offence may also emanate from a lack of cases involving the requisite exploitation, with research and previous police operations suggesting that the level of trafficking is by no means as prolific as official arguments suggest (Kingston and Thomas 2014: 264; Mai 2009). Furthermore, Kingston and Thomas' findings also suggest that the law is being misapplied. Information provided by Avon and Somerset police forces – which recorded 81 arrests under s14 in 2012 – indicated that the offence had been used for those who '[s]olicit another for the purpose of obtaining their sexual services as a prostitute in a street/public place' (2014: 265). Such conduct is, however, covered by the s19. These findings substantiate fears that s14 may be used to deal with the more public aspects of prostitution (Scoular and Carline 2014).

Through the implementation of s14, this 'shifting the burden' of criminalisation on to clients in England and Wales is clearly intended to be instrumental. It is believed that the approach will not only be effective in reducing prostitution, but is essential to that end. This, however, overestimates the ability of the criminal law to produce both significant behavioural change and fundamentally reduce what is a diverse and complex industry. Furthermore, Florin (2012) has argued that in Sweden the criminalization of clients was more of a symbolic move, intended to complement the measures brought into facilitate exiting prostitution. Hence, in the Nordic countries, the reduction in prostitution is to be achieved by supporting women to exit prostitution, which, in turn is to be achieved through social work measures. While this produces conflicts, particularly between the promotion of desistance, on the one hand, and harm-reduction and social work ethos on the other (Skilbrei and Holmström, 2013), it is significant that exiting is facilitated by social work as opposed to criminal justice mechanisms.

From 'Common Prostitutes' to Vulnerable Victims? Almost Abolitionism and Sex Sellers

The term 'common prostitute' was first introduced into law by s3 of the Vagrancy Act 1824, which criminalized any 'riotous' or 'indecent behaviour' by a common prostitute in public.

This set the tone for the focus upon the visible aspects of sex work and a construction of on-street soliciting as a public nuisance. The term remained on the statute books until 2009, when it was eventually abolished by s16 of the Policing and Crime Act. During the reform process, it was recognised that the term ‘dehumanise[d] people who deserve our sympathy as much as our condemnation-if not more’ (Jack Straw, then Home Secretary, House of Commons 2007: col 69-70). Hence, and mimicking the tone of neo-abolitionism and radical feminism, the prostitute-as-victim script is replete in official documentation. Whilst in *Paying the Price* on-street prostitution is a key focus, the issue of trafficking increasingly dominated the reform agenda. However, the victim status of both is emphasised: female prostitutes are either drug addicted street prostitutes or women who have been trafficked or otherwise forced into prostitution (See Home Office 2004, 2006, 2008).

Significantly, however, despite the focus upon the vulnerable victim status of the ‘prostituted woman’, English abolitionism sits in stark contrast to Nordic models in its refusal to decriminalize those who sell sex. Throughout the reform process, calls to abolish the soliciting offences were dismissed and herein the public nuisance discourse once again came to the fore. For example, Alan Campbell argue that ‘women cannot act with impunity: they cause a nuisance and create concern in local communities’ (House of Commons 2009d: col 316). In such situations he felt that ‘the community has the right to expect that, if they have been given every opportunity to leave prostitution, they will be gently pushed in that direction’ (House of Commons 2009d: col 316). Hence, the on-street sex worker is both a vulnerable victim and a public nuisance and, despite the government’s rhetoric that the desire is to enable women to exit prostitution, there is a complete failure to acknowledge that criminal records ‘institutionalise women in prostitution’ (Niki Adams, English Collective of Prostitutes, House of Commons 2009b: col 26). Indeed, the reach of the criminal justice net has been extended. While the phrase ‘common prostitute’ was rightly abolished, in its place we have a statutory definition of persistence: two or more occasions over a period of three months. This is a significant extension on the previous requirement of two or more occasions in one month.

Consequently, the government in England and Wales has thus far persisted with a criminal justice approach. This involves increased enforcement (including the use of Anti-Social Behaviour Orders (ASBOs)) for street sex work in particular, raids on indoor establishments under the guise of tackling trafficking and exploitation and the tightening of restrictions on

licences for sexual entertainment venues (Hubbard 2015). These mechanisms operate alongside interventions that promote prevention and support for women to exit prostitution. A prime example of this twin-track approach are the Enforcement and Support Orders (ESOs) introduced in England and Wales by the Policing and Crime Act 2009.

Enforcing Exiting Through Coercion? Evaluating Engagement and Support Orders

ESOs provide an alternative penalty for those convicted of soliciting in a street or public place for the purposes of prostitution. As opposed to receiving a fine, an offender can now be required to attend three meetings with an ‘appropriate person’, during which they must ‘address the causes of the conduct constituting the offence’ and ‘find ways to cease engaging in such conduct in the future’. However, as with kerb-crawling, the legal basis of this new order is unclear. The offending conduct that triggers the order is soliciting in a public place. Thus, in theory, ‘ceasing to engage in such conduct’ could be achieved by working indoors or in ways that do not constitute a nuisance. It appears, however, from policy guidance and from practise (see Carline and Scoular 2015), that it is prostitution *per se* that is considered to be the ‘offending conduct’ – although this is not by virtue of law. Furthermore, an ESO may be passed without the consent of the offender, and a failure to attend a meeting without a reasonable excuse will result in a breach. Whether or not a breach has occurred is to be determined by the ‘appropriate person’, who must report the matter to the court, whereby the magistrate may revoke the Order and re-sentence. This re-sentence could involve the imposition of another order, or a fine. A summons to attend court may follow a breach, and failure to attend may result in a warrant of her arrest. If arrested, the offender can be detained for up to 72 hours before the court appearance (Policing and Crime Act 2009, sch 1).

To analyse the impact of these new orders, we now turn to the key findings of an empirical project, which aimed to explore the anticipated and unanticipated effects of a policy of ‘forced welfarism’ (Scoular and O’Neill 2007; Sanders 2009b).⁴ Significantly, and drawing

⁴ The research project employed a three-part research methodology, triangulating data from academic commentary, policy documents and reports and semi-structured interviews. To commence, and in order to reveal the extent to which ESOs had been implemented, and the rates of breaching, we submitted a Freedom of Information Request. Thereafter, we conducted interviews with 31 participants, comprising of supervisors/project workers (13), police officers (11) and ESO recipients (8), across eight cities. Participants were asked questions pertaining to the impact and efficacy of ESOs, along with perspectives on best practice and suggestions for reform. Ethical approval was obtained from the University of Strathclyde. For a more detailed discussion of the methodology see Scoular and Carline (2014).

upon the data obtained via a Freedom of Information request, ESOs have not been implemented evenly across England and Wales. Study participants considered that this was an inevitable consequence of nationally variable and contingent policing priorities. Nevertheless, when orders had been implemented participants - including recipients – were invariably not against them. However, it needs to be stressed that this favourable attitude flowed from the negative impact of fining those involved in sex work. Hence, the orders were considered to be ‘the best of a bad’ situation, given the ongoing criminalization of those who solicit in a public place for the purposes of sell sex.

In the majority of areas, ESO supervision was undertaken by agencies who were already engaging, whether voluntary or otherwise, with those involved in sex work. Hence, for many recipients, an order simply involved ongoing engagement with a known project worker, which consequently enabled (in most areas) the three meetings to be completed without significant difficulty. There was also a general reluctance to breach an offender, with projects concerned to protect their relationships with their client group. Given the involvement of pre-existing agencies, supervisors derived from a diverse range of projects including NHS funded services, probation, drug intervention projects, various charities and sexual health organisations. Accordingly, a range of differing perspectives on the problematic of prostitution could be seen. Nevertheless, there was similarity in practice, with most supervisors adopting a primarily needs focused and person-centric approach.

Hence, whilst facilitating exiting was the official rationale behind the implementation of the orders, which reinforces neo-liberal responsabilization and individualises the causes of prostitution, supervisors were able to employ different forms of practice, which go beyond that which is presupposed by official policy (Home Office 2010b). The orders were utilised by many support workers to provide an opportunity for a more holistic and non-judgmental engagement. Thus, the wider social, economic and health issues faced by recipients tended to be the main focus of the meetings. This included accompanying them to medical appointments, help with benefits and housing, assistance with purchasing appliances such as a washing machine and a microwave and support to obtain food parcels, as well as harm-reduction techniques. Accordingly, supervisors resisted the coercive nature of the criminal justice system, as it was considered to be counterproductive.

Research on female offenders identifies such personal and practical support as essential to reducing offending, and thus such practices could be seen as facilitating desistance (Corston, 2007; Corston 2011; Hedderman et al 2011). However, the extent to which ESOs amounted to an effective mechanism to facilitate desistance was doubted by supervisors, due to the inadequacy of order to deal with the numerous and complex difficulties faced by many involved in sex work (Pitcher 2006). As a result, repeat orders were accepted as inevitable by project workers, as was the reality that many recipients would continue to work whilst on an ESO. Moreover, whilst some agencies recognised exiting to be a longer term goal, many doubted whether complete desistance could, for some, ever be achieved. It is also well known that exiting prostitution is an exceptionally difficult and lengthy process and often involves periods of re-engaging in sex work (see for example Hester and Westmarland 2004; Cusick et al 2011).

In contrast, a tension arose for the police, as they struggled to negotiate the contradiction emanating from the sex worker's dual victim/offender status. Whilst officers were cognisant of the complex vulnerabilities of ESO recipients, they also felt the political and community pressure to reduce – if not eradicate – on-street prostitution, in a timely manner. This in turn led some to suggest more coercive disposals, including the use of ASBOs and the threat of imprisonment, for those who failed adequately to transform their lives. Such perspectives reflect the potential carceral consequences of utilising criminal justice mechanisms to enforce exiting. This involves a 'shift in governance' (Scoular and O'Neill 2007: 773) which:

locates individual women as being responsible for the social problem they encounter, thereby justifying a punitive response when, despite the best efforts of the support agencies around them, they continue with their involvement in prostitution.

(Phoenix and Oerton 2005: 100)

Hence, the ESOs result in various difficulties, tensions and conflicts which have to be managed by the relevant agencies. Problematically, much needed support for vulnerable individuals is dependent upon the involvement of criminal justice agencies, with some recipients commenting that support was increasingly reliant upon being convicted. Indeed, whilst it was acknowledged that the order at times facilitated initial contact with some hard to reach individuals, a significant tension arose from the fact of a zero tolerance approach to sex work, as this will inevitably lead to geographical displacement (Pitcher et al 2006). Thus, project workers were increasingly dependent upon criminalising women in order to facilitate

outreach. Accordingly, projects are placed in a complex situation, whereby they are required to negotiate the criminal justice system, and monitor and potentially discipline sex workers. Concomitantly, it can also be argued that the government's policies involve a regulation of support projects, whereby they are expected to endorse the government rhetoric that prostitution is an unlivable life choice, and that the only solution is desistance. This, however, may lead to the provision of unwanted and/or irrelevant services (Cusick et al 2011: 153), which diminish the support provided to this group.

Consequently, it is argued that the orders institute a moralistic, individualistic and tokenistic response, which demonstrates a willful refusal to respond to the well-known complexities of prostitution. Prostitution is recognised by many to be '...a gendered survival strategy often used by poor women trying to create a better future for themselves and their dependents' (Phoenix 2008: 38). Hence, in addition to decriminalisation, it is recognised that the most effective way in which to enable exiting is to provide sufficient resources to address each woman's 'particular economic needs' (Niki Adams, ECP, House of Commons 2009b: col 27).

Conclusion

This chapter has traced the evolution of prostitution law and policy in England and Wales, and explored its impact upon various subjects and spaces of sex work. While neo-abolitionism, and the correlating radical feminist discourse, has influenced law reform and policy developments, the public nuisance perspective nevertheless remains influential. The interaction of these two frameworks is felt acutely by street based workers who are under intense pressure to exit, as demonstrated by the implementation of ESOs. Under the guise of promoting gender equality, sellers are increasingly cast as victims. However, this construction takes place in the context of an existing criminal justice framework and in a declining welfare system in which citizenship and assistance is increasingly conditional. At the same time, the vulnerability and victim status of the female sex worker is used to justify the need to tackle the demand through the increased criminalization of those who purchase sex. Indeed, the neo-abolitionist schema involves subjecting male sex buyers to same pathologizing and responsabilizing tendencies previously applied to female sex workers. Subsequently, as opposed to focusing on the crimes committed, the law has collapsed harm, disease and anti-social behaviour with the activity of purchasing sex, which becomes a

problematic identity *per se*. It is, thus, impossible to be both a good responsible citizen, and a purchaser of sexual services (Kulick, 2005: 215, 217).

Throughout this process a fundamental and problematic slippage occurs, as buying and selling sex are not criminal offences, but yet subjects are invariably penalised. This, we argue, signifies how the grafting of the radical feminist rhetoric of neo-abolitionism on to the pre-existing liberal framework of the law facilitates processes of neoliberal responsabilization. Hence, both purchasers and sellers are increasingly disciplined for engaging in what is fundamentally legal activity. Concomitantly, ‘ignorant men’, and their demand for sexual services, are constructed as causative of prostitution and trafficking, while women who fail to adequately transform their lives are punished. However, the ‘almost abolitionism’ reflects a neo-abolitionism approach in policy-speak only, as it results in a system which is more akin to conservative moralistic criminalization regimes. Throughout this process alternative feminist perspectives, which recognise prostitution as a form of labour, are rejected and the state eschews the complex causal factors of both prostitution and trafficking. These include the multifarious structural, material and economic inequalities, the impact of globalization and restrictive immigration practices (see for example Andrijasevic, 2010; Doezema 2010 Murray, 1998; Sanders and Campbell, 2008: 174). In contrast, we argue that the next generation of reform in the UK should be informed by a sex work discourse, which acknowledges and responds to the complexities of prostitution and trafficking.

References

All Party Parliamentary Group on Prostitution and the Global Sex Trade (APPG) (2014) *Shifting the Burden: Inquiry to Assess the Operation of the Current Legal Settlement on Prostitution in England and Wales*. Available online: <http://appgprostitution.files.wordpress.com/2014/04/shifting-the-burden.pdf> (Accessed 15 April 2014).

Ashworth A and Zedner L (2008) Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions. *Criminal Law and Philosophy* 2:21–51.

Archard D (2008) Criminalising the Use of Trafficked Prostitutes: Some Philosophical Issues. In: Munro V and Della Giusta M (eds) *Demanding Sex: Critical Reflections of the Regulation of Prostitution* Aldershot: Ashgate, pp. 149-162.

Andrijasevic R (2010) *Migration, Agency, and Citizenship in Sex Trafficking*. New York: Palgrave Macmillan.

Bindel J (1998) Out of the Gutter: The First School to Reform Kerb Crawlers Opened Last Week in Leeds. *The Independent*, November 12: 9.

Brooks-Gordon B (2010) Bellwether Citizens: The Regulation of Male Clients of Sex Workers. *Journal of Law and Society* 37(1) 145-170.

Brooks-Gordon B and Gelsthorpe L (2003) Prostitutes' Clients, Ken Livingstone and a New Trojan Horse. *The Howard Journal of Criminal Justice* 42(5): 437-451.

Carline A (2011) Criminal Justice, Extreme Pornography and Prostitution: Protecting Women or Promoting Morality? *Sexualities* 14(3): 312-333.

Carline A (2012) Of Frames, Cons and Affects: Constructing and Responding to Prostitution and Trafficking for Sexual Exploitation. *Feminist Legal Studies* 20(3): 207-225.

Carline and Scoular (2015) Saving Fallen Women Now? Critical Perspectives on Engagement and Support Orders and their Policy of Forced Welfarism. *Social Policy and Society* Vol 14(1): 103-112.

Centre of Social Justice (CSJ) (2013) *It Happens Here: Equipping the UK to Fight Modern Slavery*. London: Centre for Social Justice.

Clarke J (2005) 'New Labour's Citizens: Activated, Empowered, Responsibilized, Abandoned? *Critical Social Policy* 25(4) 447-463.

Corston J (2007) *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System*. London: Home Office.

Corston J (2011) *Women in the Penal System: Second Report on Women with Particular Vulnerabilities in the Criminal Justice System*. London: Howard League for Penal Reform.

Cusick L and Lee Berney L (2005) Prioritizing Punitive Responses Over Public Health: Commentary on the Home Office Consultation Document Paying the Price. *Critical Social Policy* 25(4): 596-606.

Cusick, L. Brooks-Gordon, B. Campbell, R. and Edgar, R. (2011) ‘‘Exiting’’ Drug Use and Sex Work: Career Paths, Interventions and Government Strategy Targets’, *Drugs: Education, Prevention and Policy*, 18, 2, 145-156.

Dellinger Page A (2010) True Colors: Police Officers and Rape Myth Acceptance. *Feminist Criminology* 5(4): 315-334.

Doezema J (2010) *Sex Slaves and Discourse Masters: The Construction of Trafficking*. London: Zed.

Ekberg G (2004) The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings. *Violence Against Women* 10(10): 1187-1218.

European Parliament (2014) *European Parliament Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and its Impact on Gender Equality*. Available online: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0162+0+DOC+XML+V0//EN>

Florin O (2012) A Particular Kind of Violence: Swedish Social Policy Puzzles of a Multipurpose Criminal Law. *Sexuality Research and Social Policy* 9: 269-278.

Giddens A (1999) ‘Risk and Responsibility’ *Modern Law Review* 62(1): 1-10.

Hart HLA (2008) *Punishment and Responsibility: Essays in the Philosophy of Law*. Oxford: Oxford University Press (2nd ed).

Hedderman C, Gunby C and Shelton N (2011) What Women Want: The Importance of Qualitative Approaches in Evaluating Work with Women Offenders. *Criminology and Criminal Justice* 11(1): 3-19.

Hester M and Westmarland N (2004) *Tackling Street Prostitution: Towards a Holistic Approach*. London: Home Office.

Home Office (2010a) *Home Office Circular 006/2010: Policing and Crime Act 2009 – New Prostitution Provisions*. London: Home Office

Home Office (2010b) *Guidance on section 17 Policing and Crime Act 2009: Engagement and Support Orders*. London: Home Office.

Home Office (2008) *Tackling the Demand for Prostitution: A Review*. London: Home Office.

Home Office (2006) *A Coordinated Prostitution Strategy and a Summary of Responses to Paying the Price*. London: Home Office.

Home Office (2004) *Paying the Price: A Consultation Paper on Prostitution*. London: Home Office.

Home Office (2000) *Setting the Boundaries: Reforming the Law on Sexual Offences*. London: Home Office.

House of Commons (2014) *Sexual Offences: Prosecutions*. House of Commons, Daily Hansard Written Answers, 11 March. Available online: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140311/index/140311-x.htm (Accessed 15 April 2014).

House of Commons (2009a) HC Debates Vol 486 (137). Policing and Crime Bill 2008-2009, 19 January.

House of Commons (2009b) Public Bill Committee 1st Sitting, *Policing and Crime Bill 2008-2009*, 27 January.

House of Commons (2009c) Public Bill Committee 4th Sitting, *Policing and Crime Bill 2008-2009*. 29 January.

House of Commons (2009d) Public Bill Committee 9th Sitting, *Policing and Crime Bill 2008-2009*, 10 February.

House of Commons (2007) HC Debates Vol 464. *Criminal Justice and Immigration Bill 2007-2008*, 8 October.

Hubbard P (2015) Law, sex and the city. *International Journal of Law in the Built Environment* 7:5-20.

Hubbard P and Scoular J (2009) Making the Vulnerable More Vulnerable? The Contradictions of Street Prostitution Policy. In Canter D, Ioannou M and Youngs D (eds.) *Safer Sex in the City*. Farnham: Ashgate. 135-153.

Jagger A (1991) 'Prostitution', in Soble A (ed) *The Philosophy of Sex: Contemporary Readings*. Maryland: Rowman and Littlefield, pp. 260-274.

Jones H and Sagar T (2001) 'Crime and Disorder Act 1998: Prostitution and the Anti-social Behaviour Order'. *Criminal Law Review*, Nov: 873-885.

Kingston S (2013) *Prostitution in the Community: Attitudes, Action and Resistance*. London: Routledge.

Kingston S and Thomas T (2014) The Police, Sex Work, and Section 14 of the Policing and Crime Act 2009. *The Howard Journal of Criminal Justice* 53(3): 255-269.

Kulick D (2005) Four Hundred Thousand Swedish Perverts. *GLQ: A Journal of Lesbian and Gay Studies* 11(2): 205- 235.

Mai N (2009) *Migrant Workers in the UK Sex Industry: Full Research Report ESRC End of Award Report, RES-062-23-0137*. Swindon: ESRC.

Matthews R (1986) Beyond Wolfenden? Prostitution, politics and the law. In Matthews R and Young J (eds) *Confronting Crime*. Sage Publications: London. 188-210.

Munro V and Scoular J (2013) Harm, Vulnerability and Citizenship: Constitutional Concerns in the Criminalisation of Contemporary Sex Work in the UK. In: Duff R A, Farmer L, Marshall S E, Massimo Renzo M and Tadros V (eds.) *The Constitution of Criminal Law* Oxford: Oxford University Press. 30-52.

Murray A (1998) Debt-Bondage and Trafficking: Don't Believe the Hype. In Kempadoo K and Doezema J (eds) *Global Sex Workers: Rights, Resistance, and Redefinition*. New York: Routledge, pp. 51-64.

Nussbaum M (1999) *Sex and Social Justice*. Oxford: Oxford University Press.

Oppenheim M (2014) MEPs vote to criminalise buying sex. *The Guardian*: <http://www.theguardian.com/global-development/2014/feb/26/meps-vote-criminalise-buying-sex-european-parliament>

Osborne H (2014) Nordic Model of Prostitution Approved by European Parliament. *International Business Times*. <http://www.ibtimes.co.uk/nordic-model-prostitution-approved-by-european-parliament-1438009>

Phoenix J (2008) 'Economic Exploitation, Male Violence and Prostitution Policy in the UK', in V Munro and M Della Guista (ed) *Demanding Sex: Critical Reflections on the Regulation of Prostitution*. Hampshire: Ashgate, 35-50.

Phoenix J and Oerton S (2005) *Illicit and Illegal: Sex, Regulation and Social Control*. Cullompton: Willan Publishing.ri

Pitcher J (2006) 'Support Services for Women Working in the Sex Industry', in R Campbell and M O'Neill (eds) *Sex Work Now*. Cullompton: Willan Publishing, 235-262.

Pitcher J, Campbell R, Hubbard P, O'Neill M and Scoular J (2006) *Living and Working in Areas of Street Sex Work*. Joseph Rowntree Foundation, Bristol: The Policy Press.

Sanders T (2009a) Kerbcrawler Rehabilitation Programmes: Curing the 'Deviant' Male and Reinforcing the 'Respectable' Moral Order. *Critical Social Policy* 29(1): 77-99.

Sanders T (2009b) Controlling the 'Anti Sexual' City. *Criminology and Criminal Justice* 9(4): 507-525.

Sanders T (2005) *Sex Work: A Risky Business*. Cullompton: Willan Publishing.

Sanders T and Campbell R (2008) Why Hate Men who Pay for Sex? Exploring the Shift to 'Tackling Demand' in the UK. In Munro V and Della Giusta M (eds) *Demanding Sex: Critical Reflections of the Regulation of Prostitution*. Aldershot: Ashgate, pp. 163-179.

Sanders T and Campbell R (2007) Designing out Vulnerability, Building in Respect: Violence, Safety and Sex Work Policy. *The British Journal of Sociology* 58(1): 1-19.

Scoular J (2004) Criminalising 'Punters', Evaluating the Swedish position on prostitution. *Journal of Social Welfare and Family Law* 26(2):195-210.

Scoular J and O'Neill M (2007) Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution. *British Journal of Criminology* 47(5) 764-778.

Scoular and Carline (2014) A Critical Account of a 'Creeping Neo-abolitionism': Regulating Prostitution in England and Wales. *Criminology and Criminal Justice* 14: 608-626.

Skilbrei M-L and Holmström C (2013) *Prostitution Policy in the Nordic Region. Ambiguous Sympathies*. Farnham: Ashgate.

Skilbrei M-L and Holmström C (2011) Is there a Nordic Prostitution Regime? *Crime and Justice* 40(1): 479-517.

Soothill K and Sanders T (2004) Calling the Tune?: Some Observations on Paying the Price: A Consultation on Prostitution. *Journal of Forensic Psychiatry* 15(4) 642-659.

Sullivan B (2010) When (Some) Prostitution is Legal. The Impact of Law Reform on Sex Work in Australia. *Journal of Law and Society* 37(1): 85-10.

Trnka S and Trundle S (2014) Competing Responsibilities: Moving Beyond Neoliberal Responsibilisation. *Anthropological Forum* 24(2) 136-153.

Von Hirsch A, Bottoms E, Burney E and Wikstrom, P (1999) *Criminal Deterrence and Sentencing Severity: An Analysis of Recent Research* (Oxford: Hart Publishing).

Walkowitz J (1992) *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London*. London: Virago.

Ward Jouve N (1986) *The Streetcleaner: The Yorkshire Ripper Case on Trial*. London: Marion Boyars Publishing Ltd

Weitzer R (2013) *Legalizing Prostitution: From Illicit Vice to Lawful Business*. New York: New York University Press.

Wolfenden Report (1957) *Report of the Committee on Homosexual Offences and Prostitution*. London: HMSO.

