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**Towards a Harm-Minimising Approach to Sex Work: A Call For  
Decriminalisation in England and Wales**

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2014

## **ABSTRACT**

This thesis has developed a harm-minimising framework to analyse the regulation of sex work in England and Wales and propose a system of reform. In so doing, it defines the ‘harm’ in sex work as that of stigma, violence and exploitation, using this categorisation to judge the effectiveness of any (new) system of legal regulation.

This thesis demonstrates how sex workers are frequently cast as a deviant population and separated from the rest of society, facing extreme forms of violence and exploitation. Using my harm-framework of analysis, this thesis examines the regulation of sex work in England and Wales, starting with the Contagious Disease Acts of the 1860’s through to modern day. In doing this, it will demonstrate the ability of the law to maintain, shape and create the conditions for the violence, exploitation and stigma faced by women selling sex. The thesis then explores alternative means of regulating sex work. It will look towards the alternatives of criminalising the clients, regimes of legalisation and of decriminalisation. It concludes that in order to provide the sex worker with sufficient protections against violence, stigma and exploitation, England and Wales should adopt a regime of decriminalisation. It is only under such a regime that sex workers could be provided with effective and realistic safeguards against the harm currently endemic in their work, and within which, crucial steps can be made towards altering their stigmatised and marginalised status.

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## STATUTE LIST

Anti-Social Behaviour Act 2003  
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Criminal Justice and Police Act 2001  
Police Reform Act 2002  
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Serious Organised Crime and Police Act 2005  
Sexual Offences Act 1956  
Sexual Offences Act 1985  
Sexual Offences Act 2003  
The Criminal Justice Act 1982  
The Sexual Offences Act 1959  
Vagrancy Act 1824

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## CHAPTER 1: INTRODUCTION

‘Most, like me, find the abolitionist approach to sex work at best, profoundly unrealistic, at worst, cruel, dangerous and demeaning towards sex workers. It is this fact, that many practitioners in the field are variously bewildered or appalled by the effect of abolitionist thinking on public policy towards sex work, that gives me the temerity to take on the debate.’<sup>1</sup>

The above quote is from Hillary Kinnell, the network coordinator of the UK Network of Sex Projects. It reflects the frustration of many over the current regulation of sex work in England and Wales where, whilst the act of selling sex in exchange for money is legal, nearly all activities that surround the exchange are illegal. This precarious legal position has left sex workers ‘systematically blamed, targeted and incarcerated... (where) their most basic and fundamental rights are continuously violated by the police, clients and owners.’<sup>2</sup> It is against this backdrop of extreme harm suffered by the modern sex worker that this thesis takes place. Throughout the following chapters, I explore the nature and complexity of harm suffered by sex workers today. I highlight the ineffectivity of our current laws in reducing these harms and search for legal alternatives that could make selling sex safer in England and Wales. In so doing, I propose a move away from our current reliance on the criminal law and welfare institutions, and instead, demonstrate the harm-minimising potential of a regime of decriminalisation with a central goal of improving the safety of sex workers.

The subject of sex work is controversial and emotive, often tied up with wider debates on female sexuality, gender relations, capitalism and the role of the law. Following this, this thesis arose from a frustration with the current academic and political preoccupation with such wider moral debate when discussing sex work, becoming so removed from the experiences of sex workers themselves. Such boundless debate result in ‘views on prostitution that paralyse political action’<sup>3</sup> and stall progressive change. As a result, change often comes in the form of symbolic and normative laws that exist without due consideration to the lives and experiences of sex workers, often placing them in extremely dangerous situations and maintaining their marginalised status. This will be demonstrated in the following chapters of this thesis using the history of England and Wales and the legal regulation of sex workers abroad.

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<sup>1</sup> Report in Hilary Kinnell, Why feminists should rethink on sex workers’ rights, UK Network of Sex Work Projects, < accessed on 13<sup>th</sup> September 2014, <http://www.nswp.org/sites/nswp.org/files/KINNELL-FEMINISTS.pdf> >, 1

<sup>2</sup> Ibid, 5

<sup>3</sup> Carol Smart, ‘Legal Subject and Sexual Objects’ in *Law Crime and Sexuality: Essays in Feminism*, (Sage, 1995) 67

Thus, by adopting a specific harm framework, this thesis re-evaluates the focal point for calls for reform by shifting the framework against which to judge the effectiveness of legal systems regulating sex work. Through a proposal for decriminalisation, this thesis places the sex worker and her<sup>4</sup> experience of harm at the centre of analysis. This thesis will culminate in a proposal for reform that would include the consultation and approval of sex workers themselves throughout the drafting process, placing the voices of those systematically silenced throughout history at the forefront of reform. By outlining the benefits of a system of decriminalisation, it proposes a legal, social and political reform in England and Wales that both understands and effectively tackles the frequent and extreme harms faced by women selling sex on a daily basis.

### **Why Harm?**

The definition of ‘harm’ and its effect on the sex worker will be discussed in the following chapter. As it will be shown, in England and Wales sex workers are at an extreme risk of harm. Compared to the average non-sex worker of the same demographic, female sex workers are 14 times more likely to be killed,<sup>5</sup> they run the daily risk of robbery and assault,<sup>6</sup> and remain on the peripheries of society, ostracised from communities and the political sphere alike. Despite these risks, laws fail to protect them but instead exacerbate these harms, creating the very conditions that enable them to continue.<sup>7</sup> The only way sex workers in England and Wales can be properly protected from harm, I argue, is a comprehensive reform of our current laws regulating sex work.

This thesis takes place amongst growing academic calls for a move away from controversial moral debates that surround sex work to one that recognises the heterogenous nature of women’s experiences in selling sex and the complexity of the sex industry.<sup>8</sup> By adopting a harm-minimising approach to regulation, I attempt to avoid the common preoccupation with the moral and political implications of selling sex that often serve to stall progressive conversations towards improving the lives of sex workers. Throughout this thesis I will place the diverse and complex range of lived experience of sex workers and their experiences of harm at the forefront of analysis by using

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<sup>4</sup> Although the vast majority of sex workers in England and Wales are female, there are also male and transgender/transsexual workers in the industry, however in this thesis I will focus solely upon female workers, as discussed below.

<sup>5</sup> Hillary Kinnell, *Violence and Sex Work in Britain* (Willian Publishing, 2008)

<sup>6</sup> UK Networks of Sex Work Projects, *Ugly Mugs: Good Practice Guidance*, (UK Network of Sex Work Projects, 2011)

<sup>7</sup> Phil Hubbard, ‘Out of Touch and Out of Time’ in Rosie Campbell and Maggie O’Neill (eds), *Sex Work Now* (Willian Publishing, 2006)

<sup>8</sup> Teela Sanders, Maggie O’Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (Sage Publications, 2009) 12

sociological research that aims to give a voice to those commonly silenced. As Maggie O'Neill argues, 'until we have a thorough understanding of the issue of prostitution from the multiple standpoints of those involved we cannot begin to understand the complexities of prostitution and the lives of those involved.'<sup>9</sup> Before introducing the layout of the thesis itself, as sex work is such a controversial subject where the use of language is sensitive and complex, I will first clarify a number of key terms I will rely upon throughout this thesis.

### **'Sex Work' or 'Prostitution'?**

The first clarification to be made when defining certain key concepts is in relation to the term 'sex work' as opposed to 'prostitution.' As Maggie O'Neill and Rosie Campbell comment, one of the biggest changes that has taken place in modern discourses around selling sex is the linguistic move from 'prostitution' to 'sex work.'<sup>10</sup> Throughout this thesis I will use the term 'sex work' and 'sex workers,' instead of the common terms 'prostitution' and 'prostitutes,' as I believe the former more closely reflects the economic nature of the transaction and works towards recognising the autonomy of women selling sex, forwarding a movement towards recognition and labour rights. This linguistic move was initially coined by Carol Leigh, a spokesperson for the sex worker rights group, Call Off Your Old Tired Ethics (COYOTE), with the aim to 'acknowledge the work we do rather than define us by our status.'<sup>11</sup> The term itself has been adopted throughout the sex worker rights movement, with organisations such as the English Collective of Prostitutes<sup>12</sup>, the Global Network of Sex Work Projects<sup>13</sup> and the UK Network of Sex Work Projects<sup>14</sup> relying upon the language of the 'sex worker' to empower, protect and advocate for women who sell sex.

This thesis will adopt such a terminology as for sex workers, academics and activists alike, the phrases 'prostitute' and 'prostitution' carry with them a stigmatising and victimising status. The linguistic shift to 'sex work' used throughout this thesis represents the recognition of the agency of the sex worker and selling sex as a form of work, as Kempadoo and Doezema state, 'the idea of sex worker is inextricably related to struggles for the recognition of women's work, for basic human

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<sup>9</sup> Maggie O'Neill *Prostitution and Feminism: Towards a politics of feeling*, (The Polity Press, 2001) 189-90

<sup>10</sup> Rosie Campbell and Maggie O'Neill (eds), *Sex Work Now* (Willian Publishing, 2006) xii

<sup>11</sup> Carol Leigh, 'Inventing Sex Work' in Jill Nagle (ed) *Whores and Other Feminists* (Routledge, 1997) 230

<sup>12</sup> Despite their name, the English Collective of Prostitutes rely upon the term 'sex worker' throughout their press releases, academic documents and manifesto. See, [www.prostitutescollective.net](http://www.prostitutescollective.net)

<sup>13</sup> See [www.nswp.org](http://www.nswp.org)

<sup>14</sup> See [www.uknswp.org](http://www.uknswp.org)

rights and for decent working conditions.’<sup>15</sup> Through adopting the ‘sex work’ terminology, I aim to recognise the agency of women who sell sex and their right to be protected from harm.

### **Defining ‘Sex Work’**

Then next step then, is defining the boundaries of sex work itself. Sex work is a complex and segmented industry with differing risks and nature of harms. The sex industry is not limited to women selling sex, the umbrella term can include a plethora of related activities such as telephone and internet sex, fantasy and peep shows, lap dancing / pole dancing and BDSM and bondage services.<sup>16</sup> Despite its heterogeneity, due to the limitations on this thesis, I will focus exclusively on women directly selling sexual services for money, defining sex work specifically as the direct exchange of sexual services for monetary gain. This definition echoes much current sex work research, with Teela Sanders, Maggie O’Neill and Jane Pitcher defining sex work as ‘where physical contact of a sexual nature is exchanged for money’<sup>17</sup> and Hoigard and Finstad describing it as the ‘buying and selling of sexual services for cash payment.’<sup>18</sup> In defining sex work as such, this thesis seeks to understand a group of women that are often marginalised from society and commonly affected by strict and controlling laws.

### **The Female Sex Worker**

Following this definition of sex work itself, the second clarification to be made before the development of my thesis is the distinction between ‘sex workers’ and more specifically, that of ‘female sex workers,’ on which this thesis will focus. The decision to focus specifically on female sex workers was not a decision I took lightly. Both male and transgender sex workers also face extreme and frequent forms of violence, exploitation, stigma and marginalisation, the exploration of which go beyond the remit of this thesis.<sup>19</sup> The decision to focus solely on female sex workers within this thesis was both a practical and theoretical decision.

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<sup>15</sup> Kamala Kempadoo and Jo Doezema *Global sex workers: Rights, resistance and redefinition* (Routledge, 1998) 3

<sup>16</sup> Ibid, 5

<sup>17</sup> Teela Sanders, Maggie O’Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (SAGE, 2009)

<sup>18</sup>

<sup>18</sup> Cecile Hoigard and Liv Finstad, *Backstreets: Prostitution, Money and Love* (Pennsylvania State University Press, 1992) 8

<sup>19</sup> See Mary Whowell and Justin Gaffney, ‘Male Sex Work in the UK: Forms Practice and Policy Implications’ in Joanna Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009) 99- 119

Female sex work is a complex and unique subject. It is interlinked with wider socio-legal discussions on gendered power relations, women's wider position in society and the intersection of gender with the economy. As many have highlighted, sex work remains predominantly a heterosexual activity with 'with men buying the sexual services of women, within a set of social relations implying unequal power relationships between the two sexes.'<sup>20</sup> Equally as important is the wider socio-economic context in which female sex work exists, where, as Eileen McLeod observed in her influential book, *Women Working*, 'as prostitutes, women are grappling with their disadvantages social position and 'relative poverty' in the context of a capitalist society.'<sup>21</sup> To properly understand the female sex worker and the nature of the harms she experiences she must first be contextualised within the society she exists, understanding the origins and complexity of harm, her social situation and the pressures shaping her existence. With this in mind, although all sex workers share commonalities, female<sup>22</sup>, male<sup>23</sup> and trans<sup>24</sup> sex workers come with their own distinct issues, debates and specific harms. Conflating all genders into such a word and time limited thesis would inevitably result in merging different experiences as one, resulting in a failure to engage with the complexities of experience.

### Mapping out the Sex Industry

This is by no means to say that there is only one, universal female sex work experience. Even within such a specific definition of female sex workers, sex work is a heterogeneous phenomenon and it is important we recognise its diversity, especially in relation to the nature of harm experienced. The sex work industry includes individuals selling sex, managers, owners, marketers, agencies and clubs involved in sexual commerce of both legal and illegal varieties.<sup>25</sup> Similarly, sex workers themselves can work for third parties under a system of management, in organised groups or individually and

<sup>20</sup> Joyce Outshoorn, *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sexual Commerce* (Cambridge University Press, 2004) in Maddy Coy, *Prostitution, Harm and Gender Inequality: Theory, Research and Policy* (Ashgate, 2012), 2

<sup>21</sup> Eileen McLeod *Women Working: Prostitution Now* (Croom Helm, 1982) 1

<sup>22</sup> Teela Sanders, Maggie O'Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (Sage Publications, 2009); Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005); Carole Pateman, *The Sexual Contract*, (Stanford University Press, 1988); Kathleen Barry, *The Prostitution of Sexuality* (New York University Press, 1995)

<sup>23</sup> Global Network of Sex Work Projects, 'The Needs and Rights of Male Sex Workers', Briefing Paper 08 (Edinburgh, Scotland); Peter Aggleton and Richard Parker (eds) *Men Who Sell Sex: Global Perspectives* (Routledge, 2015)

<sup>24</sup> Sel Hwahng & Larry Nuttbrock 'Sex Workers, Fem Queens, and Cross-Dressers: Differential Marginalisation's and HIV Vulnerabilities Among Three Ethnocultural Male-to-Female Transgender Communities in New York City' (2007) *Sexuality Research & Social Policy* 4(4), 36–59.; Howe, C., Zaraysky, S., & Lorentzen, L 'Transgender Sex Workers and Sexual Transmigration between Guadalajara and San Francisco' (2008) *Latin American Perspectives*, 35(1), 31–50.

<sup>25</sup> Ronald Weitzer, *Legalising Prostitution: From Licit vice to Lawful Business* (New York University Press, 2012)

they may work in indoor premises or on the streets. These clarifications are very important in the chapters that follow as the different specifications carry with them their unique frequency and nature of risk, requiring different approaches and responses to alleviate such risk. Instead of focusing on one particular demographic of sex workers this thesis will recognise the heterogeneous nature of sex work and aim to place the real lived experiences of sex workers, in all their forms, at the forefront of reform.

### **The Importance of Feminist Engagement with the Law**

Secondly, before I begin with the main body of my thesis I should also justify my focus on engagement with the law and law reform, as in recent years there has been significant disagreement over the utility of a focus on legal reform in the realm of sex work and the effectiveness of legal change in improving the women's situation.<sup>26</sup> In response to this, throughout this thesis I demonstrate the power of the law in shaping the experiences of sex workers and their relationship to harm. To avoid such a legal approach and fail to question the current legal and social position of sex workers would result in the further perpetuation of the silencing of the sex worker that has been established since the 1860's and thus, their further marginalisation from society. As will be shown through the analysis of the New Zealand legal reform and through a proposal for a decriminalisation approach, the power of the law can be used to achieve positive change for the sex worker and to dramatically change the harms she experiences.

The argument to move away from feminist focus on legal reform has been adopted by some in regards to sex work, most notably by Laura Agustín who argued that differing legal approaches<sup>27</sup> to sex work have little effect on the actual, real lived experiences of the individuals involved in the sex industry. The similarities between differing regulatory systems have also been explored by academics such as Phil Hubbard and Jane Scoular, whose research on the systems of the United Kingdom, Sweden and the Netherlands have shown that 'apparently contrasting legal approaches can produce similar results. Even in the apparently diametrically opposed system of criminalisation and legalisation.'<sup>28</sup> One of the continuous results, Agustín argues, is the so-called inevitable existence of an underground sex industry, that 'no matter how rational and clear the guidelines for the regulation of sex business, many

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<sup>26</sup> Vanessa Munro, *Law and Politics at the Parameter- Re-Evaluating Key Debates in Feminist Theory*, (Oregon, 2007); Laura Agustín, 'Sex and the Limits of Enlightenment: The Irrationality of Legal Regimes to Control Prostitution' (2008) *Sexuality Research and Social Policy*, (5) 4, 82; Jane Scoular, 'What's Law Got to do with it? How and Why Law Matters in the Regulation of Sex Work' (2010) *Journal of Law and Society* 37(1)

<sup>27</sup> Such as regimes of legalisation, criminalisation and decriminalisation, which will be discussed in further in chapter 3 of this thesis.

<sup>28</sup> Phil Hubbard, 'Regulating the Spaces of Sex Work: assessing the impact of prostitution law : Full Research Report ESRC End of Award Report' (Swindon ESRC, 2007)

entrepreneurs, tax evaders, freelancers, gangsters, and undocumented workers remain outside these regimes, risking fines, prison, deportation, and stigma to obtain profits and benefits of unregulated economies.<sup>29</sup> This leads Agustín to conclude that ‘no matter which sociolegal regime is put into place, people continue to sell and to buy sex wherever they can.’<sup>30</sup> Instead, she argues for de-centring the role of the law in regulating sex work in order to move towards progressive change, that ‘the field of sociolegal projects to control prostitution does not fit into any rational framework of social progress, even for so small a geographic region as Europe.’<sup>31</sup>

Agustín’s argument on the unavoidability of an underground industry fails to take into consideration the complexity of the role of law within our society. As Jane Scoular argues, her argument fails to account for the ways in which modern forms of legal power operate to support power relations ‘despite a persistent gap between law in the books and law in action.’<sup>32</sup> The power of law in modern society lies within its ‘increasing hybridisation with norms means that it is imbricated in the everyday world.’<sup>33</sup> As argued by Carol Smart within her analysis of Michel Foucault, law is a form of discourse ‘which can make claims to scientificity and hence truth.’<sup>34</sup> Law, Smart argues, is positioned on the top of a ‘hierarchy of knowledge’s which allows for the disqualification of ‘subjugated knowledge’s’ and hence gives rise to the power of law.’<sup>35</sup> As it will be demonstrated throughout this thesis, in its claim to the truth, that is, the nature of harm in sex work, the law serves to silence other discourses by according them less power.<sup>36</sup> As will be illustrated further in chapter 2, throughout the history of sex work in England and Wales, by adopting a certain understanding of harm in sex work the law has resulted in the marginalisation of sex workers, as their real lived experiences are silenced through the power of the law. Through law’s claim to truth, it has developed a social construction of the sex worker as the Other, and thus undeserving of civil rights and protections.<sup>37</sup>

Using these understandings of the role of law in modern society, arguments proposing feminists should simply work outside the law to reduce the harm experienced by sex workers loses strength. Like Scoular’s criticism of Agustín’s work, I too argue that in today’s society ‘outside of the law’ is an impossible concept.<sup>38</sup> As will be reiterated throughout this thesis, the law has a significant and, I

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<sup>29</sup> Laura Agustín, N26 82

<sup>30</sup> Ibid 82

<sup>31</sup> Ibid 84

<sup>32</sup> Jane Scoular, N27 14

<sup>33</sup> Carol Smart, *Feminism and the Power of Law* (Routledge, 1987) 38

<sup>34</sup> Carol Smart ‘Law’s Power and the Sexed Body and Feminist Discourse’ (1990) *Journal of Law and Society* 17, 196

<sup>35</sup> Ibid 196

<sup>36</sup> Carol Smart, N33 11

<sup>37</sup> Carol Smart, *Law Crime and Sexuality: Essays in Feminism* (SAGE Publications, 1995) 49

<sup>38</sup> Jane Scoular, N26



argue, unavoidable role to play in the lives of women selling sex. Feminist disengagement with the law is a wholly negative ideal as it follows that feminist would have to completely disengage with any attempt to positively change the lives of sex workers, as the law permeates all aspects of their lives. Thus, the fundamental problem of advocates for de-centring the law in relation to sex work is, as stated by Catherine MacKinnon, that ‘one result of this turning away, however realistic its reasons, is that male power continues to own law unopposed.’<sup>39</sup> By resigning the law regulating sex work as impenetrable to feminist reform or improvement, women are left facing biased systems with unjust and extremely endangering laws that have no impetus or pressure to change. In doing this, I do not argue that the law is all-powerful or that it should be the only means to reduce the harms in sex work; however, I argue that a change in the law to a decriminalisation approach is the fundamental first step towards holistic and long-lasting societal change that significantly improves the safety of women who sell sex.

### **Map of the thesis**

In order to propose a harm-minimising system of decriminalisation in England and Wales, chapter one firstly explores the definitions and origins of ‘harm.’ Rejecting the argument that harm is inherent in sex work, chapter one will argue harm is *endemic* within selling sex in England and Wales, and thus, preventable. The then sets the harm framework that will be used throughout this thesis, that is, the categorisation of harm into the three main groups of stigma, violence and exploitation.

Chapter two then maps out the development of the law regulating sex work in England and Wales. It will map the historical development of official constructions of harm in sex work and their subsequent effects on the lived experiences of sex workers, culminating in an analysis on the modern laws and policies. Using the harm framework as set out in chapter one, it will demonstrate that such criminalising and restrictive laws have placed sex workers at greater risk of violence, exploitation and stigma.

After arguing that the current legal regulation in England and Wales is making sex workers less safe, chapter three will explore the alternative regulatory regimes of criminalisation, decriminalisation and legalisation, looking at various countries as examples of these regimes in practice. Using various research and policy documents it will closely analyse the effectiveness of these policies in reducing the harms of sex work and explore their possible application to England and Wales.

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<sup>39</sup> Catherine MacKinnon, *Women's Lives, Men's Laws* (Harvard University Press, 2005) 107

The thesis will then culminate in chapter five with the proposal of a model of decriminalisation in England and Wales. It will not put forward a comprehensive regime of decriminalisation, which, it will argue, should not be done without the proper inclusion of sex workers themselves throughout the consultation process. It will put forward three fundamental protections that should be included within any regime decriminalisation in England and Wales, that is, criminal provisions to protect workers from coercion and exploitation, accessibility of labour rights and protections for the sex worker and an introduction of an inclusive and safety-orientated system of licensing.

Thus, this thesis will conclude that the law regulating sex work in England and Wales is not working. Instead, it is placing women who sell sex at an extremely high risk of violence, exploitation and stigma. It is only through legal reform and an introduction of a system of decriminalisation that we can start to make realistic and effective steps towards effectively reducing the violence, stigma and exploitation women selling sex experience on a daily basis. It does not argue that legal change will effectively and instantly eradicate all harm, but that decriminalisation is an essential first step towards making selling sex in England and Wales safe.

## CHAPTER 2

### THE ENDEMIC NATURE OF ‘HARM’ IN SEX WORK: VIOLENCE, EXPLOITATION AND STIGMA

This chapter will set out the harm framework that will be relied upon throughout this thesis to judge the effectiveness of any official response to sex work by categorising harm into that of exploitation, violence and stigma. In this chapter I aim to demonstrate that harm is not an inevitable consequence of selling sex. It is not inherent and unavoidable in the lives of sex workers. Instead, as will be illustrated throughout this thesis, the harm in sex work is a product of the society within which it exists. To do this, the first section of this chapter will focus on the ‘endemic’ or ‘inherent’ harm debate. Instead of accepting harm as an inescapable aspect of selling sex, I ask for a re-examination of the nature of harm in sex work to one that reflects the real lived experiences of sex workers themselves. In rejecting an essentialised or victimising understanding of harm, I suggest that harm in sex work can fluctuate, intensify and decrease within certain circumstances in the sex industry and for certain individuals. The remainder of the chapter will then argue that the ‘harm’ in sex work is more accurately described in three categories; that is, violence, stigma and exploitation. It is these distinct categories that will form the harm framework used throughout this thesis. Through detailing the nature of these harms, this chapter will demonstrate that the violence, stigma and exploitation of sex workers is not inevitable, but often dependent upon the surrounding social and political context of the sex worker herself, and thus, can be reduced.

#### **Harm as Endemic, not Inherent in Selling Sex**

Before categorising harm into ‘violence’ ‘exploitation’ and ‘stigma,’ I will first explain the underlying argument that is central to this thesis. That is, that harm is *endemic*, not inherent, in the lives of women selling sex. My aim here echoes the core aims of sex work labour rights groups such as the English Collective of Prostitutes<sup>1</sup> and the COYOTE (Call Off Your Old Tired Ethics) group<sup>2</sup>, who

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<sup>1</sup> Established in 1975 for the ‘abolition of the prostitution laws which criminalise sex workers and our families, and for economic alternatives and higher benefits and wages’ Found at < <http://prostitutescollective.net> > accessed 6<sup>th</sup> September 2014

have not only campaigned against the legal regulation of sex work, but against such accounts that understand selling sex as inescapably harmful to all women. Before I discuss the violence, exploitation and stigma endemic in the lives of women selling sex, I will first argue against the claims that harm is an inevitable consequence of selling sex. I will demonstrate that instead of understanding selling sex as inescapably harmful to both women selling sex, and women's wider position in society, the nature of harm in sex work is far more nuanced and complex. This chapter will demonstrate the difficulties in viewing the harm in sex work as 'straightforwardly paradigmatic,' that is, either unavoidably harmful or wholly liberating and moral.<sup>3</sup> Instead I offer an understanding of the complex nature of harm in sex work, and the vast variety of variables that enable such harms to exist.

### **'Prostitution as Violence Against Women'<sup>4</sup>**

One of the key arguments forwarded by those proposing harm is inherent in selling sex is an understanding of sex work from a gender and violence perspective, that sex work serves as 'one of the most graphic examples of men's domination over women.'<sup>5</sup> Adopted by academics including Catherine Mackinnon<sup>6</sup>, Carol Pateman<sup>7</sup>, Shelia Jeffreys<sup>8</sup> and Kathleen Barry<sup>9</sup>, this is the argument that understands selling sex as ultimately and inherently oppressing to women, linked to a system of heterosexuality and male domination. Here, harm is understood as unavoidable and inevitable. They argue that the sex worker is 'paradigmatic of women's social, sexual and economic subordination, in that her status is the basic unit by which all women's value is measured and to which all women can be reduced.'<sup>10</sup> Through her terminology of 'sexual slavery', Kathleen Barry places sex work within a wider lens of gender inequality, defining prostitution as the sexual objectification of women and a central process of the gender inequality that exists within our society today.<sup>11</sup> From this viewpoint, sex work is in and of itself, violence against women. That is, 'any man is a prostitution abuser who, for the purpose of his sexual gratification, habitually or intermittently reduces another human being into a sexual object by the use of money or other mercenary considerations.'<sup>12</sup> This violence is not

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<sup>2</sup> Founded in 1972 'to work for the repeal of the prostitution laws and an end to the stigma associated with sex work' Found at < [http://www.coyotela.org/what\\_is.html](http://www.coyotela.org/what_is.html) > accessed 6<sup>th</sup> September 2014

<sup>3</sup> Jane Scoular, 'The subject of prostitution, Interpreting the discursive, symbolic and material position of sex/work in feminist theory', (2004) *Feminist Theory* 5(3) 343-355

<sup>4</sup> Kathleen Barry, *The Prostitution of Sexuality* (New York University Press, 1995)

<sup>5</sup> Carol Pateman, 'Defending Prostitution: Charges Against Ericsson' (1983) *Ethics* 93 (3) 56

<sup>6</sup> Catherine MacKinnon, *Women's Lives, Men's Laws* (Harvard University Press, 2005)

<sup>7</sup> Carole Pateman, *The Sexual Contract*, (Stanford University Press, 1988)

<sup>8</sup> Sheila Jeffreys, *The Industrial Vagina: The Political Economy of the Global Sex Trade*, (Routledge, 2008)

<sup>9</sup> Kathleen Barry, N4

<sup>10</sup> Jane Scoular, N3, 344

<sup>11</sup> Kathleen Barry, N4, 6

<sup>12</sup> Shelia Jeffreys, *The Idea of Prostitution* (Spinifex Press, 1997) 4

limited to the sex worker herself, but constitutes a wider societal violence and objectification of all women, representing ‘the absolute embodiment of patriarchal male privilege.’<sup>13</sup>

An adoption of this viewpoint poses significant danger for the modern sex worker and has been resisted by sex worker activists and academics alike. The adoption of an ideological position that explains all sex workers as sexual objects serves to silence the very women they seek to protect, denying the complexities of their experiences of harm. Through arguing that there is a ‘gender power dynamic (which) is intrinsic to prostitution,’<sup>14</sup> these viewpoints deny the agency and the empowerment of women selling sex. As stated by Jane Scoular, ‘the move from empirical, and at times partial, accounts of women’s experiences in prostitution to an ideological position is frequently achieved at the expense of a recognition of women’s agency and the complexities and contradictions inherent in analysing selling sex across space and time.’<sup>15</sup> By defining women selling sex as victims of gendered oppression and male violence, academics such as Dworkin and MacKinnon deny space to discuss non-victimised sex workers or sex workers who do not see themselves as victims.<sup>16</sup> As Wendy Chapkis argues, ‘the position of the prostitute cannot be reduced to one of a passive object used in male sexual practice, but instead can be understood as a place of agency where the sex worker makes active use of the existing sexual order.’<sup>17</sup> Not only does this violence against women approach reject the agency of women selling sex, but it denies discussions that seek to improve the safety of sex workers on a daily basis. Throughout their aim to ‘explode a false distinction between forced and voluntary prostitution’<sup>18</sup> they deny efforts to improve the working conditions of sex workers, instead focusing on wholly eradicating the market by constructing women selling sex as victims. Indeed, as I will demonstrate later in this chapter, a vast number of sex workers serve as living contradiction to the victimised status imposed upon them by individuals understanding selling sex as an intrinsic violence against all women.

### **Power, the Self and Sexuality**

Inextricably linked to the gender and violence against women argument, the second key argument made understanding harm as inherent in selling sex focuses upon the relationship between the self and sexuality. As summarised by Catherine Mackinnon, this group of academics and activists view

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<sup>13</sup> Kari Kesler ‘Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends’ (2002) *Sexualities* 5 (2) 219-235

<sup>14</sup> Mary Sullivan, *Making Sex Work: A Failed Experiment with Legalised Prostitution* (Spinifex Press, 2007) 37

<sup>15</sup> Jane Scoular, N3 345

<sup>16</sup> Jo Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009), 67

<sup>17</sup> Wendy Chapkis, *Live Sex Acts: women Performing Erotic Labour* (Taylor and Francis, 1997) 29

<sup>18</sup> Sheila Jeffries N12 10 in Jane Scoular, N3 344

sexuality as a key aspect of individuality, that sexuality is 'that which is most one's own and yet that which is most taken away.'<sup>19</sup> This is the understanding that when selling sex, all bodily control is contracted out to the male, leaving the woman totally powerless in the exchange, and thus harmed.<sup>20</sup> Explained via an economic argument, Carol Pateman argues that sexual labour is a 'transfer of powers of command over the person.'<sup>21</sup> This is because, she argues, 'womanhood... is confirmed in sexual activity, and when a prostitute contracts out the use of her body she is thus selling herself in a very real way.'<sup>22</sup> Thus, Pateman argues a person's labour (be it sexual, emotional, mental or manual) is, 'like all life processes and bodily functions.... An alienable property of the human individual.'<sup>23</sup> Consequently as a women's sexual capacity cannot be separated from the self, it is not sexual services she is selling, but herself. This assumed special relationship between the self and sexuality means that within the prostitution exchange women are at an inherently vulnerable position, as they are rendered totally powerless, subject to the control of the client. The selling of sexual services becomes transference of power over the person, from the prostitute to the client, which requires 'the seller to temporarily surrender or suspend aspects of her will.'<sup>24</sup>

Providing a more nuanced view whilst still retaining the understanding of violence as unavoidable in selling sex, other academics ascribe a particular significance to the notion of power in the exchange. Julia O'Connell Davidson argues that the most problematic factor of arguments made by Pateman and MacKinnon is that they offer an 'undifferentiated view of power' in which they fail to distinguish between the kinds of powers exercised over a 'debt-bonded child prostitute and those exercised over an adult who prostitutes independently.'<sup>25</sup> Although she recognises the independence and semblance of power in some sex workers, she understands this as a lack of recognition of their own objectification and powerlessness.<sup>26</sup> For her, the crucial point is that women 'do not either literally become, or come to see themselves, as *objects even when they are treated as such*. (*Emphasis added*).'<sup>27</sup> Under such a semblance of power, she argues, 'to contract out sexual use of the body requires the women to sever the integrity of body and self, something that carries grave psychological consequences.'<sup>28</sup> In this understanding, any amount of power and independence will still be placed on a spectrum of 'unfreedom'<sup>29</sup> due to the limited understanding of the relationship between the self and sexuality.

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<sup>19</sup> Catherine Mackinnon, N6 515

<sup>20</sup> Carole Pateman, N5 56

<sup>21</sup> Julia O'Connell Davidson, 'The Rights and Wrongs of Prostitution' (2002) *Hypatia* 17, (2), 85

<sup>22</sup> Carole Pateman N7 207

<sup>23</sup> Julia O'Connell Davidson, N21, 85

<sup>24</sup> Ibid 86

<sup>25</sup> Julia O'Connell Davidson, *Prostitution, Power and Freedom*, (Polity Press, 1998) 15

<sup>26</sup> Julia O'Connell Davidson, N21, 91

<sup>27</sup> Ibid, 92

<sup>28</sup> Ibid, 91

<sup>29</sup> Ibid, 91

## Rejecting Dominant Discourses on Harm, Self and Sexuality

Even within the nuances of Julia O'Connell Davidson's argument, women's agency and capacity to consent are believed to be unimportant due to the assumed special connection between the self and sexuality by those that believe harm in sex work is inherent. Indeed, such opinions on the nature of harm in the exchange 'reify an image of the prostitute as a sexual subordinate' and 'sustains the myths and norms of the sex industry, of potent men and submissive women.'<sup>30</sup> This is done through ascribing a special significance to sexuality and the self and the implications of selling sex for money, that 'when sex is not explicitly treated as a genuine human interaction, it dehumanises the experience and thereby dominates the women.'<sup>31</sup> Against such an understanding of dominant forms of sexuality, many academics have turned to the work of Michel Foucault, in a *History of Sexuality*.<sup>32</sup> Under such an analysis, the so-called special relationship between the self and sexuality is a social construct, that the 'uniform truth of sex'<sup>33</sup> is an idea that has been constructed over time through normalising powerful discourses.<sup>34</sup> Under his analysis of power and knowledge Foucault argues that sexuality is a social construct rooted in the Victoria morals of 'taboo, nonexistence, and silence' and thus inextricably linked to dominant forms of discourses and power.<sup>35</sup> In terms of sexuality, he argues, the self is created in relation to dominant discourses that define normal and 'make our sense of self align with a rational model in a process of normalisation.'<sup>36</sup> Thus, following Foucault, arguments proposed by O'Connell Davidson, Mackinnon and Dworkin simply ascribe to the dominant discourses on sexuality, and fail to reflect the silenced experiences of less powerful discourses, that is, the sex workers themselves. Such a conclusion is drawn from dominating social discourses and not through reflecting the diverse range of real lived experiences of sex workers. In this sense, women selling sex represent a move against the dominant forms of sexuality that have been established throughout history. Here, I aim to avoid imposing such discourses on the nature of harm onto sex workers, and instead seek to explore the specificity of harm in sex work through research that listens to sex workers themselves, thus giving a voice to their own discourse that have been silenced throughout history.

The assumed special significance of sexuality and the self is one that does not correlate to the number of empirical studies undertaken with sex workers over their understanding of their work. Sex workers

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<sup>30</sup> Jane Scoular, N3 245

<sup>31</sup> Kathleen Barry N4, 28

<sup>32</sup> Micheal Foucault, *The History of Sexuality: The Will to Knowledge* (Penguin, 1976)

<sup>33</sup> Ibid, 69

<sup>34</sup> Ibid, 69

<sup>35</sup> Ibid, 5

<sup>36</sup> Simon Clarke, 'Culture and Identity' in Tony Bennett and John Frow (eds) *The SAGE Handbook of Cultural Analysis* (SAGE Publications, 2008) 514

sense of self and sexuality is fluid, changing from worker to worker and impossible to categorise collectively. In her research, Sophie Day found that ‘sex workers habitually incarnated different public and private bodies’<sup>37</sup> to control the exchange. Using the work of Michael Foucault, Sophie Day explores the complexity of power and the self in the prostitute exchange. She applies Foucault’s criticism on nineteenth and twentieth century thought where ‘Space was treated as the dead, the fixed, the undialectical, the immobile’<sup>38</sup> to traditional thoughts on sex workers, their sense of self and assumption of violation. Instead of such a fixed understanding of space, sexuality and power, sex workers and their own understandings of the exchange are fluid, often depending on sustaining personally demarcated boundaries of intimacy and control.<sup>39</sup> Following this, violence should not be assumed to follow from selling sex. This assumption is dangerous and allows academics and policy makers to avoid a movement towards introducing law and policy changes that aim to reduce the rapes, robberies, assaults and beatings that are experienced by sex workers on a daily basis.

### **Categorising Harm: ‘Violence,’ ‘Exploitation’ and ‘Stigma’**

To demonstrate that harms are endemic, not inherent in selling sex, we should recognise their complexity, origins, effects on sex workers and how they are sustained. To reflect the complex nature of harm in sex work, such an analysis should aim for specificity. To do this, throughout this chapter I place sex work within its socio-legal framework and its wider social context, to understand what it means to be a sex worker in modern society. I argue that harm to sex workers can be loosely distinguished into the three main categories of ‘violence’, ‘exploitation’ and ‘stigma.’ Although some elements of this grouping overlap, each of these criteria represents a significant source of risk to the sex worker, each having their own distinct debates and reasons for existence. The harm framework of ‘exploitation’, ‘stigma’ and ‘violence’ explained here will subsequently be relied upon throughout the chapters in this thesis to analyse our current system of regulation, explore the effectiveness of other potential regimes and to propose a new system of regulation in England and Wales.

### **The Exploitation of Sex Workers**

The first specific category of harm to be discussed here will be exploitation. The nature and definition of exploitation in sex work is controversial, and tied with the moral and philosophical debates that have stalled progressive sex work reform for decades. It is closely linked to debates over choice and

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<sup>37</sup> Sophie Day, *On the Game* (Pluto Press, 2007) 45

<sup>38</sup> Micheal Foucault, *Power/Knowledge* (Pantheon Books, 1980) 70

<sup>39</sup> Sophie Day, N37 45



agency in sex work, and more specifically, the existence (or lack of) of consent. In the past, debates have been preoccupied with the moral and political implications of recognising sex workers capacity to consent without the utilisation of research that explores how sex workers themselves understand their own work, and indeed, their own exploitation. This is not to argue that exploitation in sex work cannot exist where a woman has consented to sex work; as this section will show, that is not the case. However, it will demonstrate that sex work is not in and of itself exploitation, as women can and do consent to selling sex. The importance here should be in locating instances of exploitation, both where women have and have not consented to selling sex. Such a focus will allow us to then identify true cases of exploitation, as seen and experienced by the sex workers themselves. The first step towards understanding the origins of exploitation in sex work is the recognition that women can and do consent to selling sex. This recognition of consent then, allows us to use an understanding of exploitation that more accurately reflect it as sex workers themselves view it. As Sanders notes, 'in the case of prostitution women may take the decision to sell sex but they do not favour the dangerous working conditions that expose them as a vulnerable sexual minority group.'<sup>40</sup>

### **Selling Sex and Consent: Empirical Realities**

Thus, before this section is able to explore the complexity of exploitation in sex work, the recognition of the sex workers capacity to consent should first be established to enable us to distinguish between consensual and forced sex work. This in itself is a very controversial subject. Under the 'prostitution as violence against women' model, the conditions of inequality that surround the prostitute exchange mean that even if the worker thinks she is consenting to selling sex, she cannot be truly doing so as she is in an inherently and significantly weaker position than the male.<sup>41</sup> Under this understanding, consent becomes wholly irrelevant. As summarised by Kathleen Barry, 'when the human being is reduced to a body, objectified to sexually service another, whether there is consent, violation of the human being has taken place.'<sup>42</sup> Barry argues it is this re-definition of violation to its 'full human, interactive bodied experience' that spans the range of violation from 'individualised coercion to class domination' that means consent is an inadequate means of measuring violence.<sup>43</sup>

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<sup>40</sup> Teela Sanders, Maggie O'Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (Sage Publications 2009) 442

<sup>41</sup> Catherine Mackinnon, 'Trafficking, Prostitution and Inequality, Harvard Civil Rights' (2011) *Civil Liberties Law Review*, 46, 274; Maddy Coy, *Prostitution, Harm and Gender Inequality: Theory, Research and Policy* (Ashgate, 2012) 1

<sup>42</sup> Kathleen Barry, N4 19

<sup>43</sup> *Ibid*, 20

As discussed at the start of this chapter, such an over-emphasis on the victimhood perspective serves to discredit and marginalise the reality that some women, free from coercion and violence, make rational choices to earn money by providing sexual services.<sup>44</sup> The subject-hood and circumstance that shapes women's decision to enter into sex work has been documented throughout history. Most commonly, academics have sought to recognise the economic nature of the choice to sell sex and its connectedness on the wider inequality of women within society. The study of Henry Mayhew in 1861 found that selling sex was a form of economic survival in an environment where women have limited economic options available to them.<sup>45</sup> Further, in 1982, Eileen McLeod in *Women Working* highlighted how 'women are grappling with their disadvantaged social position in the context of a capitalist society.'<sup>46</sup> Today, a number of different empirical studies have shown this to remain true. As Jo Phoenix notes, 'despite the vast social changes that have taken place in the last two centuries, empirical research continues to highlight women's inequality relative to men,' and that sex work is seen by many as a mean to capitalise on such inequality.<sup>47</sup> In this sense, as Phoenix argues, 'sex work comes to make sense in that it is seen as a strategy by which an individual can escape poverty, dependency on welfare benefits or on men or their families.'<sup>48</sup> Thus, consensual sex work should be understood as a rational decision for many women in the light of limited economic and social circumstances. This recognition of agency moves away from the victimising 'non-consent' approach and towards a recognition of the complexities and struggles of the lives of women selling sex, focusing on maximising sex workers potential to consent and to protect her from exploitative conduct of which she does not consent.

Therefore, the fundamental problem with viewpoints that argue exploitation is inherent in sex work is that by arguing that consent cannot exist in sex work, they not only refuse to both understand exploitation as sex workers understand it, but fail to implement effective strategies that prevent these violations from occurring.<sup>49</sup> When Catherine MacKinnon, Maddy Coy and Kathleen Barry refer to exploitation, they are not referring to the relentless working hours, dangerous working conditions and unhealthy working environments, but they are referring to what they see as the inherently unequal power balance between the clients and the workers. Such a denial of voluntary sex work and has very dangerous implications for women working in the sex industry, as regimes then prohibit the development of safe working environments, categorically denying the recognition of how sex workers

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<sup>44</sup> Keith Soothill and Teela Sanders, 'Calling the tune? Some Observations on Paying the Price: a Consultation Paper on Prostitution' (2007) *Journal of Forensic Psychiatry and Psychology* 15 (4) 642

<sup>45</sup> Henry Mayhew, *London Labour and the London Poor* (Harper & Brothers, 1861)

<sup>46</sup> Eileen McLeod *Women Working: Prostitution Now* (Croom Helm, 1982), 1

<sup>47</sup> Joanna Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009) 3

<sup>48</sup> *Ibid*, 5

<sup>49</sup> Jo Phoenix and Sarah Oerton. *Illicit and illegal: sex, regulation and social control.*, (Willan Publishing, 2005) 67

define and experience violations committed against them.<sup>50</sup> If we recognise that women can and do consent to selling sex, we can then turn our attention to the exploitative working conditions and third party practices that often exist in the sex industry.

### **Understanding Exploitation in Sex Work**

After recognising that exploitation is not unavoidable in the lives of women selling sex, analysis can then turn to the specific, real lived experiences of sex workers and towards reducing instances of exploitation. There are a myriad of external social, economic and cultural factors that shape the sex industry and determine the extent of risk of exploitation for the sex worker. As will be demonstrated here, the main origin of risk is structured by the illegal and illicit nature of this workforce. As opposed to an unavoidable consequence of selling sex, it will be shown here that the risk of exploitation is dependent upon the social context within which sex work exists. As long as selling sex remains outside the law and exempt from any work-based employment or civil rights protections, the workers remain at an extremely heightened risk of exploitation by third parties than in any other occupation.<sup>51</sup> Therefore, in recognising exploitation, our focus should shift towards the third party control, working conditions and lack of labour protections that shape and create the conditions for exploitation of sex workers to continue.

### **The Exclusion of the Sex Worker – Third Parties**

The exclusion of sex workers from the legal and social mechanisms that protect other members of the community from exploitation and harm mean that they become active managers of their own risk, that is, become solely responsible for their safety as they are unable to rely on the law, enforcement agencies or other members of the public to help to ensure their safety. One of the major risks here is the exploitation that can then arise in such unchecked circumstances, namely, the exploitation and control of the sex worker by third parties. Third party control extends beyond that of traditional street pimps to include escort managers and others who mediate between the sex worker and client. Across the different markets of sex work, the key dimensions of control over the workers by third parties in this respect often include the amount sex workers earn, how many clients the worker should receive, dress codes, the clientele themselves and the types of activities performed.<sup>52</sup>

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<sup>50</sup> Ibid, 28

<sup>51</sup> Ibid, 28

<sup>52</sup> Cecilia Benoit and Alison Millar, *Dispelling myths and understanding realities: working conditions, health status and exiting experiences of sex workers*. (British Columbia: University of Victoria, 2001)

Especially for indoor workers, these imposed ‘house rules’ may seriously limit the sex workers’ autonomy and safety, controlling most aspects of the nature of their work and often forfeiting their access to basic rights.<sup>53</sup> In her study of the lives of sex workers working in indoor premises in Victoria in 1995, Helen Koureskas found that the women were often expected

‘to work without pay. The women are expected to be on the premises to provide choice for the clients, to socialise with clients, to clean the toilets, spas and showers, to vacuum, polish, fold and replace towels and clean the kitchen area as part of their job.’<sup>54</sup>

Such third party control and exploitation has other serious links with the violence suffered by sex workers. To demonstrate this, a number of research studies have documented that through exploitative and controlling third parties, sex workers have been unable to refuse clients or have been rendered unsupported when clients were abusive against them.<sup>55</sup> Thus, third party exploitation and control can also create the conditions for other harms to exist and continue. Such exploitation is able to occur within regimes that fail to recognise the sex worker, and thus her right to undertake her work without exploitation. Despite this common high level of third party control over the sex worker by third parties, she cannot rely on any regulatory work standards or protective legal avenues in cases of exploitation. Such exploitation occurs across the world where sex workers are criminalised and controlled and thus have very few safeguards in place to protect them from exploitation. They often have no health and safety guidelines that govern working conditions and adverse experiences such as being held against their will, being forced to have unprotected sex (by a client or on orders from a third party), having clients refuse to pay for their service and having money stolen, which are all common occurrences in the lives of sex workers.<sup>56</sup> The exclusion of sex workers from the protections afforded to most citizens compound the exploitation they suffer, enhancing the power of third parties, undermine the social and occupational status and violate their civil and workers’ rights.<sup>57</sup>

The risk of exploitation has been a focal point for the sex worker rights movement that has focused on improving the working conditions of the sex worker, and empowering her through labour rights and protections. Movements such as the English Collective of Prostitutes, International Prostitutes Collective and the International Committee on the Rights of Sex Workers in Europe campaign to

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<sup>53</sup> Helen Koureskas, ‘In a different Voice: the Prostitute’s Voice’ (1995) *The Australian Feminist Law Journal* (5) 99

<sup>54</sup> *Ibid*, 103

<sup>55</sup> Libby Plumridge, ‘Making Sex Work Doable: Emotional Labour’ (Christchurch School of Medicine and Health Sciences, 1999); Libby Plumridge and Gillian Abel, ‘Services and Information Utilised by Female Sex Workers for Sexual and Physical Safety’ (2002) *New Zealand Medical Journal*, 113 (1117) 370-372

<sup>56</sup> Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor *Taking the Crime Out of Sex Work: New Zealand Sex Workers’ Fight for Decriminalisation* (Policy Press, 2010,) 20

<sup>57</sup> *Ibid*, 21

change the current conditions of sex workers, where the risk of exploitation remains high due to dangerous working conditions and a lack of employment rights.<sup>58</sup> In this sense, as the work of the sex worker rights groups demonstrate, the struggle of the sex worker against her societally imposed vulnerability to exploitation represents her wider ‘struggles for the recognition of women’s work, for basic human rights and for decent working conditions.’<sup>59</sup> The lack of recognition of consent to sex work has resulted in a legal situation where although women can and do consent to selling sex, they do not consent to the exploitative working conditions and exploitative clients that are enabled to exist in such an unregulated and unprotected occupation. As demonstrated here, exploitation is a distinct and serious category of harm for the sex worker. It is not inherent but it is made possible through laws and persons that fail to recognise the agency and the basic rights of the sex worker, and as such, they are often subject to degrading, extremely harmful and exploitative conduct.

### **Violence in Sex Work**

The second category of harm to be introduced within my harm framework will be that of violence against sex workers. As demonstrated at the start of the chapter, the nature and origins of ‘violence’ in sex work is a controversial and subjective topic. Here, I will move away from the sex work as in and of itself violence against women viewpoint, where it becomes the ‘oldest oppression’ where the money coerces the sex rather than guaranteeing consent to it, making prostitution a practice of serial rape.<sup>60</sup> In terms of the violence suffered by the sex worker, such a viewpoint fails to distinguish between violence as sex workers define it, that is, as a distinct and serious source of harm, and this essentialised ‘wider violence.’ Dismissed as ‘meaningless shibboleth’ Hillary Kinnell argues that this abolitionist line of thinking ‘diverts attention from the violence as sex workers themselves define it and from the structural conditions that allow it.’<sup>61</sup>

### **Re-defining Violence in the Sex Industry**

Following this understanding of violence as endemic within the sex industry I will explore the complexity of such violence, the types of violence often experienced by sex workers, its effect on both indoor and outdoor workers and its origins and reasons for existence. John Lowman argues that

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<sup>58</sup> See the International Committee on the Rights of Sex Workers in Europe, ‘The Declaration on the Rights of Sex Workers in Europe’ (2005, Amsterdam, The Netherlands) at <  
[http://resources.tampep.eu/documents/Declaration\\_booklet\\_colour.pdf](http://resources.tampep.eu/documents/Declaration_booklet_colour.pdf)> accessed 6<sup>th</sup> July, 2014

<sup>59</sup> Kamala Kempadoo and Jo Doezema, *Global sex workers: rights, resistance and redefinition* (Routledge, 1998) 3

<sup>60</sup> Catherine Mackinnon, N41 274

<sup>61</sup> Hillary Kinnell, *Violence and Sex Work in Britain* (Willan Publishing, 2008), 27

violence against sex workers can be classified into two categories: ‘situational violence’ and ‘predatory violence.’ Situational violence is not premeditated, it takes place when a dispute occurs during the course of the transaction and the client resorts to violence to solve it (for instance, a disagreement about the cost of the transaction, dissatisfaction with the services, and alleged services and so on.) Such instances, he argues, are predisposed by an underlying attitude to women and sexuality.<sup>62</sup> On the other hand, ‘predatory violence’ is premeditated. It can be financially motivated, he argues, and it can be misogynist, sexual and serial. These perpetrators are not clients of sex workers, but have a violent agenda where the sex worker is a target.<sup>63</sup> The premeditated nature of predatory violence is often rationalised by the ‘moral-political marginalisation’ of sex workers that exists within certain social and policies circumstances.<sup>64</sup> This theoretical framework of violence against sex workers provides a key insight into the conditions that make such violence possible and at such a high frequency. Viewed this way, violence becomes preventable, and often a result of circumstance.

### **Violence and the Markets of Sex Work**

Further adding to the complexity of the violence experienced by sex workers is the varying markets and the environments in which sex work takes place. The nature and frequency of violence experienced is context specific and the risks and origins of such harms vary significantly both across and within the differing markets themselves. In relation to violence experienced by sex workers, research documenting the experiences of indoor sex work has been far less extensive than that of street work, with policy debates often focusing on the latter as the more dangerous and thus requiring of attention.<sup>65</sup> Without careful observation of indoor workers, focus on the violence in street sex work ‘exonerates only the harsh end of a wide spectrum of the sex industry.’<sup>66</sup> In order to understand this market and to avoid such monolithic paradigms, Teela Sanders has undertaken extensive and much needed research documenting the day-to-day activities of the indoor sex industry.<sup>67</sup> Through qualitative research and holistic interviews she has argued ‘the ordinary, non-violent and consensual sexual exchanges that constitute the majority of commercial sex between men and women are being left out of the policy-making and decision-making process.’<sup>68</sup> Whilst violence is certainly present in sex work, there is sufficient variation across time, place and sector to demonstrate that sex work

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<sup>62</sup> John Lowman, ‘Violence and the outlaw status of street prostitution in Canada’ (2000) *Violence Against Women* (6) 9, 987-1011

<sup>63</sup> Ibid, 1006

<sup>64</sup> Ibid, 1006

<sup>65</sup> Home Office, *Paying the Price: A Consultation Paper on Prostitution* (London: HMSO, 2004); Home Office, *A Coordinated Prostitution Strategy* (London: HMSO, 2006)

<sup>66</sup> Teela Sanders ‘Behind the Personal Ads: The Indoor Sex Markets in Britain’ in Campbell and O’Niell, *Sex Work Now* (Willian Publishing, 2006) 94

<sup>67</sup> Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005)

<sup>68</sup> Teela Sanders N66 94

cannot be merely reduced to either innately harmful or totally empowering.<sup>69</sup> As such, an analysis of the complexities and particularities of both the indoor and outdoor sectors and their relationship to the distinct category of violence is the first essential step towards its proper reduction.

## Indoor Sex Work

A look to the various empirical studies on the instances of violence experienced by indoor sex work proves that neither is violence inherent in sex work, nor is it experienced by all sex workers. As Hillary Kinnell notes, this is demonstrated in the figures of sex worker homicides. While it is estimated that over 70 per cent of female sex workers in the UK are indoor workers, only 22 per cent of sex-work related homicides between 1990 and 2006 were indoor workers,<sup>70</sup> demonstrating the vast differences between the risks of indoor and outdoor markets. It should be kept in mind here, as explained in the introduction of this thesis, the majority of sex workers in England and Wales work from indoor premises such as brothels, massage parlours and apartments.<sup>71</sup>

There have been a number of different research projects examining the complexity of violence in indoor premises in England and Wales and the markedly lower level of violence experienced by indoor workers than street sex workers. In their research with 71 indoor parlour workers, Jeal and Salisbury compared the health needs of women working indoors to those based on the streets in Bristol, the United Kingdom<sup>72</sup>. They noted a striking difference in terms of violence suffered, intravenous drug use, risk-taking behaviour and the use of health services or both markets, with street working women suffering extremely high levels of violence, addiction to heroin and dangerous risk taking activities.<sup>73</sup> Similarly, Teela Sanders and Rosie Campbell conducted a study amongst 90 respondents working in indoor premises where over three quarters stated they had not experienced violence from clients in their work.<sup>74</sup> In 2001 Church et al also investigated violence amongst a sample of 125 sex workers in Leeds and Edinburgh and found there was a relatively low instance of

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<sup>69</sup> Ronald Weitzer, *Legalising Prostitution: From licit vice to lawful business* (New York University Press, 2012) 16

<sup>70</sup> Hillary Kinnell, *Violence and Sex Work in Britain* (Willan Publishing, 2008) 110; UK Network of Sex Work Projects 'Response to Home Office 'Tackling the demand for prostitution: a review (2008') & 'Policing and Crime Bill (2008)' (2009) found <http://www.uknswp.org/wp-content/uploads/demandResponse.pdf> accessed 14th August 2014

<sup>71</sup> Teela Sanders, N67 10

<sup>72</sup> Nicola Jeal and Chris Salisbury, 'Health needs and service use of parlour-based prostitutes compared with street-based prostitutes: a cross sectional survey' (2007) *BJOG*, 114 (7)

<sup>73</sup> Ibid

<sup>74</sup> Teela Sanders and Rosie Campbell, 'Designing out vulnerability, building in respect: violence, safety and sex work policy', (2007) *British Journal of Sociology* 58 (1)

violence experienced by indoor workers.<sup>75</sup> Violence is not as uniform as various academics, policy documents and media articles have assumed. As will be argued, it is not the inherently nature of selling sex itself that has a direct relationship to the violence suffered by sex workers, but the context and circumstance in which women selling sex as indoor sex workers find themselves victims to ‘predatory violence,’ that is, premeditated, planned attacks.

### **The Vulnerability of the Indoor Worker**

When it comes to indoor workers, the violence that does occur is largely predatory and circumstantial, with perpetrators using the precarious legal status of sex workers and their poor relations with enforcement agencies to their advantage.<sup>76</sup> A closer examination of the nature and the occasions of violence experienced by indoor workers highlights their vulnerable status and propensity to ‘predatory violence,’ that is, premeditated violence against the sex worker. In her research Hillary Kinnell relies on the London Ugly Mugs scheme as a useful means of assessing the nature of the violence experienced by indoor workers.<sup>77</sup> ‘Ugly Mugs’ is a scheme introduced nationally by the UK Network of Sex Work Projects which encourages sex workers to report violence or threatening occasions committed against them with a view to increase reporting of crimes against sex workers, to improve the safety of workers and bring perpetrators to justice.<sup>78</sup> It collates reports of attacks or threatening occasions experienced by sex workers and circulates this information to sex workers. As Kinnell notes it is a very useful means of assessing the nature of the violence experienced and the range of incidents that sex workers themselves regard as sufficiently dangerous or disturbing to warrant alerting other workers.<sup>79</sup>

Dividing the incidents into the broad categories of ‘sexual assault’ and ‘theft’, Kinnell noted that between 2000 and 2005 out of 385 reports, 63% consisted of a robbery whilst 27% involved a sexual assault, illustrating their ‘predatory’ nature.<sup>80</sup> These results show that the robbery is primarily an acquisitive crime, although the gratuitous violence frequently meted out by some assailants may also indicate hatred and contempt for those who make their money in this way.<sup>81</sup> The fact that robbery is the greatest risk for sex workers speaks volumes about the nature and origins of violence suffered by

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<sup>75</sup> Church et al, ‘Violence by clients towards female prostitutes in different work settings: questionnaire survey’ (2001) *British Medical Journal* 322 524

<sup>76</sup> Phil Hubbard, ‘Out of Touch and Out of Time’ in Campbell and O’Neill, *Sex Work Now* (Willian Publishing, 2006) 12

<sup>77</sup> Hillary Kinnell, N70,124

<sup>78</sup> Mary Laing and Jane Pitcher, ‘National Ugly Mugs Evaluation Report’, (2013) <http://www.uknswp.org/wp-content/uploads/NUM%20Evaluation%20FIN%20090813.pdf>

<sup>79</sup> Hillary Kinnell, N70 116

<sup>80</sup> The London Ugly Mugs List, September 2000-2005 in, Ibid, 55

<sup>81</sup> Ibid, 55



indoor workers and their vulnerable status. The possibility of large amounts of money being on the premises together with the general perception of the reluctance of sex workers to report offences make sex workers extremely vulnerable to attack.<sup>82</sup> The reason for violence, that is to steal money on the premises, is not inherently linked with the nature of selling sex itself, but it is arguably due to the unprotected and vulnerable legal position of the workers themselves. Indoor sex workers become easy targets to predatory violence due to their renowned precarious legal position that places them more at risk of attack than other occupational premises.<sup>83</sup>

The extent to which the indoor sex worker is an easy target is affected by a number of variables, most importantly, the safety of the environment in which she lives. This is often dependant upon the sex worker herself. As Sanders found in her extensive research of indoor workers in England and Wales, 'sex workers are not passive recipients of male aggression in the workplace but actively address the risk of violence.'<sup>84</sup> In their research of London sex flats in the 1990s, Whittaker and Hart identified several factors that contributed to the frequency of violence suffered by sex workers. They found it depended on the experience and skill of both sex workers and maids in employing their own protective strategies, from reliance on their intuition about a client's potential for violence, the employment of 'maids', installation of panic buttons and careful monitoring of clients in the flats.<sup>85</sup> It is the social context surrounding the sex worker that creates her risk to vulnerability, not the inherent nature of the work itself where working practices can 'mitigate, reduce or enhance the potential for harm.'<sup>86</sup> The violence experienced by indoor sex workers is dependent on the strategies they themselves employ, trusting their intuition when working with clients and the working practices of the indoor premises.

### **The Exposed Street Sex Worker**

Street sex workers on the other hand, are subject to frequent and extreme forms of violence. As Linda Fairstein stated 'it is unlikely that any occasion or lifestyle exposes a woman to the threat of assault and gratuitous violence as constantly and completely' as street sex work.'<sup>87</sup> It has been long recognised that street workers face a higher frequency and more brutalised forms of sexual, verbal and

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<sup>82</sup> Ibid, 55

<sup>83</sup> Ibid, 110

<sup>84</sup> Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005) N172

<sup>85</sup> Dawn Whittaker and Graham Hart, Research Note: Managing risks: the social organization of indoor sex work, (1996) *Sociology of Health and Illness*, 18 (3) 399-414

<sup>86</sup> Hillary Kinnell, N70 40

<sup>87</sup> Jody Miller and Martin Schwartz 'Rape Myths and Violence Against Street Prostitutes' (1995) *Deviant Behaviour*, 16(1) 1-23

physical violence from both clients and members of the public than any other form of sex worker.<sup>88</sup> In the past decade, the violence suffered by street sex workers has been a large focus for policy workers, academics and feminist activists. In their pioneering study, Church *et al* documented the prevalence of violence by clients against female prostitutes working outdoors in the three major cities of Leeds, Glasgow and Edinburgh.<sup>89</sup> In total they interviewed 240 female prostitutes documenting a number of factors from drug and alcohol use, types and level of violence experienced and levels of attack reported to the police. They found that eighty one per-cent of outdoor workers had experienced violence from their clients, most frequently reporting being slapped, punched or kicked with only thirty four per-cent of those women who had experienced violence subsequently reporting it to the police.<sup>90</sup> Other research has echoed such widespread physical and sexual violence against street sex workers. In their study, Miller and Schwartz found sexual assaults had been experienced by 93.8% of their study group, 75% of which had been raped by one or more tricks; and 62.6% had been raped in other contexts on the streets.<sup>91</sup> 87.5% of the women had also been victimised by physical assaults, ranging from being punched and kicked (31.3%) to being beaten up (61.25). Despite trying to document the frequency of the violence, Millar and Schwartz found that many of the women were incapable of answering questions regarding how often they had been beaten, kicked or raped, with one individual stating, ‘at least once a week- once a week, twice a week.’<sup>92</sup> They also emphasised the acceptance of violence in their lifestyle and its normality, with the women viewing violence as ‘an ever-present part of street prostitution, something that is constantly expected or experienced.’<sup>93</sup> These findings echo a study with street workers by McKeganey and Barnard who reported that violence was such a frequent occurrence within street prostitution that it was almost commonplace, with women expecting it to happen at some point, and considering themselves lucky if they had so far managed to avoid it.<sup>94</sup> Such a frequent level of violence against sex workers is closely linked to the hostile attitudes against sex workers, the environment in which it exists and the wider societal problem of violence against women.<sup>95</sup>

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<sup>88</sup> Jody Miller and Martin Schwartz, *Ibid*; Hillary Kinnell, *Violence and Sex Work in Britain* (Willan Publishing, 2008); Stephanie Church, Marion Henderson, Marina Barnard and Graham Hart, ‘Violence by clients towards female prostitutes in different work settings: questionnaire survey’, (2001) *BMJ* 322, 524-525

<sup>89</sup> Stephanie Church *et al*, N88 524

<sup>90</sup> *Ibid*, 525

<sup>91</sup> Jody Miller and Martin Schwartz, N88, 13

<sup>92</sup> *Ibid*, 8

<sup>93</sup> *Ibid*, 9

<sup>94</sup> Helen Selby and David Canter, ‘The Relationship between control strategies employed by street prostitutes and levels and varieties of client violence’ in David Canter, Maria Ioannou and Donna Youngs (eds) *Safer Sex in the City* (Ashgate Publishing, 2004)

<sup>95</sup> Helen Selby and David Canter, ‘Prostitute homicide: the Influence of Prior Relationship on Perpetrator Behavior’, in, David Canter, Maria Ioannou and Donna Youngs, *Safer Sex in the City* (Ashgate Publishing, 2004)

## Hostile Attitudes and the Discourse of Disposal

Sex workers, most notably street sex workers, are seen as easy targets of violence. Summarised by Miller and Schwartz, street sex workers contend with the ‘fundamental belief that prostitutes are public property and that their bodies are open territories for assault.’<sup>96</sup> The empirical findings showing a much greater risk of violence experienced by street sex workers than indoor workers support the opinion that there is ‘a historical , cultural endurance of intolerance and hostility towards street workers fostered by a general culture of distaste and disrespect towards women who sell sex.’<sup>97</sup> This societal disrespect manifests itself in all forms of violence; be it predatory, situational or structural.

The low levels of police reporting of violence committed against them, lack of relations with the enforcement agencies and the precarious legal status of the sex worker serve to establish and maintain her position as a second-class citizen, whose rights and liberties are often sacrificed and violated.<sup>98</sup> Hillary Kinnell has extensively documented the negative relationships between sex workers and the police. She cites that sex workers often do not expect to be treated sympathetically by the police, that they are often cautious to go to the police if there are warrants out against her or if she is subject to an ASBO or is she has had previous negative and stigmatising experiences with enforcement enforces.<sup>99</sup> This means that often the most vulnerable group to violence in society are the least likely to seek help from enforcement agencies. This places the sex worker within ‘a social milieu in which violence can flourish.’<sup>100</sup> In examining the social and legal marginalisation of sex workers in Canada in the 1980s, Lowman describes the effects of the ‘discourse disposal’ surrounding sex workers and their occupation. He highlighted the frequency and social acceptability of language in modern society that equates sex workers to rubbish and argued it had a direct impact on legitimising the actions of those who attack and kill them.<sup>101</sup> This argument is taken a step further with Hillary Kinnell who examines statements from previous serial murders of sex workers who defend and justify their actions through the ‘doctrine of disposal’ that surround sex workers and their lowly social status. It is the construction of the prostitute within society that makes her a vulnerable target for violence and abuse. Perpetrators may be encouraged to commit violent acts or at least be disinhibited from committing them by beliefs that sex workers need to be punished, they will not report crimes to the police and that police will not afford such crimes much priority.<sup>102</sup> These aspects place women working the streets at a particularly

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<sup>96</sup> Jody Miller and Martin Schwartz, N88 2

<sup>97</sup> Teela Sanders and Rosie Campbell, N74 3

<sup>98</sup> Hillary Kinnell, Rosie Campbell and Hillary Kinnell, ‘We shouldn’t have to put up with this: Street sex work and violence’, (2000) *Criminal Justice Matters*, 42, 12-13

<sup>99</sup> Hillary Kinnell, N70 38

<sup>100</sup> John Lowman, N62 1009

<sup>101</sup> Hillary Kinnell, N70 148

<sup>102</sup> Ibid, 164

vulnerable position to the predatory misogynist violence we see all too often within society, all the more so in a milieu in which both her and her client run the risk of criminal prosecution.<sup>103</sup>

A further consequence of the discourse of disposal on the sex worker is her treatment within the community in which she works, and her vulnerability to community violence and vigilantism. Documented by many academics, often members of the community feel that the presence of sex work impacts on the crime and noise levels and have taken measures in order to try to eradicate sex work from their locality.<sup>104</sup> Such actions taken by members of the public have close ties to the violence experienced by the sex worker and serve to further stigmatise the sex worker, fuelling the discourse of disposal that surrounds women selling sex. As Sophie Day noted, since the 1990s, communities have grown more intolerant of street sex workers.<sup>105</sup> For instance, she notes street sex workers in Tower Hamlets had to wear sunglasses to protect themselves from aerosol attacks by local residents as they patrolled the streets with Rottweiler dogs.<sup>106</sup> Furthermore, the infamous ‘cleansing of Balsall Heath’ saw local members of the community harass and violently attack street sex workers during the 1990s.<sup>107</sup> During this time, as Hillary Kinnell notes, ‘up to 500 young men, many apparently bussed in from other areas, patrolled the streets, armed with baseball bats, hickey sticks and dogs. They harassed, intimidated and at times physically attacked sex workers.’<sup>108</sup> Due to the status of the sex worker as a second-class citizen, she is not only at risk of attack from potential clients, but also from the wider community itself. As this section has demonstrated, it is not the inherent nature of selling sex itself, but the wider societal context in which it is understood and responded to that places sex workers at such high risk of attack.

### **Violence against Women**

When understanding violence against sex workers, one of the key recognitions that should be made is to understand such violence as integrated within the wider societal problem of gendered violence against women. This is the recognition that the violence in sex work should not exist in the abstract without reference to violence against women in society more generally, that much of the violence experienced by sex workers serves to magnify the wider issue that is endemic throughout our society. As stated by the United Nations Secretary General, ‘violence against women continues to persist as

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<sup>103</sup> John Lowman, N62, 1004

<sup>104</sup> Maggie O’Neill and Rosie Campbell, ‘Street Sex work and their communities: creating discursive spaces for genuine consultation and inclusion’ in Rosie Campbell and Maggie O’Neill (eds), *Sex Work Now* (Willian Publishing, 2006) 35

<sup>105</sup> Sophie Day and Helen Ward, ‘British policy makes sex workers vulnerable’ (2007) *British Medical Journal* 334, 187

<sup>106</sup> Ibid, 190

<sup>107</sup> Hillary Kinnell, N70 99

<sup>108</sup> Ibid, 99

one of the most heinous, systematic and prevalent human rights abuses in the world.’<sup>109</sup> The End Violence Against Women Coalition have found that each year up to 3 million women experience violence in the UK, including domestic violence, rape and sexual violence, sexual harassment, trafficking and sexual exploitation.<sup>110</sup> When faced with these statistics, it becomes clear that violence against female sex workers does not exist in the abstract, it exists within a society with an extremely high frequency of violence against women. As McLeod argues, the question arises as to whether violent behaviour is especially common among prostitutes’ clients as opposed to men generally.<sup>111</sup> Too often are clear distinctions drawn between violence against sex workers and violence against women whereas, in reality, as Lowman highlights in his explanation of ‘predatory’ violence against sex workers, much against female sex workers violence is predisposed by the perpetrators attitude to women and sexuality more generally, where man is the dominant force and women is a sexual submissive.<sup>112</sup> This point is extremely important as it demonstrates the need for violence in sex work to be understood as a problem endemic within all aspects of society, not just this social demographic. Thus, to properly reduce violence in sex work, we should look towards reducing the violence against women throughout society and reject a viewpoint that sees sex work itself, as the causal factor of violence against women selling sex

The elimination of sex work will not achieve a reduction in violence as the risks in sex work are inextricably linked to the violence experienced by all women within our society, not just sex workers in the abstract. Inter-woven between violence against both indoor and outdoor sex workers are larger issues of violence against women that cannot be solved through criminalising the sex worker or forcing her to exit. By treating sex work in the abstract, we escape and avoid the wider problem of violence against women endemic within our society, to which sex workers serve to magnify and often bear the brunt of. Instead it is recognised here that violence against women is prevalent within our society and something that cannot be reduced through focusing on laws criminalising or changing the lifestyle of the *victims* of that violence. Only long term social change will change institutionalised attitudes towards women and tackle the violence suffered by not only sex workers, but women more generally.<sup>113</sup> The sex workers experience of violence then, serves to magnify the experience of all women in our society and any attempt to understand the complex nature of violence experienced by women selling sex, as described above, should take place against a backdrop of such recognition.

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<sup>109</sup> Ban Ki moon, United Nations Secretary General at <http://www.endviolenceagainstwomen.org.uk/about-violence-against-women> accessed 4<sup>th</sup> January 2014

<sup>110</sup> End Violence Against Women Coalition, accessed January 9<sup>th</sup> 2013, <http://www.endviolenceagainstwomen.org.uk/about-violence-against-women>

<sup>111</sup> Eileen McLeod *Women Working: Prostitution Now* (Croom Helm, 1982) 55

<sup>112</sup> John Lowman, N62 19

<sup>113</sup> Ibid, 55

## The Stigmatised Status of the Sex Worker

The final category of harm to be discussed here is that of stigma. Discussing stigma enables us to make the important distinction between the personal effects of being involved in prostitution, that is selling sex, and the societal consequences of being involved in such an occupation, that is the consequences of stigma and the further harms it produces.<sup>114</sup> Stigma and stigmatisation is intimately linked to the reproduction of the inequality of the sex worker and her exclusion from society.<sup>115</sup> It is the key element and mechanism for the harm she experiences, both internally and externally. Her socially constructed stigma is key to her experiences of exploitation and violence as it both creates and serves to perpetuate these harms, providing a justification and reason for such harms to continue.

To explain the complexity of the stigmatisation of sex workers and its effects on sex workers themselves I will use the framework as explained by Bruce Link and Jo Phelan.<sup>116</sup> They explain stigma as the co-concurrence of its components, that is, labelling, stereotyping, separation, status loss and discrimination under the exercise of power.<sup>117</sup> Stigma, they argue, is ‘entirely contingent on access to social, economic, and political power that allows the identification of differentness, the construction of stereotypes, the separation of labelled persons into distinct categories, and the full execution of disapproval, rejection, exclusion and discrimination.’<sup>118</sup> It is a social construction imposed from those within positions of power onto the less powerful in the social hierarchy. For the sex worker, stigma creates the conditions for oppressive and harmful measures. It provides persons with justification for violence, unjust treatment and exploitation and ensures the exclusion and silencing of voices from debates and discussion.

## Creating Stigma, Distinguishing and Labelling Differences

Using the framework set out by Link and Phelan, the first step towards stigmatising the sex worker is distinguishing her from the rest of society by highlighting her differences from others. This is usually done in terms of what they term ‘human differences,’ such as ‘skin colour, IQ and sexual preferences’ which are at present, highly salient characteristics.<sup>119</sup> For the sex worker, her qualifying difference is rooted in Victorian discourses on femininity and morals and her failure to meet such ideals. Gail Pheterson’s list of the sex workers’ offences against gendered norms include: having sex with strangers; having sex with multiple partners; taking sexual initiative and control and possessing

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<sup>114</sup> Joanna Phoenix, *Making Sense of Prostitution* (Palgrave, 1999) 61

<sup>115</sup> Graham Scambler, ‘Sex Work Stigma: Opportunist Migrants in London’ (2007) *Sociology* 41 (6) 1079-1096

<sup>116</sup> Bruce Link and Jo Phelan, ‘Conceptualising Stigma’ (2001) *Annu Rev Sociol*, 27 367

<sup>117</sup> *Ibid*, 367

<sup>118</sup> *Ibid*, 367

<sup>119</sup> *Ibid*, 368

expertise; being alone on the streets at night; and being in the company of drunk and abusive men.<sup>120</sup> Graham Scambler adds to this list with the sex worker as a ‘vector of disease’<sup>121</sup>, whilst others note their association to both crime and drugs.<sup>122</sup> As will be demonstrated in the following chapter, these stereotypes have been used by officials to highlight the difference between sex workers and the rest of the public. They convey a specific and negative social identity of the sex worker that has been devalued throughout history and have enabled officials to establish the sex worker as a risk to society.<sup>123</sup> They become dirty and vectors of disease, immoral and a threat to family values, drug addicts and a disruptive presence that is presented in direct contrast to the rest of society.<sup>124</sup>

### **‘Us’ and ‘Them’- The Othering of the Sex Worker**

The next step to stigmatisation, Link and Phelan argue, is the separation of ‘us’ from ‘them’, in this case, the sex worker from the rest of the public. Following this separation, as we can see through the legal and social treatment of the sex worker, ‘all manner of treatment becomes possible.’<sup>125</sup> To successfully Other the sex worker, women involved in selling sex have been defined, above all else, by their occupation. To establish her as the Other, her identity as a sex worker is prioritised above all potential identities: worker, mother, women, sister, daughter and carer.<sup>126</sup> This Othering allows the sex worker to be treated in the abstract and as a singular, unaffected and unconnected to the rest of society, totally ignoring the complexities of her lived experiences. To enable the stigmatisation of the sex worker, women who sell sex are thought to ‘be’ the thing that they are labelled.<sup>127</sup> Women are ‘prostitutes’ not women who sell sex. Selling sex becomes their defining feature and identity, not their occupation. This means the complexity of sex workers lived experiences become shoe-horned into one. Their interests as mothers, low-income families, members of the BME and LGBT community or self-employed persons are silenced as their decision to sell sex takes precedence and receives all focus and attention.

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<sup>120</sup> Gail Pheterson, ‘The Whore Stigma: Female Dishonour and Male Unworthiness’ (1993) *Social Text*, 39-64, 37,

<sup>121</sup> Graham Scambler, N115 1096

<sup>122</sup> Jane Scoular, Jane Pitcher, Rosie Campbell, Phil Hubbard and Maggie O’Neill, ‘What’s anti-social about sex work? Governance through the changing representation of prostitution’s incivility’, in Joanna Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009); Teela Sanders, *The Risks of Street Prostitution: Punters, Police and Protestors*, (2004) *Urban Stud August*, 41 (9) 1710

<sup>123</sup> Bruce Link and Jo Phelan N116, 367

<sup>124</sup> Ibid, 367

<sup>125</sup> Ibid 369

<sup>126</sup> Margaret Melrose, ‘Out on the streets and out of control? Drug-using sex workers and the prostitution strategy’ in Jo Phoenix, *Regulating sex for sale: Prostitution policy reform in the UK*, (Polity Press, 2009), 87

<sup>127</sup> Bruce Link and Jo Phelan N116 27

## Loss and Discrimination – the Effects of Stigmatisation

After associating sex workers with negative differences and establishing sex workers as the Other, ‘a rationale is constructed for devaluing, rejecting and excluding them.’<sup>128</sup> They then experience the effects of stigma, that is, loss and discrimination.<sup>129</sup> This can come in many forms and has been vastly documented in the forms of both ‘enacted’<sup>130</sup> and ‘felt’<sup>131</sup> stigma, it is also interlinked with the harms of both exploitation and violence. As previously discussed, such violence and exploitation experienced by sex workers is made possible due to their marginalised and stigmatised status, as explained by Lowman’s ‘doctrine of disposal’ the wider ‘constellation of derogatory beliefs, contempt and hostility towards sex workers’<sup>132</sup> enable and create the conditions for such harms.

Stigma is a complex social process with dangerous and far-reaching results on the stigmatised groups. As Goffman argues, it manifests itself in both ‘enacted stigma’ and ‘felt stigma.’<sup>133</sup> ‘Enacted stigma’ refers to the behaviours and reactions by others towards stigmatised individuals are often subject to, in this case the violence exploitation and rights abuses directed at the sex worker.<sup>134</sup> ‘Felt stigma’ on the other hand, is the internalisation of the negative image of the stigmatised individual and the fear of being discriminated against, which can have significant effects on the physiological health and well-being of women selling sex.<sup>135</sup> It intersects across all areas of the sex workers life, in the community, criminal justice system and throughout public and political bodies. The stigmatisation of the sex worker has classed her as a deviant second-class citizen, associated with disease, contamination, crime and drugs.<sup>136</sup>

## Enacted Stigma

Enacted stigma is linked to the sex workers experiences in both her public and private lives. It refers to the disadvantage faced by sex workers when it comes to her opportunities for income, education, access to healthcare services, her housing status and her interaction with the care system.<sup>137</sup> In her research with street sex workers in Liverpool, Rosie Campbell noted the social exclusion that revolved around poor access to health and welfare services, uncertainty of living conditions and high

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<sup>128</sup> Ibid, 371

<sup>129</sup> Ibid, 371

<sup>130</sup> Graham Scambler, N115 1079

<sup>131</sup> Lisa Lazarus, Kathleen Deering, Rose Nabess, Kate Gibson, Mark Tyndall and Kate Shannon ‘Occupational Stigma as a Primary Barrier To Health Care for Street-Based Sex Workers in Canada’ (2012), *Cult Health Sex* 14(2) 139-150

<sup>132</sup> John Lowman, N62 9

<sup>133</sup> Erving Goffman, *Stigma: Notes on the management of spoiled identity* (Penguin Books, 1963) 30

<sup>134</sup> Ibid, 30

<sup>135</sup> Ibid, 30

<sup>136</sup> Gillian Abel, ‘Decriminalisation: A harm minimization and human rights approach to regulating sex work,’ (University of Otago, Dunein New Zealand, 2012) iii

<sup>137</sup> Graham Scambler and Anthony Hopkins, ‘Being Epileptic: Coming to Terms with Stigma’ (1986) *Sociology of Health & Illness*, 8 (1) 26-43



levels of violence.<sup>138</sup> Enacted stigma here refers to societal injustices often imposed against sex workers. It will recognise the injustice perpetrated by institutions and the state, where sex workers are denied basic civil rights and protections afforded to most other members of the public.<sup>139</sup> As Hillary Kinnell argues, this includes harm of a society ‘which drives sex workers into the most dangerous situations, which denies them protection and deliberately makes them homeless.’<sup>140</sup> This widening of how to define harm against sex workers allows for a more inclusive understanding of what it means to be a sex worker and the nature of risks they face on a day-to-day basis. This recognition of the effects of stigma moves away from the monolithic understanding of harm against sex workers as an inherent and inevitable result of gender relations towards a more complex and accurate understanding that reflects what it means to be a sex worker today and the complexity of her stigma suffered.

### Stigma and Health Care Provision

There have been many empirical research projects with sex workers that have sought to document the effect of enacted stigma as a barrier to accessing health services.<sup>141</sup> They have consistently shown that due to the stigmatised status of the sex worker she often feels unsafe to disclose her involvement in sex work to their support networks and feels unable to access non-judgemental health care services.<sup>142</sup> This was reflected in Day and Ward’s research with sex workers, where they found that fear of privacy and disclosure of their sex work status prevented a high number of sex workers from accessing health services.<sup>143</sup> This damaging effect of stigmatisation occurs across the globe. In a research project where 252 sex workers in Canada responded to a questionnaire, 58.5% reported occupational sex work stigma while 49.6% reported barriers to accessing health services in the previous six months. The reasons for not disclosing involvement in sex work to health care professionals have been suggested to include fear of arrest and prosecution, negative past experiences with disclosure, fear of disapproval and embarrassment.<sup>144</sup> This then has a significant effect on the health and well-being of sex workers and on the quality of the health service received by sex workers as they often do not reflect their care needs or fail to attend health care services all together.

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<sup>138</sup> Rosie Campbell, ‘Working on the Street: An evaluation of the Linx Project, 1998-2001’, (Liverpool Hope University, Liverpool)

<sup>139</sup> Paddy Hillyard and Steve Tombs ‘Beyond criminology?’ in Paddy Hillyard et al (eds) *Criminal Obsessions* (Crime and Society Foundation, 2005)

<sup>140</sup> Hillary Kinnell, N70, 31

<sup>141</sup> Louise Clark, Street Sex Workers’ Experience of Accessing Health Services: A Report for the Department of Health, The Griffins Society, 2009; Sophie Day and Helen Ward, Sex Worker and the Control of Sexually Transmitted Disease, *Genitourinary Medical*, (1997) 73, 161-168; Helen Ward and Sophie Day ‘Violence in sex work extends to more than risks from clients,’ (2001) *British Medical Journal*, 323: 230

<sup>142</sup> Louise Clark, *Ibid*, 8

<sup>143</sup> Sophie Day and Helen Ward, Sex Worker and the Control of Sexually Transmitted Disease, *Genitourinary Medical*, (1997) 73, 161-168

<sup>144</sup> Louise Clark, N141, 7

## Stigma and the Family Life

A second importance manifestation of enacted stigma in the lives of the sex worker are the structural harms experienced by the sex worker as a result of her stigmatised status. A number of people have documented the effects of negative attitudes of enforcement agencies and public bodies towards sex workers on their private and family lives. In their research of sex workers in the UK, Ward and Day noted, ‘different types of violence were experienced by the state, family and clients. The most harrowing entailed the occasional removal of prostitutes’ children by the state, and domestic violence.’<sup>145</sup> The stigma that enables such structural violence against indoor workers can come in the form of strict immigration and deport orders, the intrusion of the care system into their livelihood, the erratic behaviour of policing of indoor premises and the constant failure of the police to respond to violence against sex workers as crimes worthy of their attention.<sup>146</sup> This high risk of structural violence results in the fact that women involved in selling sex in indoor premises often lead erratic lives, frequently moving between locations or across international borders where they are ‘hidden from view to avoid detection by police and social services’ to avoid such structural violence.<sup>147</sup>

## Felt Stigma

‘Felt stigma’ refers to the internal effects of stigma on sex workers, that is the shame associated with membership of a stigmatised group and the constant fear of encountering enacted stigma.<sup>148</sup> The stigmatised status becomes a part of a persons ‘world view.’ That world view can has serious consequences on the mental well-being of the sex worker as she can constantly expect and fear rejection, may result in strained and un-comfortable social interactions with potential stigmatises, more constructed social networks, low self-esteem and depressive symptoms.<sup>149</sup>

As Sanders found within her research of indoor workers in the UK, the fundamental risk in selling sex referred to by the sex workers was the risk of getting caught.<sup>150</sup> Due to the stigmatised status of the sex worker, one of the highest risk factors considered by women selling sex was the risk of ‘being discovered’ which was predominantly out of their control.<sup>151</sup> She found that it was often the threat of families and friends finding out about their occupation that brought a significant amongst of mental strain onto sex workers, ‘whereas women felt they can recover from physical injuries, such emotional

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<sup>145</sup> Helen Ward and Sophie Day ‘Violence in sex work extends to more than risks from clients,’ (2001) *British Medical Journal*, 323: 230

<sup>146</sup> Phil Hubbard, ‘Out of Touch and Out of Time’ in Campbell and O’Neill, *Sex Work Now* (Willian Publishing, 2006); Joanna Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009); Teela Sanders ‘Behind the Personal Ads: The Indoor Sex Markets in Britain’ in Campbell and O’Neill, *Sex Work Now* (Willian Publishing, 2006)

<sup>147</sup> William Spice, ‘Management of sex workers and other high-risk groups’ (2007) *Occup Med* 57 (5) 322-328

<sup>148</sup> Graham Scambler and Anthony Hopkins, Being Epileptic: Coming to Terms with Stigma, *Sociology of Health & Illness*, 8 (1) 27

<sup>149</sup> Bruce Link and Jo Phelan, N116 374

<sup>150</sup> Teela Sanders, N67 46

<sup>151</sup> Ibid, 46

injury would result in irreparable loss in their personal lives.’<sup>152</sup> This refers to the sense of shame coupled with a fear of potential rejection, even ostracisation, on the part of significant others or family members if they should find out about their occupation.<sup>153</sup>

## **Conclusion**

Through separating the risk of harm in sex work into three distinct categories, this chapter has provided a clear understanding of how regulatory regimes should understand harm in sex work. This harm framework, will be relied upon throughout the remainder of this thesis on which to judge any regulatory system of sex work, that is, the risk of violence exploitation and stigma faced within the daily lives of the sex worker. This chapter demonstrated that such harms are not an unavoidable and inevitable aspect of selling sex, but often are created and maintained through the circumstance in which sex work exists. Therefore, the context surrounding sex work is fundamental in creating, perpetuating and reducing these harms. This will be demonstrated further in the next chapter where I will illustrate how the stigma, violence and exploitation experienced by sex workers in England and Wales is shaped and maintained through laws that fail to recognise the complex lives of the sex worker, and maintain dominant discourses that fail to understand or response to the complexity of harms they face. Further in the development of this thesis, whilst exploring alternative routes of reform I will use the harm framework set out here not only to measure the effectiveness of a regulatory regime, but upon which to propose legal reform.

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<sup>152</sup> Ibid, 46

<sup>153</sup> Graham Scambler, N115, 1082

## CHAPTER 3

### THE REGULATION OF SEX WORK IN ENGLAND AND WALES – IGNORING AND CREATING HARMS

After mapping out the complex nature of ‘harm’ in sex work in the previous chapter, this chapter will use the framework, that is, stigma, exploitation and vulnerability, to analyse the development of the laws regulating sex work in England and Wales and their effectiveness (or lack of) at reducing these harms. It will demonstrate the ability of the law to structure subjects, spaces and form power in contemporary sex markets, maintaining and shaping the harms experienced by the sex worker.<sup>1</sup> The fluid and changeable nature of harm experienced by the sex worker since the Contagious Disease Act of 1864 will be used to reiterate the endemic nature of harm in sex work, that is it not unavoidable, but shaped and controlled through law.

Using the acknowledgement of the power of the law to shape the harm in sex work as described in the introduction of this thesis, this chapter will illustrate that since the 1860’s, the law has significantly increased the sex worker’s vulnerability to harm. It will show how the law has created and maintained a discourse that has served to silence the lived experiences of the sex worker in favour of moral and political aims. As a result of such silencing, since the Contagious Disease Acts in 1862, the laws regulating sex work have served to exacerbate and create the violence, stigma and exploitation endemic in the industry. Today, not only does the sex worker continue to face these harms, but their existence are made possible through laws that create the very conditions for such harms to continue.

#### **Sex work in Victorian Society: The Contagious Disease Acts**

The first explicit regulation of women selling sex occurred in the 1860s with the Contagious Disease Acts. Under these Acts, a woman could be identified as a ‘common prostitute’ by a policeman and then subjected to fortnightly international examination. If found suffering from a sexual transmitted disease, she would be kept in a Lock hospital up to nine months. These Acts demonstrate the role of the law in creating and perpetuating the harm experienced by the sex worker, establishing her marginalised and ostracised status. The introduction of the Contagious Disease Acts in 1866 was framed within a medical discourse as prevention measures against the transmission of syphilis and other forms of venereal disease, something largely attributed to the use of prostitutes in garrison

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<sup>1</sup> Teela Sanders, Maggie O’Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (Sage Publications, 2009) 4

towns and ports.<sup>2</sup> By 1869 the government had created an overt system of police control of sex workers, requiring close police surveillance of registered women, whose residence and traffic were to be restricted to narrowly circumscribed areas.<sup>3</sup>

It is this establishment of extreme social stigma in the 1860's that would consequently create the 'social milieu'<sup>4</sup> in which exploitation and violence would prosper in modern day. The social process involved in creating and sustaining such stigma, as explained in the previous chapter, is demonstrated throughout the development of the Contagious Disease Acts of 1864, 1866 and 1869. Reflecting the Victorian views on sexual morality and gender expectations of the time, the Acts saw the creation of the prostitutes as a special group, outside the normal bounds of society, and thus justifiably subject to extreme and invasive laws.<sup>5</sup> When it comes to the modern stigma experienced by sex workers on a daily basis, the Contagious Disease Acts set the precedence that has seen women selling sex treated as a lesser group, deserving of fewer rights and protection from the rest of society.

### **The Creation of an Outcast Group**

In order to create such stigma, the Acts established the sex worker as a separate and identifiable category of women, creating a rigid and fixed prostitute identity that served to confine and publicly condemn the 'common prostitute.'<sup>6</sup> This directly contradicted the reality of the lives of women selling sex at the time. Before the Contagious Disease Acts, Judith Walkowitz argues that most evidence presents a picture of sex workers as integrated rather than excluded from the community of the casual labouring poor.<sup>7</sup> For most working women at the time, sex work represented only a temporary stage in their life and short-term response to economic needs. Through their special treatment in law, the government and enforcement agencies disrupted this social trend and established the sex worker as a distinct and separate group. Using the stigma framework of understanding set out by Link and Phelan, this differentiation created by powerful governments is the first step towards establishing and creating stigma. It was made possible through a number of ways, most notably through the particularly degrading compulsory medical examination for each registered sex worker. The examination,

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<sup>2</sup> Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State*, (Cambridge University Press, 1980) 74

<sup>3</sup> Ibid, 69

<sup>4</sup> John Lowman, 'Violence and the Outlaw of (Street) Prostitution in Canada' (2000) *Violence Against Women*, 6, (9), 1009

<sup>5</sup> Carol Smart, *Feminism and the Power of Law*, (Routledge, 1989) 94

<sup>6</sup> Judith Walkowitz, N3, 210

<sup>7</sup> Ibid, 270

described as one lady as a form of ‘instrumental rape’ was both intrusive and humiliating.<sup>8</sup> The women were forced to attend examination during the day at specific examination houses. Women would be escorted to the houses in front of members of the public and were often taunted on the way by young boys who would loudly question if the women were going to the ‘Bougie Fair’ or the ‘meat market.’<sup>9</sup> It was this public nature of the examination process that had significant consequences, both publically and internally establishing the sex worker as an outcast group. As one woman stated,

‘it was no use trying to reform now she was registered as a prostitute and everybody would know what she had been doing, who she was ... going up for the examination, she said, was worse than going with 20 men.’<sup>10</sup>

The overt public nature of the laws meant that the official social construction of ‘the prostitute’ as a contaminated second-class citizen was hard to ignore for both the public and the women themselves. The Acts forced sex workers to adjust their self-images and required themselves and the public to acknowledge their outcast status.<sup>11</sup> As Walkowitz notes, there was a significant shift in attitudes and self-perception of working women forced upon them by the Acts, which saw a construction of sex work imposed from above, into the consciousness of the poor.<sup>12</sup>

The effects of such a shift in attitudes and self-perception of sex workers under the Contagious Disease Acts also had an effect on the violence and exploitation experienced by the sex worker.<sup>13</sup> The Acts created an ‘extensive public resistance’<sup>14</sup> towards sex workers, creating the social climate for violence and exploitation. This came from both members of the public and officials themselves. One examples used by feminist campaigners of the time was the structural violence experienced at the hands of public servants, with stories of boiling hot or unsterile instruments used for the medical examination.<sup>15</sup> Secondly, such violence would also come from the enforcement agencies as the police would harass and closely monitor the lives of women they suspected of selling sex such as daily visits to brothels and encouraging members of the public to become informants to the police.<sup>16</sup> By relying on public shaming to control poor women, as Walkowitz describes, ‘they resembled both an occupying military force billeted on a subject population.’<sup>17</sup> As seen within their treatment by public

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<sup>8</sup> James Wilkinson, *The forcible introspection of Women for the Army and Navy by the Oligarchy Considered Physically* (Josephine Butler Society, 1870) 15

<sup>9</sup> Judith Walkowitz, N3 202

<sup>10</sup> Ibid, 202

<sup>11</sup> Ibid, 202

<sup>12</sup> Ibid, 202

<sup>13</sup> Ibid, 201

<sup>14</sup> Ibid, 201

<sup>15</sup> Ibid, 201

<sup>16</sup> Ibid, 203

<sup>17</sup> Ibid, 203

officials, the Othering of the sex worker created the conditions in which exploitation and violence could prosper, that is, isolated from the rest of the community and without the same protections from officials. As it will be demonstrated, the stigmatised status established under the Contagious Disease Acts created the conditions for the exploitation and violence against sex workers, from a wide range of aspects of the community.

### **The Wolfenden Report and the Sexual Offences Act 1959**

The next major re-examination of the laws regulating sex work can be seen in the 1950s. Using the Othering process established by the Contagious Disease Acts, the Wolfenden Report<sup>18</sup> published in 1954 triggered the introduction of a new set of laws and policy regulating the lives of sex workers. As warned in the previous chapter, here we see first-hand the malleable nature of the term ‘harm’ by officials when discussing sex work. As will be demonstrated, the 1957 Report moved from the medical justification of the Contagious Disease Acts, to one that explained the harm of sex work as a public nuisance. Using the harm framework set out in the previous chapter, we can see that as a result of the 1957 Report and the Sexual Offences Act of 1967, women selling sex were further stigmatised and pushed underground into the dangerous and high risk unregulated sector where they were extremely vulnerable to exploitation and violence. Once again, the fluctuating nature of the harms experienced by sex workers demonstrate that harm is not an inevitable consequence of selling sex, but is at the mercy of law and official understanding of sex work.

### **Origins and Context**

The Wolfenden Committee Report was published in 1957 and focused upon the issues of street sex work and homosexuality, providing the framework for many of the current laws regulating selling sex in England and Wales. Significantly, the Wolfenden Committee was established at a time when street sex work, while largely contained in deprived inner-city districts, was implicated in a wider process of post-war moral decline that seen to be leading to family breakdown and social disintegration.<sup>19</sup> Helen Self, Eileen McLeod and Carol Smart have placed hardening of attitudes towards sex work within the context of the 1950’s, where the post-war social emphasis was on domestic reconstruction and the redefinition of women’s role as homemakers.<sup>20</sup> Against this backdrop, officials paid little regard to the

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<sup>18</sup> The Wolfenden Report: Report on the Committee on Homosexual Offences and Prostitution, 247, (H.M.S.O, 1957)

<sup>19</sup> Phil Hubbard, ‘Out of Touch and Out of Time’ in Campbell and O’Neill, in Rosie Campbell and Maggie O’Neill (eds) *Sex Work Now* (Willian Publishing, 2006) 4

<sup>20</sup> Helen Self, *The Fallen Daughters Of Eve*, (Frank Class 2003) ; Carol Smart, *Feminism and the Power of Law*, (Routledge, 1989); Eileen McLeod *Women Working: Prostitution Now* (Croom Helm, 1982)

stigma, violence and exploitation endemic in sex work and the role of the government in perpetuating those harms, and instead focused on the public nature of the work and protecting societal morality.

## The Law

After the Wolfenden Report, the Street Offences Act 1959 was introduced, criminalising loitering and soliciting in a public space.<sup>21</sup> Under these provisions, imprisonment for soliciting or kerb-crawling increased from fourteen days to three months and the maximum fines were raised from forty shillings to twenty-five pounds.<sup>22</sup> The increased use of the criminal law in controlling street sex workers saw the use of prison as the ‘ultimate deterrence’ from working in public view, moving sex workers into extremely hazardous working conditions.<sup>23</sup> Although the indoor worker remained regulated under the Sexual Offences Act 1956, which made it illegal to live off the earnings of prostitution,<sup>24</sup> the focus of the government and enforcement agency remained on outdoor sex work, leaving the indoor worker largely unregulated.

This differentiated treatment was explained through an emphasis on the liberal principle of the public/private divide. The report constructed sex work as a matter of private morality and thus ‘not the laws business,’<sup>25</sup> with the only exception being where the activities and behaviour involved caused harm, that is, street sex work. To do this, the Wolfenden Committee instituted a sharp distinction between vice and immorality that took place in ‘public’, to which severe sanctions were attached, and similar acts that occurred between consenting adults in ‘private’, which were tolerated in law.<sup>26</sup> The Committee used this distinction between public and private morality to justify a criminalisation approach towards street sex work which, they argued was an affront to public decency. The result of this on the harms experienced by the sex worker was two-fold. For the indoor worker, although criminalised in some cases<sup>27</sup>, she was left in a largely ignored industry, where exploitation and violence could occur without repercussions. For the street-worker, her prosecution and stigmatising meant she was pushed into darker and more dangerous locations to avoid enforcement, where risk of violence was extremely high.

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<sup>21</sup> The Sexual Offences Act 1959, s1 (1)

<sup>22</sup> Eileen McLeod *Women Working: Prostitution Now* (Croom Helm, 1982) 92

<sup>23</sup> *Ibid*, 96

<sup>24</sup> Sexual Offences Act 1956, s30

<sup>25</sup> The Wolfenden Report, N23, 61

<sup>26</sup> Sophie Day, ‘Wolfenden 50: Revisiting State Policy and the Politics of Sex Work in the UK’, in Vanessa Munro and Marina Della Giusta (eds) *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Ashgate, 2008) 51

<sup>27</sup> s33 – s37 Sexual Offences Act 1956



## Maintaining Harms – Stigma under Wolfenden

Instead of recognising the harmful nature of belonging to a stigmatised group, Wolfenden and the Sexual Offences Act 1957 perpetuated and intensified this harm through further legitimising their outcast status. Wolfenden described sex work as an isolated and deviant choice of lifestyle chosen by a specific type of woman, paying no recognition to the social context of poor women in the 1950s. As stated in Wolfenden ‘the great majority of those women who are prostitutes are those whose psychological make-up is such that they choose this life because they find it a style of living which to them easier, freer and more profitable.’<sup>28</sup> Maintaining the social stigma associated with sex work, the Committee rejected any rational explanations behind entry into sex work, ‘whatever may have been the case in the past, in these days, in this country, at any rate, economic factors cannot account for [entry into prostitution]’<sup>29</sup> and thus ignoring the complexity of women’s entry into selling sex, as described in the previous chapter. The idea that sex work attracts a certain deviant character has permeated our legal system and continues today, serving to perpetuate stigma and justify the exploitation, violence and structural harm faced on a daily basis by sex workers.

## Violence and The Street Worker

As the main source of alleged public nuisance, street sex workers received the main brunt of the criminal law. To justify this, Wolfenden stated ‘ordinary citizens who live in this area (i.e. Those in which street prostitution takes place) cannot, in going about their daily business, avoid the sight of a state of affairs which seems to them to be an affront to public order and decency.’<sup>30</sup> As such, this focus on street workers as the source of harm ‘created an apparatus of control with the Street Offences Act 1959 that did not govern prostitution *per se* but only the visibility of it.’<sup>31</sup> Instead of reducing the harms stemming from sex work, this control and focus on the street worker had serious repercussions on her safety.

These harsh criminal sanctions resulted in the displacement of street sex workers as the women began working in more hazardous environments, the risks of such being ‘overridden by the perceived need to earn money.’<sup>32</sup> At the expense of their safety and in order to earn money without police interference sex workers were pushed into more isolated working environments. As explored in the previous chapter, in such dangerous working conditions the risk of violence is extremely high with

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<sup>28</sup> The Wolfenden Report, N23, 13

<sup>29</sup> Eileen McLeod, ‘The Streets Prostitutes Campaign Against Control’ in Bridget Hutter and Gillian Williams (eds) *Controlling Women: the Normal and The Deviant* (Croom Helm, 1981) 62

<sup>30</sup> The Wolfenden Report, N23, 82

<sup>31</sup> Jo Phoenix, *Making Sense of Prostitution* (Pallgrave, 1999) 78

<sup>32</sup> *Ibid*, 96

little chance of protection if such violence did occur. Under the Street Offences Act street sex workers became further isolated from the rest of society and thus, extremely easy targets for violent acts.

### **Exploitation, Violence and The Indoor Worker**

The result of the criminal laws against the street worker saw a movement of sex workers from the streets, into the underground indoor sex industry as they had little risk of arrest. Pushed underground and away from the law, these workers were left with an extremely heightened risk of violence and exploitation. Unlike the invasive control of the street workers, indoor sex workers existed within an 'informal economic activity'<sup>33</sup> with little police or legal intrusion and no rights or protection from violence or exploitation. At the time of introduction of the 1959 Act, Lady Ravensdale demanded action from the government to close the clubs and locations used for the purpose of selling sex of which, she argued, were 'popping up everywhere' as 'the street woman of 1959 is the club woman of the 1960's'.<sup>34</sup> Women were adapting their occupations around the laws with new and less obtrusive methods of solicitation developing, mainly through the congregation of people in clubs, cafes and bars.<sup>35</sup> Here, the public/private delimitation seen in Wolfenden meant that the state was 'not compelled upon to guarantee the usual infrastructure of commerce, whether in relation to webs of credit, debt and the money support more generally, or to the specific nature of contracts, advertising, health and safety or taxation.'<sup>36</sup> This meant that sex workers, whilst viewing their actions as a form of work, were not given the safety guarantees and rights as other employees at a significant risk of exploitation and harm. As explained in the previous chapter, sex workers are at highest risk of exploitation when pushed underground, marginalised and out of the reach of enforcement and protective agencies, much like the legal situation indoor workers were placed after the Wolfenden Report and Sexual Offences Act 1959.

The laws introduced in the 1950's once again show the role of the law in controlling the harms suffered by the sex worker. Through the use of the criminal law, it saw the street worker pushed into a much more dangerous working environment whilst pushing the indoor worker further and further underground, with no forms of protection from exploitation or vulnerability. The Wolfenden Committee legitimated the continued labelling and stigmatisation of women selling sex as this widely

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<sup>33</sup> Sophie Day, N31, 59

<sup>34</sup> Lady Ravensdale, *New Society*, 16 January 1969 in Helen Self, *The Fallen Daughters Of Eve*, (Frank Class 2003) 221

<sup>35</sup> Ibid, 221

<sup>36</sup> Sophie Day, N31, 60

held prejudice became more and more ingrained into legislation, creating a climate of vulnerability for those involved and paving the way for more restrictive reforms under the New Labour government.<sup>37</sup>

Before the New Labour Review there was a significant shift in policy development focusing on the clients and third parties in the sexual exchange. The Sexual Offences Act of 1985 introduced a power of arrest for kerb-crawlers. This was the first time the criminal law sought to criminalise the men that solicit women as well as the women that solicit men. This shift in legal focus represents the first movement towards the gendered understanding of sex work that we see permeates the legal system in England and Wales today. This understanding came in full realisation under the New Labour review of the 1950s.

### **The New Labour Review and the Modern Sex Worker**

The millennium saw the first official analysis of the laws governing sex work since the 1950s, with the New Labour Government publishing numerous consultations and introducing a number of legal reforms in the area of sex work, paving the way to the current legal landscape. Once again, the official understanding of the ‘harm’ shifted, as this era saw ‘new anxieties about community safety and exploitation joining more long-standing concerns about morality and decency.’<sup>38</sup> The understanding of harm set up by New Labour forms the backdrop of the official recognition of ‘harm’ we see today, that is, the victimhood rhetoric that surrounds the modern sex worker paired with the criminality of third parties involved in the transaction. As will be demonstrated, this gendered violence understanding of sex work is relied upon today to justify the increase in punitive legislation, strict enforcement measures and intrusive welfare strategies that currently govern the life of the sex worker.

The harm framework of vulnerability, exploitation and stigmatisation allows you to see that there exists ‘fundamental contradiction at the heart of on-going policy shift; policies introduced with the intent of increasing sex workers safety and decreasing exploitation may actually be making women workers less safe.’<sup>39</sup> Groups of indoor workers are constantly managing the risk of being raided by the police;<sup>40</sup> lone indoor workers are placed in extremely vulnerable and isolated positions;<sup>41</sup> street sex

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<sup>37</sup> Helen Self, N25, 284

<sup>38</sup> Jane Scoular, Jane Pitcher, Rosie Campbell, Phil Hubbard and Maggie O’Neill, ‘What’s anti-social about sex work? Governance through the changing representation of prostitution’s incivility’, in Jo Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009), 30

<sup>39</sup> Ibid, 4

<sup>40</sup> Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005) 103

<sup>41</sup> Ibid, 42

workers are being forced into dangerous and unmonitored locations<sup>42</sup> and the relationship between sex workers and police mean that they remain extremely unlikely to report any exploitation or violence committed against them.<sup>43</sup> Furthermore, the public image of sex workers created by such restrictive laws and responsibilising welfare strategies once again cement the Otherness of the sex worker, maintaining her stigmatised status in the public psyche and further exposing her to violence and exploitation.

### **A Modern Understanding of Harm**

The shift in the understanding of ‘harm’ in sex work towards the victimisation of the worker can be attributed to the surrounding domestic and international context in the millennium. Firstly, the international focus on violence against women and trafficking had a significant influence on the agenda of the government. The United Nations Convention against Transnational Organised Crime included a pledge to combat the buying and selling of women and children for sexual exploitation.<sup>44</sup> Secondly, in 2000, the UN Optional Protocol on People Trafficking was introduced, supplementing the convention.<sup>45</sup> This understood women involved in sex work, most notably women trafficked from one country to another, as victims of the industry. This began a renewed state interest into the regulation of commercial sex and afforded centrality to the notion of ‘abuse of vulnerability’ as providing the normative trigger for condemnation of people trafficking.<sup>46</sup>

Adding to this, on a domestic level there was increasing pressure on the government to take a strong stance on issues surrounding sexual violence against women. Before its introduction, academics and campaigning organisations such as Rape Crisis and Women’s Aid and a growing sexual abuse survivor movement offered a critique of the content and operation of the laws regarding sex, sexual violation and sexual abuse.<sup>47</sup> At the same time during this period, there was great media outrage over the murders of five street sex workers in Ipswich by Steve Wright in 2006. These murders raised serious questions about whether sex work has any place on Britain’s streets and has been viewed to have ‘stiffened the governmental resolve’ in relation to sex work policy, especially the levels of

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<sup>42</sup> Phil Hubbard, ‘Out of Touch and Out of Time’ in Campbell and O’Neill, *Sex Work Now* (Willian Publishing, 2006)

<sup>43</sup> Hillary Kinnell, *Violence and Sex Work in Britain* (Willan Publishing, 2008), 53

<sup>44</sup> United Nations Convention Against Transnational Organised Crime, Article 3 (a)

<sup>45</sup> United Nations, 2000, Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime

<sup>46</sup> Tiggey May, Alex Harocopos and Michael Hough, ‘For Love or Money Pimps and the management of sex work’ (Home Office, 2000) Police Research Series Paper 134

<sup>47</sup> Jo Phoenix, *Regulating Sex for Sale* (the Policy Press, 2009), 22

violence faced by workers.<sup>48</sup> Against this background that focuses around sexual violence against women, the government published a consultation paper *Paying the Price: a consultation Paper on Prostitution*<sup>49</sup> and then set out the blueprint *A Coordinated Prostitution Strategy*<sup>50</sup>, which sets out the then Government's strategy for dealing with sex work. These consultation papers that informed subsequent legal change offered a very limited understandings of the realities of women selling sex; as victims of male exploitation, dire social conditions, poor education, uncontrollable drug addictions and lastly, sexual deviants.<sup>51</sup> As Keith Southill and Teela Sanders argue, 'from the start, all prostitution is aligned with the worse-case scenario of extreme coercion and violence.'<sup>52</sup> Stemming from such an unqualified view of the victimisation of sex workers, policy documents and the subsequent legal change that followed reflect such a limited understanding of sex work.

### **The Current Laws Governing Sex Work in England and Wales**

Following from thus modern understanding of harm and informed by the consultation papers *Paying the Price: a Consultation Paper on Prostitution*,<sup>53</sup> *A Coordinated Prostitution Strategy*<sup>54</sup> and furthered throughout modern day rhetoric, the current regulation of sex work in England and Wales sees the 'curtailing, constraining, limiting, regulating and specifying'<sup>55</sup> of the sex worker and men who buy sex. The current legal regulation of sex work in England and Wales sees an increased enforcement response to sex work, a focus on the use of ASBOs against the sex worker and the promotion of Engagement and Support Orders as efficient welfare strategies to help women exit sex work. As will be illustrated here, current regulation seeks to establish the sex worker as the responsible victim where if she does not accept the 'help' given to exit she is given very little protection from the violence, exploitation and stigma experienced in her daily life.<sup>56</sup> This section will demonstrate how the overregulation of the sex worker, her clients, and the third parties she interacts with on a daily basis has served to push the industry further underground, forced the sex worker to work alone with a heightened risk of violence and cemented her stigmatised status in society. Instead of protecting those involved in sex work, the law has increasingly made being a sex worker in England and Wales dangerous and misunderstood.

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<sup>48</sup> Phil Hubbard, 'Making the Vulnerable more Vulnerable?' in David Canter, Maria Ioannou and Donna Youngs, *Safer Sex in the City* (Ashgate Publishing, 2004)

<sup>49</sup> Home Office, *Paying the Price: A Consultation Paper on Prostitution* (London: HMSO, 2004) 5

<sup>50</sup> Home Office, *A Coordinated Prostitution Strategy* (London: HMSO, 2006)

<sup>51</sup> Keith Soothill and Teela Sanders "Calling the Tune? Some Observations on Paying the Price: A Consultation on Prostitution", (2004) *Journal of Forensic Psychiatry* 15 (4) 653; Home Office, *A Coordinated Prostitution Strategy* (London: HMSO, 2006) 51

<sup>52</sup> Keith Soothill and Teela Sanders, *Ibid* 652

<sup>53</sup> Home Office 2004, N61

<sup>54</sup> Home Office 2006, N62

<sup>55</sup> Jo Phoenix and Sarah Oerton *'Illicit and illegal: sex, regulation and social control.'*, (Willan Publishing, 2005) 1

<sup>56</sup> *Ibid*, 1

An increase in the governmental control of the sex industry was achieved through several legislative steps. Firstly, the government amended the offences pertaining to sex work to be gender neutral under the Sexual Offences Act 2003 (hereby SOA). Under the SOA, ‘causing or inciting prostitution for gain’ and ‘controlling prostitution for gain’<sup>57</sup> replaced the gender specific ‘living off the earnings of prostitution’<sup>58</sup> (brought against men) and ‘controlling and directing the actions of a prostitute’<sup>59</sup> (brought against women). Further, the SOA made gender neutral the offences of kerb-crawling, loitering and soliciting<sup>60</sup> and introduced the use of Anti-Social Behaviour Orders against sex workers.<sup>61</sup> Another area where the SOA significantly increased the laws net of control was upon third parties involved in the sex industry. Under the so-called ‘controlling’ offences the law imposes the heaviest penalties, (upto 7 years) on third parties controlling individuals in the sex industry. These offences include the criminalisation of keeping a brothel<sup>62</sup>, causing or inciting prostitution for gain<sup>63</sup>, controlling prostitution for gain,<sup>64</sup> keeping a disorderly house<sup>65</sup> and paying for the sexual services of a prostitute subject to force.<sup>66</sup> Furthermore, within the afore mentioned wider international concern over the trafficking of persons for sexual slavery, the SOA increased offences against managing, controlling or recruiting women into the sex industry. The Act introduced laws criminalising ‘recruiting,’ ‘harbouring’ or ‘facilitating’ the movement of people for sexual exploitation in and outside the United Kingdom.<sup>67</sup> Importantly, no detailed consideration was given as to what exploitation within this context may mean ‘with the apparent presumption being that the mere fact of having worked as, or having had it intended that one would work as, a prostitute would suffice.’<sup>68</sup> In this sense, trafficking laws can be used even in instances where the sex worker has consented to selling sex, denying any possibility of autonomy in the exchange and assuming exploitation and vulnerability. This lack of definition of key terms within the legislation is a central theme of modern laws, where key terms in provisions remain undefined in law and thus subject to the courts, often very broad, interpretations. Although selling sex itself remains legal, the numerous regulations and provisions surrounding its sale make it increasingly difficult for sex workers and their clients to do so within the remit of the law.

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<sup>57</sup> s52-53, Sexual Offences Act 2003

<sup>58</sup> s22 (1) Sexual Offences Act 1956

<sup>59</sup> Criminal Law Amendment Act 1912, s7

<sup>60</sup> s1, Street Offences Act 1959, Criminalised loitering and soliciting in a public space as amended by s16 Policing and Crime Act, 2009; s1, Sexual Offences Act 1985, issued the power of arrest for kerb-crawlers.

<sup>61</sup> s1, Crime and Disorder Act 1998

<sup>62</sup> s33 and s33a, Sexual Offences Act 1956

<sup>63</sup> s52, Sexual Offences Act 2003

<sup>64</sup> Ibid, s53

<sup>65</sup> Common law offence, see *R v Tan* [1983] QB 1053

<sup>66</sup> s14, Policing and Crime Act 2009

<sup>67</sup> s57-9, Sexual Offences Act 2003

<sup>68</sup> Vanessa Munro and Marina Della Giusta *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Ashgate, 2008) 20

A second important area of control of the sex worker is the use of compulsory welfare provisions. Following the *Coordinated Prostitution Strategy* in 2006<sup>69</sup> and *Tackling the Demand for Prostitution* in 2008<sup>70</sup> that both highlighted the importance of effective exiting services and support, Engagement and Support orders were introduced under the Policing and Crime Act 2009.<sup>71</sup> These aim at moving individuals out of the sex industry, and give courts an alternative disposal for men and women convicted of loitering or soliciting for the purposes of sex work. Engagement and Support orders ‘will require someone to attend three meetings where they will engage with services which can help them address the underlying causes of their engagement in prostitution.’<sup>72</sup> The intention of these provisions, as stated by the Home Office, is that ‘this initial engagement will result in continued intervention leading ultimately to those persons subject to an order moving away from prostitution.’ If the ‘offender’ fails to attend these sessions, they can be subject to a further summons and a possible 72 hours imprisonment.<sup>73</sup>

Together, these laws are designed to ‘challenge the view that prostitution is inevitable and here to stay.’<sup>74</sup> The aim of the government was never to make sex work safer, but to take steps towards its eradication and management. This section will now examine how these measures effect the day-to-day lives of sex workers and their risk of harm. It will demonstrate that by failing to recognise that harm is endemic, not inherent in sex work, the government have ignored the complexities of women’s experience in selling sex and their relation to harm. This in turn means that the policy makes no effort to make working conditions safer for women, instead placing the focus of the law on criminalisation, welfare agencies and exiting, avoiding the issue of reducing harms. By relying upon monolithic portrayals of the victim status of the sex worker, the current legal landscape fails to dissect and interrogate the multiple and complex cases of the vulnerable condition, and pays insufficient attention to the voice of individual sex workers.<sup>75</sup> The current government and its enforcement agencies ignore the complex spectrum between violence, exploitation and stigma, as discussed in the previous chapter, instead adopting a dangerously essentialising view of sex work with has dangerous consequences for the sex worker and her experience of stigma, violence and exploitation.

#### Confirming the Stigma – The Sex Worker as the Victim and the buyer as the criminal

<sup>69</sup> Home Office, N50

<sup>70</sup> Home Office, *Tackling the Demand for Prostitution: A Review* (London: HMSO, 2008)

<sup>71</sup> s17 Policing and Crime Act 2009

<sup>72</sup> Home Office, Guidance on Section 17 Policing and Crime Act 2009: Engagement and Support Orders

<sup>73</sup> Schedule 1, Policing and Crime Act 2009

<sup>74</sup> Anna Carline, ‘Criminal Justice, Extreme Pornography and Prostitution: Protecting Women or Promoting Morality?’ (2011) *Sexualities* 14 (3) 312; Home Office 2006, N61, 1

<sup>75</sup> Vanessa Munro and Jane Scoular, ‘Abusing Vulnerability? Contemporary Law and Policy Responses to Sex Work in the UK’ (2012) *Feminist legal studies* 20, 192

Firstly, this thesis will explore the effect of the current approach on the stigma experienced by the modern sex worker. As Jo Phoenix and Sarah Oerton argue, I will demonstrate that one of the most profound impacts of the modern regulatory scheme is its stigmatising understanding of sex work. That being, the dangerous status of the sex worker within a regime that ‘redefines the ‘problem’ of prostitution’ to being a ‘problem of victims and in so doing, paradoxically constructs prostitution as a criminal justice issue.’<sup>76</sup> Our current piecemeal legal landscape is governed by the understanding that ‘prostitution makes victims of many of those involved in it, and of the community in which it takes place,’<sup>77</sup> resulting in the introduction and the maintenance of legislation that significantly curtails the selling of sexual services in England and Wales, focuses upon so-called controlling third parties and introduces the forced rehabilitation of sex workers.

Firstly, the victim status of the sex worker is established through the introduction of the Engagement and Support orders where we see a ‘forced welfarism’<sup>78</sup> and ‘an increased social control over one of the most vulnerable sectors of society.’<sup>79</sup> Through these orders, responsibility for harms faced is placed on the sex worker and her clients whilst simultaneously freeing the government from any responsibility to reduce those harms. The sex worker is only guaranteed the same rights and protections as other members of society if she leaves sex work, confirming her status as the Other and on the peripheries of society.

In their research measuring the success of these orders, Carline and Scoular found that they were ineffective; failing to understand and respond to the complexity of sex work and the lives of sex workers.<sup>80</sup> As they found in their research, ‘when exiting or work reduction had occurred, this was generally linked to a range of factors other than the orders.’<sup>81</sup> As explored in Chapter 1, sex work is inextricably linked to wider societal issues of poverty, unemployment and gender relations. The decision to sell sex is not one that should be treated in the abstract, but shaped by a myriad of social factors and pressures. Focusing on the choice to exit ignores the role of wider societal issues, and constructs the ‘problem’ of sex work being placed on sex workers individually. Through these compulsory rehabilitation orders the stigmatised status of the sex worker is upheld as she is treated as

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<sup>76</sup> Jo Phoenix and Sarah Oerton *Illicit and illegal: sex, regulation and social control.*, (Willan Publishing, 2005) 91

<sup>77</sup> Home Office 2004, N49, 17

<sup>78</sup> Anna Carline and Jane Scoular, ‘Saving Fallen Women Now? Critical Perspectives on Engagement and Support Orders and their Policy of Forced Welfarism’ *Social, Policy and Society* 14 (1), 3

<sup>79</sup> Ibid 3; Scoular and O’Neill, *Regulating Prostitution: Social Inclusion, Responsibilisation and the Politics of Prostitution Reform* (2007) *Brit.J.Crim* 47, 764-778

<sup>80</sup> Anna Carline and Jane Scoular, N74 31

<sup>81</sup> Ibid, 5



a criminal who has the power to reduce the harms committed against her, not as a rightful citizen with the right to live her life without a constant threat of harm.<sup>82</sup> A sex worker is told that help from harm is available to her, if only she leaves the sex industry. Sanders uses Dwyer's 'conditionally of welfare'<sup>83</sup> to describe the current situation of the sex worker: you can have protection only if you exit sex work, reaffirming her status as the Other.

Under the current laws there exists a double stigmatisation of both the sex worker as victims and the buyers of sex as exploitative males. Along with the kerb-crawling and soliciting offences, one of the key offences that govern potential buyers of sex is s14 of the Policing and Crime Act 2009 that criminalises 'paying for the sexual services of a prostitute subject to force'. This offence criminalises buyers who have paid or promised to pay for the sexual services of a sex worker that has been subjected to forcible conduct. Importantly, the offending party need not know that the sex worker has been subject to exploitative conduct. As Hardy et al argue, this offense is a manifestation of how the government understands sex work and the buyers of sexual services, that is, their intention to criminalise men who buy sex from women, which 'can be seen throughout the review of prostitution policy.'<sup>84</sup> Under the modern understanding of harm, official rhetoric sees 'men purchasing sex from women are referred to as 'pimps', 'drug dealers' and 'kerb-crawlers' who coerce, exploit and abuse women and children involved in prostitution.'<sup>85</sup> As Phoenix and Oerton argue, the governments refusal to recognise the possibility of autonomous and consenting sex workers allow the officials to appear to be doing something about the 'problem of men' whilst 'neglecting the material and social conditions such as poverty, and lack of choices which often condition involvement in prostitution.'<sup>86</sup> Under s14, as Sarah Kingston notes, a buyer cannot simply argue he did not know the sex worker was being coerced, 'a lack of knowledge or ignorance is no justification, excuse, or defence.'<sup>87</sup> This offence, she argues 'demonstrates the severity by which the UK government views those who buy sex.'<sup>88</sup> In reality, a number of bodies have argued that this offence is both unfair and unworkable. The Bar Council have highlighted that 'a defendant may be found guilty in circumstances where he could have no idea at the time that he was committing the offence' and that 'the proposed clause as

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<sup>82</sup> Malcolm Harrison and Teela Sanders, 'Vulnerable People and the Development of 'Regulatory Therapy', in Tim Newburn, Alan Dearling and Peter Sommerville (eds), *Supporting Safe Communities: Housing, Crime and Communities* (London, Chartered Institute of Housing, 2006) 115-168

<sup>83</sup> Ibid, 140

<sup>84</sup> Hardy, Kingston and Sanders *New Sociologies of Sex Work* (Ashgate, 2010)

<sup>85</sup> Ibid 29; Home Office 2004 5, 8

<sup>86</sup> Jo Phoenix and Sarah Oerton *Illicit and Illegal: Sex, Regulation and Social Control* (Willan, 2005)

<sup>87</sup> Sarah Kingston 'Intent to Criminalise: Men who buy sex and Prostitution Policy in the UK' in *New Sociologies of sex work*, 23

<sup>88</sup> Sarah Kingston 'Intent to Criminalise: Men who buy sex and Prostitution Policy in the UK' in *New Sociologies of sex work*, 23

currently drafted is unworkable, wrong in principle and will create unfairness.’<sup>89</sup> Again, as will be shown throughout this section, the government favour strong symbolic provisions instead of provisions that seek to improve the safety of sex workers themselves. This again echoes the official stigmatisation of sex workers as victims, and purchasers of sex as sexual exploiters, where the only necessary response to the sex industry is to seek its eradication, not to make its existence safer for those involved.

### **The Unprotected and Isolated Indoor Worker**

The major side-effect of treating all sex workers as victims is then the failure to look at reducing specific instances of violence, exploitation and stigma experienced by sex workers on a daily basis, which is to which this thesis will now turn. Firstly, this essentialising understanding of sex workers meant that the heterogeneity of sex work was ignored. For instance, the existence and agency of indoor workers was hardly recognised in the consultation process of the laws; as Teela Sanders notes, it is only in the final chapter of *Paying the Price*, labelled ‘Considering the Options’, do the indoor markets appear, and even then the main focus of concern is those experiencing ‘serious exploitation’ such as ‘children abused through prostitution’ and ‘trafficked women kept in bondage’ that happen in off street premises.<sup>90</sup> Despite this, in *Paying the Price*, the government recognised the harm minimising potential of well-managed indoor premises, recommending the decriminalisation of brothels for up to three workers, ‘to increase their ability to protect themselves.’<sup>91</sup> On the laws criminalising owning a brothel, the review recommended ‘the offence should be amended so that it applies only to larger brothels where exploitation is more likely to be a factor, rather than on 2 or 3 men or women working together in a private address.’<sup>92</sup> However, in the later document, *A Co-ordinated prostitution strategy*, this recommendation was dropped, instead criminalising all women working together.<sup>93</sup> This was a significant failure of the government to take a proactive stance in reducing the preventable harms experienced by many indoor workers on a day-to-day basis, instead, silencing the voices and experiences of the sex workers in favour of a victimhood rhetoric. Instead, concerning indoor workers, the law remains focused on preventing exploitative control of third parties and stopping trafficking. Most notably the Sexual Offences Act 1956 makes it illegal to procure

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<sup>89</sup> Ibid, 32 citing politics.co.uk 2009

<sup>90</sup> Teela Sanders, ‘UK Sex Work Policy: Eyes Wide Shut to Voluntary and Indoor Sex Work’ in Jo Phoenix, *Regulating Sex for Sale: Prostitution policy reform in the UK*, (Polity Press, 2009) 69; Home Office 2004 N60, 84

<sup>91</sup> Home Office 2004, N49, 9.12

<sup>92</sup> Ibid 6.15

<sup>93</sup> Home Office 2006, N50, 10

(encourage) a woman into prostitution or live off immoral earnings or keep a brothel, essentially placing those who manage, own and organise massage parlours at risk of prosecution.<sup>94</sup>

Under the offences of ‘inciting prostitution for gain’<sup>95</sup> and ‘controlling prostitution for gain’<sup>96</sup>, we see further relationships potentially criminalised under the Sexual Offences Act with very subjective and broad terms constituting as ‘control’ of the sex worker. Despite the centrality of the notion, within a provision that criminalises ‘controlling prostitution for gain,’<sup>97</sup> the term ‘control’ remains undefined by statute as the remit of the law remains in the hands of the courts. Under the offence of controlling prostitution for gain, the courts have interpreted ‘control’ to not require that the sex worker is forced into selling sex from the start, ‘only that the sex-worker is now acting under compulsion, direction or instruction.’<sup>98</sup> As the case of *R v Massey*<sup>99</sup> illustrated, it can be enough to tell a person to carry out a particular activity or to do it in a certain way to be guilty of this offence and, although threats or violence are usually required, it is enough to control someone through offers of reward.<sup>100</sup> This case gave a number of examples of where ‘controlling circumstances’ could be found; from a defendant with a ‘dominant personality’ where the victim is ‘psychologically damaged and fragile,’ to where the defendant is ‘an older person and the other person is emotionally immature’ and also where ‘the defendant holds out the lure of gain, or the hope of a better life.’<sup>101</sup> In defending such a broad and subjective interpretations of ‘control’ the Court of Appeal reiterated the official understanding of the sex worker as the victim, stating that ‘sex workers are often vulnerable young people with disturbed backgrounds, who have never known a stable relationship or respect from others and are therefore prey to pimps.’<sup>102</sup> As the organisation Release have highlighted, the difficulty with such ambiguous provisions is that they may be applied to any person, ‘including family members, boyfriends or girlfriends and maids’<sup>103</sup> who often form the crucial safety mechanisms for the sex workers themselves.

By potentially criminalising the sex workers closest relationships, these laws place the most law-abiding worker at the highest risk of violence. Due to the offence of ‘keeping a brothel’ and

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<sup>94</sup> Teela Sanders and Rosie Campbell, ‘What’s criminal about indoor sex work?’ In Kate Williams, Phillip Birch, Gayle Letherby and Maureen Cain (eds), *Sex as Crime* (Willian, 2007) 52

<sup>95</sup> s52, Sexual Offences Act 2003

<sup>96</sup> s53, Sexual Offences Act 2003

<sup>97</sup> Ibid

<sup>98</sup> Release: Drugs, the Law and Human Rights, *Sex Workers and the Law*, (Release Publication, 2011) 21

<sup>99</sup> *R v Massey* N80

<sup>100</sup> Ibid; Release: Drugs, the Law and Human Rights N98, 21

<sup>101</sup> Ibid, para 20

<sup>102</sup> Ibid, at para 73

<sup>103</sup> Release: Drugs, the Law and Human Rights N98, 21

‘controlling prostitution for gain’ potentially applying to women working together, using maids and working closely with boyfriends or third parties, the law is ‘effectively discouraging safe working conditions and collective business relationships.’<sup>104</sup> As Jo Phoenix states, ‘the only way that prostitution can be practiced without committing a criminal offence is a one-to-one arrangement between two consenting adults in private.’<sup>105</sup> Yet, as the Ugly Mugs scheme illustrates, it is this situation where the worker is the most at risk.<sup>106</sup> As Hillary Kinnell notes, the percentage of workers reporting robbery involving a sexual assault was considerably higher in the cases of women working alone at 48%, compared to 24% of reports from those working with others.<sup>107</sup> Yet, in direct contradiction to these statistics, the law pushes women into these dangerous situations. The law places sex workers in a ‘fragile and hostile legal climate’<sup>108</sup> where if the sex worker abides by the law, she is placed in an extremely vulnerable position and at significant risk of violence. On the other hand, for the sex worker who chooses to work with others in safer conditions, she is liable to arrest.<sup>109</sup>

### **Creating Exploitation – Working Conditions and Closure Orders for Indoor Workers**

Furthermore, for indoor workers the current laws also represent a significant failure to improve the working conditions for the women choosing to work within the sex industry. By ignoring the existence of the freely consenting workers operating in a vast number of indoor premises, the new policy offers no incentive for practices to invoke or retain good management, leaving no reason it should provide good and safe working conditions for its workers. As Jane Pitcher found in her extensive research with indoor premises in England and Wales, the health and safety conditions of indoor premises can vary significantly, she found variation in quality and degrees of professionalism amongst brothels, with some establishments offering more safety mechanisms than others.<sup>110</sup> One of the key pieces of legislation preventing protecting the indoor sex worker is found within Section 21 of the Policing and Crime Act 2009 which inserted a new Part 2A into the Sexual Offences Act 2003, and details the power for the courts to close, on a temporary basis, premises associated with sex work. As Teela Sanders asks, ‘why should owners and managers invest in their premises, creating secure and safe working environments in a climate of uncertainty regarding whether their business will be

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<sup>104</sup> Ibid 95

<sup>105</sup> Jo Phoenix, N31 20

<sup>106</sup> Hillary Kinnell, N43, 126

<sup>107</sup> Ibid, 53

<sup>108</sup> Ibid, 53

<sup>109</sup> Police and Crime Act 2003, s41

<sup>110</sup> Jane Pitcher and Marjan Wijers, The Impact of Different Regulatory Models on the Labour Conditions, Safety and Welfare of Indoor-based Sex Workers, (2014) *Criminology and Criminal Justice* 14(5), 554

raided?’<sup>111</sup> As Sanders notes, although those exploited within the industry are ‘an important public protection issue which deserves high priority and resources, this attention (given to the exploited) outweighs the reality that the majority of indoor establishments are not involved in extreme exploitation or organised crime.’<sup>112</sup> As the UK Network of Sex Worker Projects have argued, ‘any changes to legislation should work from a starting point of making a distinction between definitions of ‘prostitution/sex work’ and ‘exploitation, coercion and abuse.’<sup>113</sup> The focus of the criminal law should be on those crimes where sexual exploitation and poor working conditions exist and where sex workers are left with little choice or options to control their working environment.<sup>114</sup> As Pitcher and Wijers note, the ‘precarious nature of work in these settings, combined with any lack of legal protection or regulation, leaves workers open to exploitation.’<sup>115</sup> For those that are consenting to work within the industry, the modern policy means that they are often forced to work within unregulated premises where there is no onus on the owners of the establishment to introduce safe working conditions.

Furthermore, despite the rhetoric surrounding the introduction of these laws as answers to reducing trafficked and exploited women, in reality, they have been largely ineffective. As documented by Hillary Kinnell, reports have been received of British women working together for safety reasons and being charged with brothel keeping; of raids involving the use of police dogs, of police filming women in their underwear and such footage being broadcasted on television; and police undertaking large-scale raids under the guise of rescuing trafficking victims but finding none.<sup>116</sup> In recent years there has been a number of high profile police raids on indoor premises, in which a number of brothels were closed down to ‘protect trafficked victims.’ For instance, in 2004 over 300 police and immigration officers raided various addresses in Yorkshire where forty-seven women were arrested for immigration offences. Hailed at the time as a victory against trafficking, the raids were intended to represent a significant step towards reducing the so –called inherent exploitation in sex work. However, three years later all the original charges were dismissed as no proven exploitation was found.<sup>117</sup> Most recently, in 2014 using s21 of the Policing and Crime Act, police raids of indoor sex parlours in Soho, London, saw 200 officers in riot gear with dogs raided the known sex worker flats, issuing 18 closure orders. There were reports of women being handcuffed and dragged on the streets

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<sup>111</sup> Teela Sanders and Rosie Campbell, What’s criminal about indoor sex work? In K Williams, P Birch, G Letherby and M Cain (Eds), *Sex as Crime* (Cullompton: Willian, 2007) 67

<sup>112</sup> Ibid, 69

<sup>113</sup> UKNSWP Response to Paying the Price, 2004, 8, accessed online, 10/03/2014

<<http://myweb.dal.ca/mgoodyea/files/UKNSWPResponsetoPayingthePriceNovember2004.pdf>>

<sup>114</sup> Teela Sanders and Rosie Campbell, N111, 69

<sup>115</sup> Jane Pitcher and Marjan Wijers, N110, 554

<sup>116</sup> Hillary Kinnell, N43 115

<sup>117</sup> Hillary Kinnell, N43, 112

in their underwear in the presence of the media, who were alerted about the operation.<sup>118</sup> Despite the statement of the Metropolitan police commander that the raids were necessary to ‘close brothels where we have evidence of very serious crimes happening, including rape and human trafficking’ none of the premises were later proven in court to house trafficked victims. Nikki Adams of the English Collective of Prostitutes argued that these raids only served to force women onto the streets working alone without the protection of an agency or group.<sup>119</sup> In reality, the laws introduced to reduce the so-called inherent exploitation in sex work, are actually both failing to locate instances of exploitation and pushing women onto the more dangerous outdoor locations.

### **The Street Sex Worker as a Nuisance**

Under the Labour Review, official documents and rhetoric focused on street sex work, where it was argued ‘systematic abuse, violence and exploitation are endemic.’<sup>120</sup> However, maintaining the understanding in Wolfenden, officials also argued that street sex work contributes towards the ‘general decline of public order and community safety.’<sup>121</sup> Despite the recognition of the harms experienced by street sex workers, the historical construction of the prostitute as a threat to public order and decency take precedent in our current laws. This in turn has meant that ‘sex workers who are visible to the general public have proved ideal subjects for a test case of the government’s anti-social behaviour initiatives,’<sup>122</sup> as opposed to central recipients of protection from violence. Seen predominantly as a nuisance, the street sex worker is identified as ‘a distinct group targeted by anti-social powers,’<sup>123</sup> which experience the endangering effects of these public order offences especially harshly. In turn, this means that as street sex workers are treated as a public order issue, their safety and need for protection from violence is ignored. Instead, through the use of such anti-social powers the street sex worker is placed in more dangerous and vulnerable situations than ever before, all in the name of protecting the ‘wider community.’

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<sup>118</sup> Mark Townsend, ‘Closure of Soho brothels raises risks for women, says local priest’ The Observer, Sunday 23 February, 2014, <http://urbantimes.co/2014/06/soho-brothel-prostitution-debate/>

<sup>119</sup> Nikki Adams, ‘Listen to sex workers – we can explain what decriminalisation would mean’ Thursday, 6 November, 2014 The Guardian Online, <http://www.theguardian.com/commentisfree/2014/nov/06/sex-workers-decriminalisation-amendment-modern-slavery-bill> accessed 10th November, 2014

<sup>120</sup> Home Office 2004, N61, 6

<sup>121</sup> Ibid, 9

<sup>122</sup> Tracy Sagar, ‘Anti-Social Powers and the Regulation of Street Sex Work’, (2009) Social Policy and Society, 9 (1), 101-109

<sup>123</sup> Tracy Sager, Ibid 101

## Anti-Social Behaviour Orders – Endangering the sex worker

Arguably for sex workers, the most dangerous of these public order offences is the Anti-Social Behaviour Order (ASBOs). Despite their devastating effects on the safety of street sex workers, ASBOs have recently become the most popular means of controlling the street sex worker by enforcement agencies, as noted by Marianne Hester and Nicole Westmarland in their research on sex work management in a number of localities in England and Wales.<sup>124</sup> ASBO's were created by the section 1 of the Crime and Disorder Act 1998<sup>125</sup> and enabled the police or local council to apply to magistrates for an order to control 'anti-social' behaviour, defined as that 'likely to cause harassment, alarm or distress to one or more persons not of the same household.'<sup>126</sup> ASBOs typically ban the subject of the order from an area, which may include the sex worker's home, as well as the premises of agencies sex workers need to access for health and welfare services.<sup>127</sup> If an ASBO is breached this can result in a prison sentence of up to five years, despite the fact that soliciting is a non-imprisonable offence, thus sex worker will go to extreme lengths to avoid being caught by the police. ASBOs have quickly become recommended as a 'means to protect communities from the harassment, alarm and distress caused by both those soliciting and kerb-crawling' as they have a lower standard of proof than the crime of soliciting, yet can result in a prison sentence if breached.<sup>128</sup> These laws have disastrous effect on the safety of the street sex worker. As Hillary Kinnell argues, 'the threat of arrest and of ASBOs increases the incentive to avoid being seen by police or CCTV cameras, so women take less time to assess potential customers and work later at night, in darker and more isolated areas.'<sup>129</sup> Under this strict punitive approach for both the worker and the client she is at risk at a far greater and increase first of violence on a number of levels as she is pushed into darker and more isolated areas, where the chance of attack are far greater with far fewer means of protection.

One of the key risks from the use of ASBO's is an increase in the risk of violence suffered by the sex worker, where as a result of the extremely invasive public order offences used against the street sex worker, her right to occupy public space has been severely curtailed.<sup>130</sup> This has resulted in the displacement of the sex worker, where she is pushed into dangerous and isolated locations where risk

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<sup>124</sup> Marianne Hester and Nicole Westmarland, *Tackling Street Prostitution: Towards a Holistic Approach*, Home Office Research Study, 279, (University of Bristol)

<sup>125</sup> The Act has since been amended by the Police Reform Act 2002, the Anti-Social Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005

<sup>126</sup> Crime and Disorder Act 1998, s.1 (1); Crown Prosecution Service Guidance on Anti-Social Behaviour Orders on Conviction (ASBOs) [http://www.cps.gov.uk/legal/a\\_to\\_c/anti\\_social\\_behaviour\\_guidance/](http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/)

<sup>127</sup> Hillary Kinnell, 'Murder Made Easy' in Campbell and O'Neill (eds) *Sex Work Now* (Willian Publishing, 2006), 147

<sup>128</sup> Phil Hubbard, 'Out of Touch and Out of Time' in Rosie Campbell and Maggie O'Neill, (eds) *Sex Work Now* (Willian Publishing, 2006) , 15

<sup>129</sup> Hillary Kinnell, N127, 147

<sup>130</sup> Phil Hubbard, 'Cleansing the Metropolis: Sex work and the politics of zero tolerance' (2004) *Urban Studies* 41 (9), 1696

of violence is extremely high. As highlighted in the previous chapter, location places a key part in the protective strategies employed by street sex workers. The geographical location of the commercial sex act 'is a crucial aspect of the precautions, deterrent and protection strategies that sex workers create and implement to keep themselves safe.'<sup>131</sup> The effects of these harsh zero-tolerance laws on the safety of women working on the streets can be seen clearly in the research of Hubbard, Sanders and Kinnell who document effects of our current zero tolerance policing on the previously employed safety strategies of sex workers.<sup>132</sup> Kinnell found that after such an increase in zero tolerance policing the meagre safety strategies usually employed by sex workers to avoid violence are totally undermined as safety strategies of a traditional and close-knit soliciting areas have been destroyed.<sup>133</sup> The new laws not only undermine but criminalise the efforts of sex workers to control the environment and circumstances in which they work to prevent attacks.

Further increasing the risk of violence under modern laws, having time and light enough to assess a client or negotiate a deal are infrequent luxuries as anti kerb-crawling measures as amended in the Sexual Offences Act 2003 to include clients,<sup>134</sup> serve to reduce the numbers of clients, further limiting any residual level of choice over whether to accept a client or not.<sup>135</sup> This is illustrated in research by both Teela Sanders and Benson, who found that although sex workers regard a clientele of regular customers as an important safety strategy, these 'regulars' are more likely to be caught by such strategies, leaving sex workers with a proportionately fewer regulars amongst their clientele.<sup>136</sup> This growing danger is shown in a recent Channel 4 documentary where 71 per cent of women stated they took more risks as a result of police crackdowns and 65 per cent said they workers longer hours.<sup>137</sup> In her own research in Liverpool, Kinnell found 'the working girls are scattered thinly over the now vastly dispersed soliciting areas... these days, the girls walk alone, no possibility of them looking out for each-other.'<sup>138</sup> The recent police crackdowns and strict laws have meant that working girls have moved from their traditional working environments and become more displaced, spanning over greater geographical areas and out of sight from members of the public where they are at extreme risk of violence and attack.

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<sup>131</sup> Teela Sanders, 'The Risks of Street Prostitution: Punters, Police and Protestors', (2004) *Urban Studies*, 41 (9), 1710

<sup>132</sup> Hillary Kinnell and Phil Hubbard, 'Community Action and the Displacement of street prostitution: evidence from the British cities' (1998) *Geoforum*, 29 (3), 269-86; Phil Hubbard and Teela Sanders 'Making Space for Sex Work: Female Street Prostitution and the production of urban space' (2003) *International Journal of Urban and Regional Research*, 27, 75-89

<sup>133</sup> Phil Hubbard and Teela Sanders, *Ibid*, 75

<sup>134</sup> Sexual Offences Act 2003, s56

<sup>135</sup> Hillary Kinnell and Phil Hubbard, N109, 78

<sup>136</sup> Teela Sanders, 'Female street sex workers, sexual violence and protection strategies' (2001) *Journal of Sexual Aggression*, 7 (1); Catherine Benson *Violence Against Female Prostitutes: Experiences of Violence, Safety Strategies and the Role of Agencies* (Loughborough University, 1998)

<sup>137</sup> Hillary Kinnell N104, 147

<sup>138</sup> Hillary Kinnell, N127, 75



## The Policing of Prostitution

Together with the harmful effects of the quasi-criminalisation of sex work, the status of the relationships with the police and sex workers remains a crucial element in the production of their vulnerabilities to harm.<sup>139</sup> Current laws see the police play the dual role of both law enforcers and protectors from harm, and thus, disempower the police from taking affirmative action to protect sex workers. Numerous officials in the police force itself have highlighted the ‘impossible position’<sup>140</sup> officer’s find themselves in. For if a woman reports a crime and in doing so reveals she is working in a brothel, the officer in question is compelled by law to act on the evidence of criminality.<sup>141</sup> In a response to the consultation process, one submission from the Association of Chief Police Officers (ACPO) stated that police forces were currently ‘operating in a policy vacuum’ where ‘too often individual damage has been seen as an ‘occupational hazard’ for sex workers, instead he argues ‘such an attitude can have no place on modern Britain, and especially not in any police strategy seeking to address the problems caused by prostitution.’<sup>142</sup>

These police practices perpetuate the social stigma and exclusion experienced by sex workers. At present, the policing of sex work in the UK reproduces sex workers’ status as second-class citizens as ‘while citizens fear criminality, sex workers fear both police and criminals.’<sup>143</sup> As previously explored in this chapter, the policing of sex work activities are inconsistent and unpredictable, leaving the sex workers under a constant fear of arrest and mistrust of the police. Often, police attitudes can differ markedly from division to division and from individual officers, leaving sex workers in a state of uncertainty as they may be tolerated one week and arrested the next.<sup>144</sup> Phil Hubbard has highlighted the way in which the police deploy the law in different contexts and situations, concluding that ‘the way that the law has been interpreted and enacted by the police has been shown to be, at best, arbitrary, indistinct and confused, and, at worst, sexist and racist.’<sup>145</sup> Similarly Sharpe has also found that police tactics and strategies for policing differ significantly across space dependant on a number of variables including levels of staffing, financial constraints and the discretion of senior police

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<sup>139</sup> Phil Hubbard, N128, 28

<sup>140</sup> Andrew Boff, ‘Silence on Violence: Improving the Safety of Women’ (*GLA Conservatives*, March, 2012) <<http://glaconservatives.co.uk/campaigns/silence-on-violence/>> 34

<sup>141</sup> *Ibid*, 34

<sup>142</sup> Strategy & Supporting Operational Guidance for Policing Prostitution and Sexual Exploitation (Association of Chief Police Officers, 2004) 13 in Phil Hubbard, N105, 22

<sup>143</sup> Phil Hubbard, N128, 28

<sup>144</sup> *Ibid*, 7

<sup>145</sup> *Ibid*, 8

officers.<sup>146</sup> Inconsistent policing practices and arbitrary ‘crackdowns’ mean that working women have no clear sense of what is acceptable and work under a constant fear of arrest.<sup>147</sup>

Therefore, as this section has shown, the constant fear results in women working in darker and more isolated locations to avoid the police and seriously damages the relationship between sex workers and the police. It means sex workers feel unable to report crimes committed against the police and means they rarely rely on the police to come to their aid in such an attack. Sex workers learn to adjust to ‘recognise the rules of the game, and tactically adjust to work in times and places where they do not attract the unwelcome attention of the police.’<sup>148</sup> Importantly, this precarious relationship with the police means that crimes against sex workers are likely to go unreported, leaving them at an even greater risk of gratuitous violence.

### **A Change on the Horizon? Towards Criminalising the Client**

There has been little legal development since the 2009 Policing and Crime Act, which saw the focus of the ideology behind the law governing sex work shift towards protecting the worker. However, in the past year there has been a recent flurry of policy reports and debates over the future of regulating sex work in England and Wales, mainly centring upon introducing the Swedish model into the UK.<sup>149</sup> Firstly, in March 2014, an All-Party Parliamentary group for England and Wales on Prostitution and the Global Sex Trade published a report entitled ‘*Shifting the Burden*.’<sup>150</sup> Influenced by the Swedish model of criminalisation, the report recommended ‘a shift in the burden of criminality from those who are the most marginalised and vulnerable – to those that create the demand in the first place.’<sup>151</sup> Furthering this possible move towards criminalising the clients is the Honeyball Report.<sup>152</sup> Proposed by London MEP Mary Honeyball, this report understands sex work as the commodification of women’s bodies and was backed in the European Parliament with 343 MEPs for, and 139 against.

The second development in the arena of sex work is the current proposal for the introduction of the Modern Slavery Bill 2014, currently going through the consultation process in Parliament. This piece

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<sup>146</sup> Karen Sharpe, *Red Light, Blue Light: Prostitutes, Punters and Police*: (London Ashgate: 1998)

<sup>147</sup> Teela Sanders N111, 1712

<sup>148</sup> Phil Hubbard, N128, 9

<sup>149</sup> Jane Pitcher and Marjan Wijers, N110, 558

<sup>150</sup> *Shifting the Burden: Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales*, All-Party Parliamentary Group on Prostitution and the Global Sex Trade, March 2014

<sup>151</sup> Gavin Shuker, Forward in *Ibid*

<sup>152</sup> ‘Sexual Exploitation and Prostitution and its Impact on Gender Inequality’, (2014) Directorate-General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs, A Report forwarded by British MEP Mary Honeyball

of legislation aimed to ‘consolidate, clarify and improve the existing modern slavery offences.’<sup>153</sup> To do this, it intends to create two offences of ‘slavery, servitude and forced labour’ and secondly of ‘human trafficking.’<sup>154</sup> As both the Modern Slavery Bill and *Shifting the Burden* are extremely recent, their effects on the harms endemic in sex work can only be speculative. Indeed, only recent an attempt to include a provision under the new Bill that would see the criminalisation of clients, introduced by Fiona McTaggart MP, was stopped before voting stage after responses by the English Collective of Prostitutes and Yvette Cooper, MP. As it will be argued in the next chapter, such a move towards criminalising the clients in sex work would be an extremely dangerous development and one which would significantly increase the stigma, violence and exploitation endemic in sex work today.

## Conclusion

It may be difficult to imagine how a modern government could introduce a paradoxical set of laws that place a section of our society at such a high risks of harm. However, when understood within the historical context of the construction of the prostitute as the ‘Other’ and the maintenance of that Otherness within modern law, the societal acceptability of these restrictive laws on this pariah group becomes more easily understood. The official discourse that served to establish the sex worker as the Other in the 1860’s set the foundations for the implementation of the restrictive and controlling laws we see today.

The fluctuating nature of the harms experienced by sex workers demonstrate that harm is not an inevitable consequence of selling sex, but at the mercy of law and official understanding. This chapter has illustrated how the risk of violence, exploitation and stigma is dependent on the laws in which women sell sex. It has exposed the dangerous effects of modern laws that push sex workers into dark and isolated locations where they are at extreme risk of violence, how the current laws create the perfect conditions for exploitative conduct and how much of the harms experienced by sex workers today stem from their position in the residual ranks of society, ostracised from the social and political world. As the laws have such an endangering effect on the lives of sex workers, it is crucial that we maintain an engagement with the law and push for legal reform. Without reform, sex workers will continue to face such extreme and frequent harms with little recourse for justice.

Following this recognition of the ineffectiveness of current laws to decrease the harms faced by the sex worker, the following chapter will search for an alternative form of regulation for England and

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<sup>153</sup> Modern Slavery Bill, Factsheet: Offences (Clauses 1 to 6), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/348371/Factsheet\\_on\\_Offences\\_Clauses\\_1\\_to\\_6\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348371/Factsheet_on_Offences_Clauses_1_to_6_.pdf) accessed 10th October, 2014

<sup>154</sup> Modern Slavery Bill, ‘Explanatory Notes’ <http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0008/en/15008en.htm> accessed 10<sup>th</sup> October 2014, 3

Wales. Using the harm framework of violence, exploitation and stigma it will explore the potential benefits of regimes that criminalise the clients, regimes of legalisation and those of decriminalisation to reduce the harms experienced by sex workers.

## CHAPTER 4

### WHAT ELSE IS OUT THERE? ALTERNATIVE MODELS OF REGULATION

The previous chapter demonstrated the power of the law in regulating sex work. It showed how since the Contagious Disease Acts, the harm faced by sex workers in England and Wales have been produced, intensified and maintained through the use of the law. This chapter moves towards examining alternative systems of regulating sex work and their potential to decrease the harms experienced by the sex worker. As explored in the introduction of this thesis, the law is crucial tool in which to advance social change and this chapter will continue this engagement with the law as a means through which to advance such social progress. As Jane Scoular notes and will be demonstrated here, law is not merely symbolic, ‘it structures subjects, spaces, and forms of power in contemporary sex markets.’<sup>1</sup>

With this in mind, this chapter explores the different ways sex work is regulated worldwide and examines their effectiveness in reducing the harms suffered by sex workers. Like the law in England and Wales, the differing approaches of criminalisation, legalisation and decriminalisation will demonstrate the ability of the law to structure the life of the sex worker and their relationship with harm. The differing models will demonstrate ‘the way law and regulatory norms operate to support or to challenge the structures and conditions of the contemporary sex industry’<sup>2</sup> and most notably its capacity to reduce, maintain or increase the sex workers experience of harm. Behind the regulatory models of decriminalisation, legalisation and criminalising clients, lie broader aims of the policy, be it to eliminate sex work, to tolerate it or to reduce its harms.<sup>3</sup> The so-called ‘end result’ of the policy will correspond to the dominant philosophical assumptions that underpin the differing regimes, and consequently, their understanding of harm and sex work itself.<sup>4</sup> These legal discourses that shape the law, whether arguing that harm is inherent or endemic in sex work, create the Truth of harm in sex work, influencing how society should understand the sex industry and disqualifying less powerful or influential experiences.

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<sup>1</sup> Jane Scoular, ‘What’s Law Got to Do with it? How and Why Law Matters in the Regulation of Sex Work,’ (2010) *Journal of Law and Society* 37 (1)

<sup>2</sup> Jane Scoular and Teela Sanders, ‘Introduction: The Changing Social and Legal Context of Sexual Commerce: Why Regulation Matters’, 2010 *Journal of Law and Society* 37 (1), 4

<sup>3</sup> Jo Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009),

<sup>4</sup> Gillian Abel, ‘Decriminalisation: A harm minimization and human rights approach to regulating sex work,’ (University of Otago, Dudgeon New Zealand, 2012) 13

The danger here lies with governments that adopt an understanding of harm that views it as inherent and thus unavoidable within the industry, the implications of which manifest itself in regimes that seek to eradicate sex work, not make the conditions in which women sell sex safer. As I will demonstrate, through regimes that rely on the criminal law to regulate sex work, using Sweden as an example, when countries and political regimes adopt an understanding of harm in sex work as gendered violence against women, they can then justify their own inactivity in reducing the stigma, violence and exploitation endemic in sex work whilst silencing the lived experiences of sex workers on the ground. If however, as this chapter will illustrate, governments listen to sex workers and acknowledge the complexity and specificity of harms through a decriminalisation approach, such as the legal regime seen in New Zealand, governments can become proactive by aiming to introduce real and effective change that aims to make selling sex safer and reduce stigma, violence and exploitation.

### **Criminalising Clients and Sweden**

The first regime that will be explored here is one currently used to regulate sex work in Sweden. Often dubbed the Nordic model, in 1999 the Swedish government introduced a new law that criminalised the purchaser of sex and decriminalised the actions of the sex worker. Unlike England and Wales that criminalises many activities of the sex worker, under the Prohibiting the Purchase of Sexual Services Act 1999 selling sex is wholly decriminalised, whereas paying or offering to pay for sexual services is criminalised with potential imprisonment up to 6 months and/ or fines.<sup>5</sup> In effect, the offense comprises all forms of sexual services, whether purchased on the street, in brothels, in so-called massage parlours, escort services, or in other similar circumstances.<sup>6</sup> Under this scheme the criminal law is the main means used to manage, control, repress, prohibit or otherwise influence sex work.<sup>7</sup> Importantly, throughout debates forming the law there were no consultations with sex workers or sex work organisations,<sup>8</sup> and thus no opportunity to listen to the potentially dangerous impact that criminalising the client would have on sex workers. Instead, the focus on the criminal law was ‘driven by strong moral judgements about the undesirability of sex work,’<sup>9</sup> adopting a radical feminist understanding of the so-called inherent harms. The result of such an ideological understanding of sex work and harm was a set of laws that serve to wholly misunderstand the complexity of harms by sex

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<sup>5</sup> Prohibiting the Purchase of Sexual Services Act 1999, makes Chapter 6, Section 11 of the Swedish Penal Code, ‘Procuring’ applicable to men or women who buy sex.

<sup>6</sup> Gunilla Ekberg, ‘The Swedish Law That Prohibits The Purchase Of Sexual Services: Best Practices For Prevention Of Prostitution And Trafficking Human Beings’ (2004) *Violence against women*, 10, 1198

<sup>7</sup> Jo Phoenix, *Regulating Sex for Sale* (the Policy Press, 2009), 15

<sup>8</sup> A Gould, ‘The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden,’ (2001) *Journal of Law and Society* 30 (3) 437- 456; Don Kulick, ‘Sex in the New Europe: the criminalization of clients and Swedish fear of penetration’ (2003) *Anthropological Theory* 3 (2) 119-218

<sup>9</sup> The Open Society, ‘Laws and Policies Affecting Sex Work’, Sexual Health and Rights Project (New York) 2

workers, ignoring and maintaining the stigma, violence and exploitation suffered by women selling sex.

### **A Gendered Approach to Harm**

As explained in previous chapters, the results of law adopting a certain understanding of sex work and the nature of its harms is to marginalise and silence alternate viewpoints, as other knowledge's are accorded less status and less value.<sup>10</sup> This is a key insight to explain how the marginalisation of the lived experiences of sex workers is achieved in Sweden. Throughout policy debates and official documents the Swedish government constructed the nature of harm in sex work to be inherent and unavoidable for both the women selling sex and for women throughout society. As explained by Jay Levy such an ideological position is used to justify a law that has resulted in further endangering sex workers through their displacement yet simultaneously 'ridding Sweden of perceived aesthetic and social blight by displacing visible prostitution, while Sweden postures as a progressive state that recognises prostitution as a form of violence.'<sup>11</sup> Thus, like in modern England and Wales, the Swedish approach to regulating sex work also represents the dangerous consequences of laws that fail to understand the experiences of women selling sex.

This marginalising discourse began in the debates leading up to the introduction of the law, where the notion that sex work is intrinsically degrading to women and a form of violence, was the most powerful argument and 'totally eclipsed alternative views.'<sup>12</sup> This was summarised by the Minister for gender equality, Margaretha Winberg who stated, 'the Swedish government has explicitly noted that the female body cannot be looked upon as merchandise which can be bought or sold... If there were no customers looking upon women's bodies as objects, there would be no market where the victims of this trade could be offered and exploited.'<sup>13</sup> Thus for the political majority in Sweden the new law symbolised an attempt to address the so-called 'root cause' of sex work, that is, the buyers. As Don Kulick notes, the official aim of the law was to 'mark a stance' or 'send a message' that society did not accept sex work; hence, 'the impact of the law on prostitutes was of secondary concern.'<sup>14</sup> For its supporters, the significance in the legal change was that it sends 'a message that society does not accept prostitution.'<sup>15</sup> This is the idea that through criminalising the buyer, the law represents 'a

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<sup>10</sup> Carol Smart, *Feminism and the Power of Law*, (Routledge, 1989) 9

<sup>11</sup> Jay Levy, Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers' *Criminology and Criminal Justice*, 2014, 14 (5) 598

<sup>12</sup> *Ibid*, 196

<sup>13</sup> Jo Phoenix, N3 30

<sup>14</sup> Don Kulick, Sex in the New Europe: the criminalization of clients and Swedish fear of penetration (2003) *Anthropological Theory* 3 (2) 204

<sup>15</sup> Gunilla Ekberg, N6, 1999

concrete and tangible expression of the belief that in Sweden women and children are not for sale’<sup>16</sup> The official understanding on the nature of harm in sex work used to justify a legal approach that focused on its eradication, not improving the conditions in which women sell sex.

The Swedish focus on the symbolic strength of the legal change fails to recognise the role of law within wider society, and its consequent effects on the lives of sex workers. This approach silences the lived experiences of sex workers and denies the interconnectedness of the violence, stigma and exploitation suffered within the wider society, and instead places full responsibility on the men who buy sex for the existence of sex work itself. It fails to address the role of the law in maintaining and structuring the harms experienced by sex workers, and as will be explored, served to further marginalise the sex worker and place her at a much higher risk of harm.

### **Sweden: Violence, Stigma and Exploitation**

Before exploring the effects of the Swedish approach to sex work, it should be first recognised that measuring the ‘success’ of sex work regulation regimes is extremely subjective. For supporters of the Swedish legislation, its effectiveness is not judged by reduced levels of violence, conviction rates or support services, but by a decrease in the number of women selling sex and conviction rates of men buying or attempting to buy sexual services.<sup>17</sup> The supporters of the Swedish model rarely measure its success in terms of increased safety of women selling sex, that is, the levels of violence, exploitation and stigma suffered, but instead simply look towards statistics exploring the number of women involved in sex work. Shelia Jeffreys summarises her support by stating, ‘the positive effects of the law are that street prostitution has declined in all parts of the country and the majority of ‘prostitution buyers’ have disappeared.’<sup>18</sup> Similarly, justifying her support for the legislation, Gunilla Ekberg refers to the decline in numbers of women working on the streets and the decline of purchasers of sex.<sup>19</sup> When the new law was introduced in 1999, she argues, very large decreases in women selling sex were reported in Sweden’s three largest cities. Gothenburg reported the largest decrease, where it was estimated the number of women involved in street prostitution had diminished by over two-thirds compared to the previous year. Furthermore, 734 males have been reported under the law since 1999 to April 2004, where after education programmes throughout the police force,

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<sup>16</sup> Ibid, 1210

<sup>17</sup> Yvonne Svanstrom, ‘Prostitution in Sweden: debates and policies 1980-2004’ in G. Gangoli and N. Westmarland (eds) *International approaches to prostitution: Law and Policy in Europe and Asia*, (Bristol, The Policy Press) 76

<sup>18</sup> Sheila Jeffreys, *The Industrial Vagina: The Political Economy of the Global Sex Trade*, (Routledge, 2008), 203

<sup>19</sup> Gunilla Ekberg, N6, 1198- 1190



there was a 300% increase in arrests.<sup>20</sup> However, it is important here to note here that it remains difficult to rely on such estimates regarding the number of women selling sex in Sweden, as it will be explored further below, one of the dangerous consequences of such a legal change was to push women selling sex underground, where they remain undocumented and away from the public eye.

We should move away from statistics focusing on the numbers of women selling sex and instead, look towards the personal experiences of the women on the ground and the instances of violence, stigma and exploitation as a more accurate means of measuring the success of legal change. Under this harm framework, it is clear that such a criminalised approach is extremely *ineffective*, placing sex workers at a much-heightened risk of harm. In reality the law makes the life of a sex worker in Sweden both difficult and unsafe. Through silencing the experiences of sex workers, the law was enabled to perpetuate the three main harms endemic in sex work, increasing their risk to exploitation, violence and social stigma.

### **Exploitation Underground in Sweden**

Firstly, the Swedish model demonstrates that criminalising clients place sex workers at a greater risk of exploitation, pushing them underground into invisible and unregulated locations. Although the commonly reported statistics may point to a decrease in sex work,<sup>21</sup> on closer examination, it seems that this is only the case for certain forms of *visible* sex work. As Svanstrom argues, one of the major difficulties by the Swedish government specifically targeting street sex workers, is that it remains extremely difficult to ascertain the effect of the introduction of the criminal law on indoor workers and indeed the number of women moving from working from street to indoor premises.<sup>22</sup> Despite this, many have argued that a reduction in women working on the streets in Sweden occurred together with a rise in the number of women working in the invisible, indoor sector. To avoid the criminal law, sex work was moved further from the public eye, away from enforcement agencies and pushed underground. Research has shown that although half of the street workers disappeared almost at once as the law was introduced the introduction of the law, the results also corresponded to an increase in the number of sex advertisements on the Internet.<sup>23</sup> The law led to a crackdown on street sex workers where clients were more visible and vulnerable to arrest and an expansion of the indoor market.<sup>24</sup>

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<sup>20</sup> Ibid at 1200

<sup>21</sup> Socialstyrelsen 2000 and 2003 in Don Kulick, N14 199

<sup>22</sup> Yvonne Svanstrom, N17, 76

<sup>23</sup> Liv Jessen 'Prostitution seen as violence against women' in Sophie Day and Helen Ward (eds) *Sex Work, Mobility and Health in Europe* (Keegan Paul, 2004)

<sup>24</sup> Jane Scoular, 'Criminalising 'Punters': Evaluating the Swedish prostitution on prostitution' (2004) *Journal of Social Welfare and Family Law* 26(2) 195 - 210

Such a move of sex workers to unregulated indoor premises leaves women more isolated than before, which leaves them open to exploitation at the hands of brothel keepers and third parties.<sup>25</sup> Importantly, Swedish sex workers have none of the rights accorded to workers in other occupations and therefore they are open to coercion and exploitation by managers, pimps and clients.<sup>26</sup> With no safe working standards, little positive relations with the police and a lack of social services to support the underground sex market, it is an extremely unsafe environment for women. Adding to this vulnerability is the Swedish law that criminalises third parties, where like in England and Wales, if women work together indoors and pay each other for rent or expenses, they can be criminalised under laws against brothel-keeping or profiting from sex work.<sup>27</sup> This provides sex workers with more incentive to remain hidden and alone, and at a much heightened risk of harm.

On the contrary to government statements that argued the law would decrease the exploitation and abuse suffered by sex workers, a number of academics have argued that the law has made it more difficult to locate and prosecute traffickers and exploiters as relations with the police become more strained and women selling sex are hidden in their underground locations.<sup>28</sup> The inability of the law to ‘tackle’ the demand (and thus the ‘exploitative party’) is apparent when examining the conviction rates after the legal change. In fact, a study by the National Council for Crime Prevention reported that during the first year of the laws introduction, 91 police offence reports were filed, most of which were discontinued due to insufficient evidence.<sup>29</sup> Further, by 2000, only seven cases against third parties had gone to court, 6 of which gaining convictions.<sup>30</sup> Faced with these statistics, it clear that the law is not working and doing very little to reduce the exploitation endemic within sex work whilst creating the perfect conditions for exploitation in the invisible indoor industry.

### **Violence, Displacement and the Police**

Closely linked to exploitation comes to the risk of violence stemming from the criminalisation approach. Criminalising third parties results in the displacement of the street sex worker, the dangers of which were discussed in the previous chapter in relation to the current law in England and Wales. Similarly in Sweden, displacement caused by criminalising clients has resulted in placing the street sex worker at an extremely heightened risk of extreme and gratuitous violence. Some women have reported that because there are fewer clients soliciting on the streets, women have been forced to lower their prices, are more willing to accept greater sums for unprotected sex and are less likely to be

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<sup>25</sup> Jo Phoenix, N3 16

<sup>26</sup> Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation* (Policy Press, 2010) 4

<sup>27</sup> Don Kulick N14, 203

<sup>28</sup> Don Kulick N14 203

<sup>29</sup> Ibid, 203

<sup>30</sup> Ibid, 203

picky when assessing potential clients.<sup>31</sup> As Jane Scoular found in her recent study of the law in Sweden, due to their need to protect their clients under increased policing, sex workers must conclude their negotiations under duress, in quieter and darker locations and with no time to screen clients.<sup>32</sup> In Sweden ‘by criminalising the buyer, the person selling sex becomes the protector of their potential clients,’<sup>33</sup> and take more risks to ensure the safety of their clients, and thus, their business. Under these laws the worker is forced to find locations in which there is little chance of police disturbance or CCTV and thus, a greater risk of violence. As opposed to their protectors the police become the main hindrance to their work as women expose themselves to significant risk in order to avoid the enforcement agencies.

### **Further Stigmatising the Sex Worker**

Lastly when it comes to stigma, by avoiding the governmental responsibility to include sex workers into various aspects of community life, criminalising laws increase the marginalisation of the sex worker. They serve to reproduce the social and moral discourse of the sex worker as an essentialised victim, of which should be protected with the criminal law. Failing to acknowledge or understand the devastating effects of stigma for women selling sex, one report published by the Swedish government stated that the negative effects of stigma ‘must be viewed as a positive from the perspective that the purpose of the law is indeed to combat prostitution.’<sup>34</sup> Especially for the sex workers that choose to remain in the occupation, in Sweden stigma and the harms stemming from it are not only ignored but are encouraged. Instead of aiming to reduce its extremely dangerous effects, this policy model *relies* on stigma to discourage buyers of sex, with a hope that such a public pressure will force them to conform. How can a law that ‘focuses on increasing the social stigma against buyers, as well as sellers, of sex’<sup>35</sup> reduce the very real harms faced by women on a daily basis as a result of such social exclusion? Here the doctrine of disposal<sup>36</sup> is retained as the law cements those involved in the sex industry as deviants and women continue to be subject to violence and exploitation as a result of the status of the sex worker as a second class citizen unworthy of the same rights and protections as the rest of the public.

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<sup>31</sup> Jane Scoular, N24, 210

<sup>32</sup> Jane Scoular, N24, 200

<sup>33</sup> Ruth Jacobs, ‘APPG on Prostitution and the Global Sex Trade Report "Shifting the Burden" Increases Violence Against Women’ in The Huffington Post, 07/04/2014, [http://www.huffingtonpost.co.uk/ruth-jacobs/violence-against-women\\_b\\_5102413.html](http://www.huffingtonpost.co.uk/ruth-jacobs/violence-against-women_b_5102413.html)

<sup>34</sup> Ann Jordan, ‘The Swedish law to Criminalise Clients: A Failed Experimental in Social Engineering’ Program on Human Trafficking and Forced Labour, *Centre for Human Rights and Humanitarian Law*, Issue 4, 2012, 4

<sup>35</sup> *Ibid*, 2

<sup>36</sup> See John Lowman, ‘Violence and the Outlaw of (Street) Prostitution in Canada’ (2000) *Violence Against Women*, 6, (9) as discussed in chapter 1

## Rejecting Sweden

Although the Swedish model is often dubbed the ‘end violence against women’ approach by its supporters, I argue here that the Swedish approach to sex work is *in and of itself* violence against women. It places women at a serious risk of danger and harm; it refuses protection from workplace exploitation and further increases the social stigma and marginalisation of sex worker. Despite this, ‘the popularity of the Swedish approach is such that it frequently takes centre stage whenever prostitution policy is on the political agenda.’<sup>37</sup> As was noted in the previous chapter, this certainly seems the case in England and Wales.

## Legalisation

After rejecting the Swedish approach of criminalising the clients, I will now look towards the potential benefits and drawbacks of regimes of legalisation to reduce the stigma, violence and exploitation suffered by sex workers. For some, regimes of legalisation ensure the safety of sex workers, whilst putting in place sufficient safeguards and criminal sanctions to control and regulate the industry. Within regimes of legalisation the state takes an active role in the control of sex workers and their industry, much like the way tobacco and alcohol, for example, are controlled in many countries.<sup>38</sup> Still relying on the criminal law to outlaw unregulated sex work, regimes of legalisation control where, when, and how sex work can take place.

## The Differing Models of Legalisation

Underlying regimes of legalisation is the acknowledgement that sex work is a unique industry and thus requires special protections and state regulations, maintaining the idea that sex work and consequently its workers, are unlike other workers. It is a model of intervention in which some of the criminal justice sanctions regarding the sale and purchase of sex are removed and replaced by civic regulations regarding the legal status of the contract between the seller and the purchaser of sex, and the conditions in which it is permissible to sell sex.<sup>39</sup> These regimes still retain an important role for the criminal law in setting out the permissible form of sex work, for instance in geographical locations, registration of workers, size of establishments and so forth and still controlling the worker and third parties through sanctions. However, the degree of control and the conditions of regulation

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<sup>37</sup> Ronald Weitzer, *Legalising Prostitution: From licit vice to lawful business* (New York University Press, 2012) 76

<sup>38</sup> *Laws and Policies Affecting Sex Work: A Reference Brief*, The Open Society < Accessed 16 March 2014 <http://www.opensocietyfoundations.org/sites/default/files/sex-work-laws-policies-20120713.pdf>

<sup>39</sup> Jo Phoenix, N3 17

under legalisation regimes can result in as significant risks to the safety of sex workers than in regimes of criminalisation.

Due to the flexible nature of the term ‘legalisation’ it can encompass many different policies that rely upon both regulatory practices and the criminal law to control the sex industry. Legalisation regimes can be found in countries such as the Netherlands, Germany, Switzerland, Denmark and Austria and in these countries alone, the systems of legalisation vary significantly. The various levels of governmental control on the industry may include licensing of businesses, registration of sex workers, health checks (e.g mandatory condom use, periodic HIV and STD tests) or geographic restrictions (such as zoning in designated red-light districts or prohibitions near schools, churches etc), age restrictions, and other rules for workers, managers and clients.<sup>40</sup> This is important to note, as when considering potential benefits of legalisation, much depends on what exactly is regulated.<sup>41</sup> For instance, as Jo Phoenix points out in the Netherlands individuals have to be 18 years and older to be sex workers, but only 16 years old to be clients, while in Greece it is not possible for married women to register as prostitutes.<sup>42</sup> Many countries that legalise the selling of sex can also require sex workers to register with a licensing authority such as the local authority or courts, which may also occasionally involved compulsory health checks for sex workers or a range of other prescriptions.<sup>43</sup> Under the umbrella term ‘legalisation,’ by maintaining the special status of sex work, the sex worker could be subject to strict requirements and could in fact, be subject to as much control over the way she lives her life as regimes of strict criminalisation.<sup>44</sup> As Jo Phoenix notes, the paradoxical point to be made about legalisation is that ‘in an effort to provide a symbolic message that sex work is work like any other, the implementation of special measures or regulations for sex workers serves to increase the distinction between sex workers and other low-paid, casual and exploited workers.’<sup>45</sup> By maintaining the uniqueness of sex work through exceptional legal treatment and the criminal law, such laws continue to reproduce the status of the sex worker as the Other, subject to extreme and unique legal treatment and justifiably subject to the control of the criminal law.

Due to the potentially strict conditions under legalisation such as, strict licensing requirements, strict immigration conditions and strict registration requirements, there is a significant risk of women selling sex to be working in underground and unregulated premises where violence and exploitation remains high. Furthermore, the high levels of state control within such capitalist societies often result

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<sup>40</sup> Ronald Weitzer, N37 77

<sup>41</sup> Ibid, 85

<sup>42</sup> Jo Phoenix, N3, 18

<sup>43</sup> Ibid 17

<sup>44</sup> English Collectives of Prostitutions, ‘Campaigning for Legal Change’ in Annette Scambler and Graham Scambler (eds), *Rethinking Prostitution: Purchasing Sex in the 1990s* (Routledge, 1996)

<sup>45</sup> Jo Phoenix, N3 18

in the principle of harm-minimisation taking a back seat, as profit and business capital come to the foreground in regulating the industry, as seen in Germany. This is a significant difficulty in legalising sex work, that is, seeking to ensure that the interests of businesses do not dominate the legal trade.<sup>46</sup> The problems linked to legalisation and the nature of the risk of harms stemming from such an introduction mean that, more often than not, the legalisation of sex work is ‘a model of intervention that works primarily at a symbolic, rather than a practical level.’<sup>47</sup>

### **Exploitation and Stigma in Legalisation**

When it comes to the risk of exploitation in sex work many often refer to the improved working conditions and worker’s rights that come as a consequence after legalisation. As Phil Hubbard et al found in their consultation paper, the ‘legalisation of brothels has undoubtedly improved working conditions within many regulated brothels, and it is significant that the number of sex workers registered for tax purposes doubled between 2000-2004.’<sup>48</sup> Indeed, hoping to improve the working conditions of sex workers in the Netherlands, since 2000 the emphasis has been on regulating and controlling businesses to a greater extent than controlling individual workers.<sup>49</sup> Businesses are deemed legal if the government has issued a license for the premises. To obtain a license, business must conform to certain rules regarding the safety of sex workers such as, security, fire safety, building codes, and hygiene. The capacity of licensing systems under legalisation to reduce the risk of violence and exploitation of sex worker was also highlighted by Brents and Hausbeck, who researched the introduction of the licensing of brothels in Nevada, America.<sup>50</sup> In the licensing system of Nevada, the rationale for the regulations is almost ‘exclusively based upon the rhetoric of risk and violence associated with prostitution.’<sup>51</sup> Common safety mechanisms found in the brothels was the use of panic buttons, regular STI checks, safe guidelines for the negotiation process, control of customer behaviour and good relations with the police, all safety mechanisms that together contributed towards obtaining a working license.<sup>52</sup> In order to protect the economic and legal viability of their business, brothel owners must demonstrate they can protect their worker’s health and safety. As Brents and Hausbeck found, ‘brothel owners have a clear interest in maintaining their image as

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<sup>46</sup> Ibid, 18

<sup>47</sup> Ibid, 18

<sup>48</sup> Ibid, 11

<sup>49</sup> Ronald Weitzer, N37 152

<sup>50</sup> Barbara Brents and Kathryn, ‘Violence and Legalised Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy’ (2005) *Journal of Interpersonal Violence* 20 (3) 225

<sup>51</sup> Ibid, 275

<sup>52</sup> Ibid, 227

law-abiding, trouble-free businesses to keep their licenses and maintain good relations within their communities.’<sup>53</sup>

However, although Brents and Hausbeck noted that for some sex workers working conditions had significantly improved, they also found that due to the lack of specific safeguards in protecting women selling sex from exploitative working conditions, there was ‘leeway in the interpretation of official regulations’ and thus, selective employment of good working conditions.<sup>54</sup> As Brents and Hausbeck have noted, as the state’s labour laws do not cover brothels in Nevada, sex workers are at risk of poor working conditions and threats to their health and safety.<sup>55</sup> In this sense, this was one of the major drawbacks for Brents and Hausbeck in the legalised brothels in Nevada, that is, that the safety mechanisms in place ‘are clearly those that protect profitability for owners.’<sup>56</sup> That is, that the safety of the industry was not dependant upon creating safe working conditions for the sex worker but ‘a safe, conflict-free transaction... is built into the operating structure of brothels as a means to sustain the economic and social viability of the legalised prostitution industry.’<sup>57</sup>

One example of the lack of non-exploitative working practices is the strict controls that are often imposed onto sex workers under systems of legalisation where the safety of indoor premises is often achieved at the expense of the autonomy and freedom of the sex workers. For instance, the indoor premises in Nevada closely monitor the movement and actions of its sex workers. Owners always know when workers are on shift and the majority do not allow women to leave the premises when on a contract to work, even if they are not on shift.<sup>58</sup> As Brents and Hausbeck found, ‘most brothels identify specific days when women can go to the store or run errands; some do not even allow that.’<sup>59</sup> At the expense of safe working conditions, women are commonly under lock-down and extreme supervision and remain marginalised from the rest of society. Under such regimes, there exists no impetus to include sex workers with the rest of society, as they remain marginalised and controlled. Thus, although legalisation may offer some safer working practices and conditions, it may do so at the expense of the autonomy and independence of the worker. As shown by Brents and Hausbeck, within regimes of strict legalisation and state control of brothels, the sex workers status as the Other is maintained as she still remains isolated from other workers and treated as a separate category of persons with different protections and rights of autonomy. In this sense, her stigmatised status is

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<sup>53</sup> Ronald Weitzer, N33 281

<sup>54</sup> Barbara Brents and Kathryn Hausbeck, ‘State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels’ (2001) *Sociological Perspectives* 44 (3) 326

<sup>55</sup> *Ibid*, 326

<sup>56</sup> *Ibid*, 227

<sup>57</sup> *Ibid*, 227

<sup>58</sup> *Ibid*, 284

<sup>59</sup> *Ibid*, 284

retained, as the state relies upon such a differential status to justify the special control of the sex worker.

### **The Underground Industry – Violence and Exploitation**

Although the working conditions may have improved for some sex workers under regimes of legalisation, in most legalised countries there remains a vast number of sex workers that remain on the outside of the benefits of legalisation and at a much heightened risk of violence and exploitation. What has been dubbed as the ‘growing division in the prostitution world,’<sup>60</sup> is one of the major limitations of the legalisation approach, that is, the risk of creating a two-tiered system of regulation. This is the danger that the women who, for some reason, fail to qualify for the rights and protections afforded by legalisation are then pushed in the underground sector where risk of vulnerability and exploitation remains higher than ever. Within any form of legalisation regimes, the level of control and qualifications for legitimate entry into the industry will inevitably result in the exclusion of a large number of sex workers, where ‘involuntary prostitutes, underage prostitutes or illegal prostitutes are relocated from the regulated sector to the unregulated sector [in] forms of prostitution that are difficult to monitor.’<sup>61</sup> There is a clear correlation between strict controls over brothel licensing and the number of workers pushed underground; the harder it remains to gain a licence, the more workers remain in unprotected and illegal establishments. This is clearly seen within the system of Victoria in Australia, which is notorious for the vast numbers of sex workers that are working in the dangerous underground sex industry,<sup>62</sup> at significant risk of exploitation by third parties. In Victoria, the growth in the number of underground workers is largely down to the system of verification of brothels being onerous and expensive, resulting in high levels of non-compliance.<sup>63</sup> Within this system local councils retain the power to license brothels and planning laws have frequently been interpreted too rigidly and applications for licensing outside designated zones have successfully been blocked by local councils.<sup>64</sup> Placing further restrictions on sex workers is the fact the term brothel remains undefined in law resulting in situations where one or two workers have fallen under the definition of brothel, meaning many private workers operate illegally due to the difficulty they experience trying to comply with council requirements to operate within designated areas.<sup>65</sup>

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<sup>60</sup> Annelies Daalder, ‘Lifting the Ban on Brothels: Prostitution in 2000-2001’ (Ministry of Justice, 2004) 50

<sup>61</sup> Ibid, 50

<sup>62</sup> Alison Arnot, ‘Legalisation of the sex industry in the State of Victoria, Australia: The impact of prostitution law reform on the working and private lives of women in the legal Victorian sex industry’, (Department of Criminology, University of Melbourne, 2002)

<sup>63</sup> Gillian Abel, ‘Decriminalisation: A harm minimization and human rights approach to regulating sex work’, *University of Otago, Dunedin*, June 2010, 25

<sup>64</sup> Ibid, 26

<sup>65</sup> Ibid, 26



This underground sector where vulnerability and exploitation remains high is the most significant barrier to protecting sex workers from harm within regimes of legalisation. The underground sector in the Netherlands, for instance, is thought to be growing rapidly. A study by van der Helm and van Mens in 1999 estimated there were approximately 25,000 sex workers in the Netherlands in any one year, fifty per cent of which are not nationals of the European Union and thus cannot qualify as legal sex workers, and consequently cannot be attributed the rights and protections afforded to legal sex workers.<sup>66</sup> Furthermore, brothel owners will be prosecuted if they employ such persons. This places these women at a high risk of exploitation and vulnerability from third parties. Their employers have no obligations to provide for safe working conditions and their clients need not be afraid of legal repercussions if they harm or steal from the women due to their reluctance to report. In this sense, the major risk of legalisation regimes can be seen clearly within the Netherlands example. Here, a two tier system is being created, 'with a legal sector, in which workers may win the same employment, civil and other rights as all other nationals of the European Union, and an illegal sector, in which workers are excluded from civil society and have few rights to health care, social benefits or protection at work and little recourse to the law should they suffer abuse.'<sup>67</sup> Thus, although the law appears to have enhanced the safety of workers and reduced coercion in the legal sector, in the illegal sector conditions have 'barely changed' and as a government report stated, 'business owners hold a solid position of power in relation to the women doing the work.'<sup>68</sup>

### **Exploitation: Replacing 'Pimps' with 'Business Owners'**

Aside from dangers of a two-tiered result as seen in the Netherlands, there is another major concern regarding legalisation and the vulnerability and exploitation of sex workers. This the result of legalising sex work as a business and its wider context within a capitalist market. Not unique to sex work itself, this barrier to safety is the difficulty of legally providing a mechanism by which individuals can enforce their legal and contractual rights, and ensuring the interests of business do not dominate the sex trade.<sup>69</sup> This has been a large concern in Germany, where the legalisation of brothels has led to the establishment of so-called 12 –storey 'mega brothels' and the growth of the industry, now valued at 15 billion euros a year. Since 2002, procuring, managing, and promoting prostitution are no longer crimes, provided that these actors do not curtail a worker's 'personal or financial

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<sup>66</sup> Judith Kilvington, Sophie Day and Helen Ward, 'Prostitution Policy in Europe: A time of change?' (2001) *Feminist Review*, 67, 86

<sup>67</sup> *Ibid*, 86

<sup>68</sup> Ronald Weitzer, N36 166,

<sup>69</sup> Jo Phoenix, N3 18

independence.<sup>70</sup> In Germany sex workers have certain contractual rights and forcing a woman to accept a particular client or engage in specific practices is criminalised, but unlike other legal systems, the law does not regulate other working conditions such as conditions to improve the health and safety of workers.<sup>71</sup> Thus it seems following this scheme of legalisation, the capitalisation of sex work became the priority, with the safety of the industry's workers consequential. This became clear in a government report which stated that there had been 'hardly any measurable, positive impact' on working conditions as a result of the 2002 law and added that 'it is not surprising that working conditions are not improved unless they also fulfil the economic interests of the operator.'<sup>72</sup> The major concern here is that this scheme of legalisation has done very little to prevent the exploitation of sex workers. Some academics have observed that the 2002 law resulted in a 'domestication process' that changed how the media saw 'pimps,' who became businessmen under the new laws, with profit as the sole focus.<sup>73</sup> Thus, despite the initial intention of legalisation regimes to protect the sex worker from harm, under a legalised regime they are vulnerable to capitalist pressures where the importance of the safety of the sex worker is lost as commercial profit and gains take centre-fold.

### Rejecting Legalisation

Although regimes of legalisation may have a strong symbolic rhetoric, in reality under such controlling and strict regimes the risk of exploitation, violence and stigma for sex workers can be as high as they would be under systems criminalisation. For instance, the sex worker could be placed in a work environment that is not subject to the same safeguards and control than other labour environments, where she is at greater risk of exploitation than other workers. On the other hand, if a sex worker failed to meet the (commonly strict) eligibility criteria under schemes of legalisation, she risks being pushed underground where the risk of violence and exploitation remains extremely high, with very few resources for protection or justice as seen with examples of the Netherlands. However, the underlying and most problematic aspect of regimes of legalisation is the continual treatment of the sex worker as the Other. Throughout regimes of legalisation, by treating sex workers as exceptions, requiring specialist legal treatment and criminal law enforcement, her marginalised is upheld and further codified by law as the enforcement agencies and regulatory bodies maintain the marginalisation of the sex worker from the rest of society. As demonstrated in chapter 2, the stigma of the sex worker has very drastic and far-reaching repercussions, as such, it is only until we acknowledge that sex workers are, above all else, women managing risk within our society and therefore, *part of our society*, can we make realistic and achievable positive change towards reducing the harms they experience. Such inclusion of the sex worker cannot be achieved under either schemes

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<sup>70</sup> Ronald Weitzer, N37 116

<sup>71</sup> Ibid, 117

<sup>72</sup> Ibid, 117

<sup>73</sup> Martina Low and Renate Ruhne, 'Domesticating Prostitution' (2009) *Space and Culture*, 12 (2)

of criminalising the client or legalisation, it is only until we decriminalise both the sex worker and her clients that we can begin to make such social change.

## Decriminalisation

Above, I have outlined here how the law in regimes of criminalisation and legalisation serve to disempower sex workers, subject them to extreme and invasive harms. Both regimes fail to secure the safety of the sex worker whilst failing to acknowledge the fundamental role the law plays in constructing and maintaining violence, exploitation and stigma. Moving away from an understanding of sex work as inherently harmful, decriminalisation offers a ‘contrasting picture to the conventional wisdom that prostitution is destined to remain a distasteful practice or oppressive institution under any and all circumstances.’<sup>74</sup> As the model of regulation proposed by the English Collective of Prostitutes<sup>75</sup>, UNAIDS<sup>76</sup>, the World Health Organisation<sup>77</sup> and within the World Charter for Prostitutes’ rights<sup>78</sup>, decriminalisation proposals are preoccupied with the reduction of the specific harms stemming from sex work, that is, stigma, exploitation and violence and as such, harm reduction is a constant and key tenant of such proposals. Crucially, regimes of decriminalisation make the important recognition that selling sex does not have to be oppressive or harmful. Regimes of decriminalisation are ‘an expression of a government’s or society’s view that sex work should not be punished by the harshest penalties and that sex workers should not be cast as criminals.’<sup>79</sup> Consequently, decriminalisation is then, it is argued, ‘the only way to protect the human rights of sex workers and minimise the amount of harm incurred by their occupation.’<sup>80</sup>

## The Law

As its name suggests, the decriminalisation response to sex work sees the removal of the criminal and civil laws applying specifically to sex work and allows sex work to be regulated within current civil law, along with any other occupation. Importantly, the criminal law continues to apply to cases

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<sup>74</sup> Ronald Weitzer, N37, 72

<sup>75</sup> Response from English Collective of Prostitutes to the Criminalisation of the Purchase of Sex (Scotland) Bill (2), accessed 17<sup>th</sup> September, 2014 <http://prostitutescollective.net/wp-content/uploads/2012/12/Scotland-consultation-response1.pdf>

<sup>76</sup> World Health Organisation, Violence against sex workers and HIV Prevention (2001; 2005) accessed 17<sup>th</sup> September, 2014 <http://www.who.int/gender/documents/sexworkers.pdf>

<sup>77</sup> UNAIDS, Global Network of people living with HIV, et al (2010) Making the law work for the HIV response, accessed 17<sup>th</sup> September, 2014

[http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100728\\_HR\\_Poster\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/priorities/20100728_HR_Poster_en.pdf)

<sup>78</sup> World Charter For Prostitutes’ Rights, International Committee for Prostitutes’ Rights, Amsterdam 1985, Published in Gail Pheterson, *A Vindication of the Rights of Whores*: (Seal Press, 1989) 40

<sup>79</sup> The Open Society, ‘Laws and Policies Affecting Sex Work’, Sexual Health and Rights Project (New York) 5

<sup>80</sup> Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor *Taking the Crime Out of Sex Work: New Zealand Sex Workers’ Fight for Decriminalisation* (Policy Press, 2010,) 8

involving extortion, kidnapping, assault, rape and other crimes.<sup>81</sup> Sex work is treated the same as any other trade and the harms stemming from sex work, that is violence, stigma and exploitation are dealt with under existing law and structures. Importantly, decriminalisation represents the shift from regulating sex work from a moral perspective to acknowledging the human rights of this section of the population.<sup>82</sup> By integrating it with other forms of work, the aim of decriminalisation is to make selling sex safer, removing the social exclusion, which makes sex workers vulnerable to harm.<sup>83</sup>

Full decriminalisation itself is rare and the boundaries between schemes of decriminalisation and legalisation can be unclear. For instance, in New South Wales, Australia, brothel sex work is decriminalised but local municipalities still retain the right to pass local ordinances prohibiting street sex work in specific areas.<sup>84</sup> This reluctance of total decriminalisation has resulted in a difficulty for some to distinguish between some regimes of legalisation and decriminalisation. The distinction I will use here is both the role of the criminal law and the extent of government control over sex work, i.e. the legal mechanisms used by the government to regulate paid sexual transactions.<sup>85</sup> As discussed above, regimes of legalisation seek to have strong governmental control with continued reliance on the criminal law in delimitating when and how selling sex can take place. From this distinction, I will argue that looking at the success of the New Zealand model of decriminalisation, such a model can provide a significant and realistic opportunity to reduce the levels of violence, exploitation and stigma faced by sex workers on a daily basis. Under systems of decriminalisation, sex workers could carry out their work within a far safer and more accepting modern society where harm-minimisation of the sex worker is at the forefront of policy development and reform.

### **Decriminalisation in New Zealand**

To date New Zealand is the only country to decriminalise all aspects of sex work and has taken major steps towards reducing the harms endemic in sex work. In 2003, after significant lobbying from the New Zealand Prostitutes Collective and Tim Barnett MP, the Prostitution Reform Act 2003 was introduced. The Act decriminalised voluntary adult sex work and permits soliciting, brothels, escort agencies, and third party-involvement. The law explicitly states that its aim was to 'safeguard the human rights of sex workers and protect them from exploitation.'<sup>86</sup> Its main terms were that brothel operators must hold a certificate administered by the Registrar of Auckland District Court (the central

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<sup>81</sup> Ronald Weitzer, N37 77

<sup>82</sup> Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation* (2010, Policy Press) 1

<sup>83</sup> Jackie West, Prostitution: Collectives and the Politics of Regulation, (2000) *Gender, Work and Organisation*, 7 (2) 106

<sup>84</sup> Jo Phoenix, N4 19

<sup>85</sup> Ronald Weitzer, N37, 76

<sup>86</sup> Parliament of New Zealand, Prostitution Reform Act, Public act no. 28, 27 June 2003, article 3.

government), the location, advertising and signage were regulated by local councils and standard business requirements and four or less workers may run a ‘small owner-operated business’ without holding an operator certificate, but can be regulated by local councils. Importantly, no sex workers are required to register or hold a certificate to sell sex.

Interestingly some academics identify the New Zealand system as one of legalisation, not decriminalisation. In making this argument, Ronald Weitzer points to the fact that the new regime provides for periodic inspections of sex work premises by the police, social services, and the health department whilst deferring much regulating power to local jurisdictions.<sup>87</sup> However, it is argued here that the defining feature of New Zealand as an example of a decriminalised regime is the reduced role of the criminal law. Recognising the damaging and stigmatising effects of criminal regulation of sex work, the criminal law has a very limited role, as it is limited to protecting underage workers and those selling sex under coercive circumstances. Sex work is placed firmly out of the criminal justice system and into the civil law of the state. Under these laws, it is required that all efforts are made to ensure the use of condoms in sex work, however infractions of these rules are not criminal offences.<sup>88</sup> It also explicitly states that sex workers are covered under the government’s 1992 law on health and safety in the workplace.<sup>89</sup> It is this that differentiates the New Zealand approach from other countries, as Jo Phoenix argues ‘legalised prostitution is fundamentally different from a model of intervention in which the sale of sex is legal, but where the criminal justice system is used as the *primary* means of managing the sex industry.’<sup>90</sup> The legal discourses that surround such an approach are not essentialising or silencing, but respond to the complex lives of the sex worker and acknowledge the responsibility and the role of the government in reducing harm.

### **Official Understanding of Harm as Endemic in Sex Work**

As proposed in the first chapter in this thesis, the starting point behind such a legal approach is that harm is endemic, not inherent in selling sex. This was the underlying ideology behind such legal development. As explain by Tim Barnett, the leading MP proposing the law in New Zealand, the law ‘was built around the principle of harm minimisation – identifying the genuine harms caused by prostitution and writing law and policy to minimise them.’<sup>91</sup> Unlike the ideology behind the Swedish approach, official arguments in favour of legal reform included harm reduction, the empowerment of

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<sup>87</sup> Ronald Weitzer, N37 98

<sup>88</sup> Articles 8 and 9, Prostitute Reform Act 2003, New Zealand

<sup>89</sup> Article 10, Prostitute Reform Act 2003, New Zealand

<sup>90</sup> Jo Phoenix, N4 17

<sup>91</sup> Tim Barnett, MP, Decriminalising Prostitution in New Zealand: the Campaign and the Outcome, January 2007 <

<http://myweb.dal.ca/mgoodyea/Documents/New%20Zealand/Decriminalising%20Prostitution%20in%20NZ.pdf>  
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workers and enhanced control over the sex trade.<sup>92</sup> A policy of decriminalisation comes with the crucial acknowledgement that the harm in the sex industry is not inherent, but often relational to the legal and social context of the sex workers themselves. Thus, the law in New Zealand did not aim for normative power and the elimination of the sex industry, instead, it aimed to ‘reduce victimisation and exploitation, institutionalise a set of labour rights for workers, eliminate the involvement of minors, reduce crimes associated with prostitution, decrease the number of illegal immigrants working in the sex trade, and curb sex trafficking.’<sup>93</sup> In direct contrast to both the criminalisation and legalisation legal discourses, the discourse surrounding this introduction illustrates the power of the law to shape and influence societal understanding of sex work in a positive way, and to response and reduce the harms faced by sex workers.

The government acknowledged the need to protect autonomous and consenting workers that ‘the majority of sex workers do not fit the popular stereotype of the drug-addicted, immoral, pimped, street-based worker who works in an environment of violence, crime and hopelessness.’<sup>94</sup> The New Zealand government de-bunked the myths surrounding sex work and treated sex workers as any other labourer. This approach recognises that many women are not victims and powerless in the sexual transaction but in fact, are autonomous and choose their occupation. For proponents of decriminalisation, it is the only potential regime that recognises prostitutes right to use their bodies as they wish and that does not seek to control sex workers through the law.<sup>95</sup> Through adopting a regime of decriminalisation the government acknowledged that those women should be given the rights and legal status to ensure their safety, respect and inclusion into the rest of society.

### **The Law- Brothel Licensing in New Zealand**

After decriminalisation, New Zealand further introduced the licensing of brothels as a further safeguard against violence and exploitation in the indoor sex industry. To reduce harm, licensing systems in decriminalisation impose safe working conditions and hygiene standards onto businesses and provide cause for periodic monitoring of licensed premises, punishing violations.<sup>96</sup> There are significant differences between a licensing system under a regime of legalisation, such as seen in Germany, Nevada and Victoria and one under regimes of decriminalisation, as seen in New Zealand. Importantly for regimes of decriminalisation, the underlying goal behind licensing is to improve the health and safety of workers, not, as warned in the above section on Legalisation, for commercial and capital gain which can have dangerous effects on health and safety of the workers. New Zealand is an example of licensing under systems of decriminalisation, where inclusive terms and conditions result

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<sup>92</sup> Ronald Weitzer, N37 97

<sup>93</sup> Ibid at 97

<sup>94</sup> Gillian Abel *et al*, N80 10

<sup>95</sup> English Collectives of Prostitutes, N44, 85

<sup>96</sup> Ronald Weitzer, N37 82

in a very small number of unregulated indoor premises and thus a far smaller chance of women becoming lost in unregulated and underground sex work premises.<sup>97</sup> Decriminalisation regimes show that there is a complex balance to be struck between legal requirements that are designed to protect the working conditions of the sex worker and total state regulation and control over indoor working premises.

To protect the sex worker, New Zealand's licensing system is both easy and inclusive, whilst still imposing criteria of safe working conditions onto the business owner. In New Zealand every operator of a business must hold a valid operator's certificate. To obtain an operator's certificate, applicants must be over the age of 18, be a citizen or permanent resident of New Zealand or Australia, and not have any disqualifying convictions with an application fee of only \$200. As the Prostitute Reform Committee states, 'the system was intended to be simple and straightforward to encourage compliance.'<sup>98</sup> The more inclusive licensing system of New Zealand has not seen the creation of a significant two-tiered system<sup>99</sup>, mainly due to the fact it is not as difficult or costly to obtain a licence than in other states. Whilst consulting on plans for the licensing requirements, the drafting committee on the legislative proposal stated, 'the criteria proposed to get certification should be open, transparent and related to the reason for having a certification regime – namely the protection of sex workers.'<sup>100</sup> Here the committee noted the important balance to be struck between creating a licensing system that was easy to join with sufficient incentives whilst ensuring there remained sufficient safeguards and controls for the protection of the sex worker. Furthermore, one important aspect of the New Zealand legislation is that it included provisions allowing up to four sex workers to work together without the presence of someone in a management role. One of the subsequent impacts of the PRA was the movement of some sex workers from managed indoor premises, into these independent locations.<sup>101</sup> As Lynzi Armstrong notes, this suggests that the legislation has allowed more freedom for sex workers to choose where they work, supported independence amongst sex workers to work without the involvement of a third party and, as such, potentially decreased the scope for exploitation.<sup>102</sup> Importantly, the main difference between systems of decriminalisation and legalisation is the central ideology of harm-minimisation behind the introduction of licensing systems in decriminalised regimes that sees minimum state control, which is centred upon making the working premises as safe as possible for the worker.

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<sup>97</sup> Ibid, 82

<sup>98</sup> Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, New Zealand Government 2008, 6.1.1

<sup>99</sup> Ibid, 3

<sup>100</sup> Ibid, 6.1.1

<sup>101</sup> Lynzi Armstrong, Out of the Shadows (and into a bit of light): Decriminalization, Human Rights and Street-based sex work in New Zealand in Kate Hardy, Sarah Kingston and Teela Sanders, *New Sociologies of Sex Work* (Ashgate, 2010) 41

<sup>102</sup> Ibid, 41

## Exploitation under Decriminalisation

Firstly, the Prostitute Reform Act in New Zealand made a significant improvement to the risk of exploitation and vulnerability of sex workers. The Prostitute Reform Act 2003 provided for the regulation of health and safety within workplaces, safe employment conditions and made sex workers eligible for employment rights. Thus, if exploited, sex workers have the same rights to rely on as any other labourer. Not only did the laws give workers' rights and decriminalise their actions, but it also increases the penalties against those found to harm the workers. Penalties for coercion or being the client of an under-age sex worker were increased significantly and strengthened, aiming to protect genuine victims within the industry.<sup>103</sup> The clear aim here being to clearly tackle exploitation and victimisation within the sex industry. This dual use of both labour protections and the criminal law against third party exploiters meant the law sent a clear message to society that sex workers were deserving of the same rights and protections as any other citizens, not treating them as exceptions but as members of society.

Post-decriminalisation, in terms of reducing exploitation through empowering the worker and including her within society the Review found that 92% of sex workers knew they had employment rights, 95% were aware they had legal rights and 93% of workers were aware they had health and safety rights.<sup>104</sup> Although finding similar results, a different study found that street-based workers were, however, significantly more likely than managed and private workers to report that they had no rights and were also less likely to report having employment and safety and health rights than the other sectors.<sup>105</sup> As Gillian Abel et al found, in their qualitative interviews, most participants described the PRA in terms of how it enabled them to have more rights in the workplace by providing rights around safer sex, health and safety and was also helpful in responding to stigma around sex work.<sup>106</sup> Crucially, the Report found that one of the fundamental consequences of decriminalisation 'has been the illumination of the workings of an industry which have historically been hidden.'<sup>107</sup> The report highlighted the act that there was no need for sex workers and brothel owners to conceal their occupation and women could also openly solicit in visible, safer locations. This increased visibility means that those who are most at risk in the industry, such as street sex workers were no longer forced into darker, more dangerous locations with little protection against exploitation. The rights given to sex workers under decriminalisation established crucial safeguards against the exploitation and abuse of vulnerability previously endemic within the once-invisible and underground industry.

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<sup>103</sup> Tim Barnett Lecture, 19<sup>th</sup> December 2011, English Collective of Prostitutes, Tent City University of Occupy London

<sup>104</sup> New Zealand Government, N98 44

<sup>105</sup> Gillian Abel, Lisa Fitzgerald, Cheryl Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*, Report to the Prostitution Law Review Committee, (2007, University of Otago) 138

<sup>106</sup> Ibid 139

<sup>107</sup> New Zealand Government, N98 41



## Violence under Decriminalisation

By decriminalising the status of the sex worker, the Prostitute Reform Act has a significant positive influence on reducing the violence experienced by the sex worker; however, it remains clear that violence in sex work still remains a significant problem. In suggesting that the decriminalisation regime improved the safety of sex workers, academics and policy makers have often pointed to the empowerment of the worker following the decriminalisation, and thus her ability to undertake her negotiations in safer circumstances and her ability to rely on protection from the police.<sup>108</sup>

Through interviews with sex workers, Gillian Abel and Lisa Fitzgerald found that in the indoor premises of New Zealand the decriminalisation of brothels meant that through their labour rights and their ability to openly negotiate with clients sex workers had the potential to reduce the levels of violence in the workplace.<sup>109</sup> This benefit refers to the preventative power of the Act, that the realisation of employment and legal rights has given many sex workers confidence to avert or react to situations that hold the potential for violence.<sup>110</sup> Indeed, people often point to the fact that decriminalisation can vastly improve the relationship between the sex workers and the enforcement agencies as the police focus not on laws against solicitation and loitering but violence against sex workers. Abel and Fitzgerald found that through decriminalisation, managed workers could ensure their safety by making it clear to clients prior to going into the room what they could expect in the transaction.<sup>111</sup> This was not possible before decriminalisation in New Zealand as the workers could be liable for solicitation charges, as is the case in England and Wales. This clarity is a very important tool to reducing violence against workers. As Hillary Kinnell found in her research with sex workers in England and Wales, misunderstandings by clients of what should be expected with regard to sexual acts is a common reason behind many assaults.<sup>112</sup> Under a regime of decriminalisation where punishment is only restricted to those who are violent or coercively exploitative, the workers are able to rely on other workers and good management for safety strategies and risk prevention, without fear from prosecution. This allows the worker, third parties and licensing agencies to ensure the safest working environments and practices that aim to promote the safety of the sex worker and reduce the possibility of violence.

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<sup>108</sup> Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, 'The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers, Report to the Prostitution Law Review Committee' (2007) Department of Public Health and General Practice, University of Otago, Christchurch: New Zealand

<sup>109</sup> Gillian Abel and Lisa Fitzgerald, 'Risk Management in Sex Work post-Prostitution Reform Act: a public health perspective' in Gillian Abel, Lisa Fitzgerald, Catherine Healy, Aline Taylor *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation* (Policy Press, 2010) 223

<sup>110</sup> Gillian Abel et al, N80, 221

<sup>111</sup> Ibid, 223

<sup>112</sup> Hillary Kinnell, *Violence and Sex Work in Britain* (Devon: Willian, 2008) 200

This is not to argue that decriminalisation will eliminate violence suffered by sex workers. As Lynzi Armstrong found in her research of street sex workers experience of violence post-decriminalisation in New Zealand, although the shift to decriminalisation has not eliminated violence completely, the legal change has provided a framework that better supports existing risk management strategies that sex workers employ to reduce risk.<sup>113</sup> For instance, she notes that in removing the possibility of arrest for soliciting, the PRA has provided an environment in which these women have sufficient time to screen potential clients on the streets.<sup>114</sup> However, the risk of violence in sex work has not decreased completely. Research with street sex workers has shown they still believe post-decriminalisation there exists a significant risk of violence. At the PRA Review found, the majority of street sex workers interviewed felt that the PRA could do ‘little about violence that occurred,’ however they also noted that a significant minority thought there had been an improvement since the enactment of the PRA.<sup>115</sup> A significant factor found by the review committee that safety arrangements would often differ between brothels, with women working in smaller owner-operated brothels would be at greater risk of violence and/or robbery than the larger, more commercialised brothels.<sup>116</sup>

The Review committee undertook a survey that asked participants if they had experienced any adverse incidents in the last 12 months, including; a refusal of a client to pay, having money stolen by a client; been physically assaulted by a client; threatened by someone with physical violence; held against their will; been raped by a client; or received abusive text messages.<sup>117</sup> Few workers reported the crimes against them to the police, most of those that did refused to continue with court proceedings. Despite the removal of the criminal law it seems that workers remain distrustful of the authorities. These findings show the need for a holistic legal reform when it comes to decriminalisation, legal change will not necessarily directly result in a significant reduction of the level of risk faced by sex workers. Instead, although decriminalisation may lay the foundations for such change, it should be supported and followed through with the sufficient training and education necessary to effectively improve the lived experiences of sex workers. With this in mind, although the decriminalisation regime has shown significant improvement for the safety of sex workers, it also demonstrates the limit of legal change in societal change and the need for holistic and dedicated change from all aspects of society to effectively reduce the endemic violence suffered by sex workers and most notably, street sex workers.

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<sup>113</sup> Lynzi Armstrong, *Managing risks of violence in decriminalised street-based sex work: a feminist (sex worker rights) perspective*, 2011, Victoria University of Wellington, ii

<sup>114</sup> *Ibid*, ii

<sup>115</sup> New Zealand Government, N98 14

<sup>116</sup> *Ibid*, 44

<sup>117</sup> *Ibid*, 56

## Decriminalisation and Reducing Stigma

When it comes to stigma, it should be noted that a change to a decriminalised system in New Zealand did not bring with it social acceptance of sex workers by all in society.<sup>118</sup> This is not to argue that the regime has been unsuccessful, but to highlight the significant barrier stigma poses to the introduction of a strategy that aims to include sex workers within society and protect them from harm. As has been previously explored, stigma of sex workers is something that has become entrenched over time and is extremely hard to displace. In their research supporting the decriminalisation laws in New Zealand, the Prostitute Reform Committee comment that the participants in their interviews were ‘cognisant of the fact that laws had little or no impact on social perceptions of their job as ‘no laws have the power to do that. The people have to change.’’<sup>119</sup> Indeed, although the workers were no longer legally forced into dangerous locations and pressured to conceal their occupation, there still exists an established societal stigma against sex workers and buyers. In New Zealand, decriminalisation has faced significant obstacles in the form of the ‘deeply ingrained moral and social stigma attached to working in the sex industry.’<sup>120</sup>

This had led many to argue that the problem of deeply ingrained stigma is difficult to reduce with mere decriminalisation. However, such a quick conclusion should not be drawn from the New Zealand model. As Weitzer argues, ‘stigma and claims that prostitution is “immoral” do not magically disappear post legalisation.’<sup>121</sup> As has been demonstrated in the context of England and Wales, the stigmatisation of sex workers is one that has been engrained throughout history and will be extremely difficult to displace. Positive social change in this respect will not happen immediately post-legal change but regimes of decriminalisation, I argue, lay the foundations for such progressive social change to begin. As Lars Ericsson argues, ‘a sound prostitution is, first of all, prostitution that is allowed to function in a social climate freed from emotional prejudice... in order to improve prostitution we must first and foremost improve our attitudes towards it.’<sup>122</sup> In this sense, reducing the stigma of sex workers post-decriminalisation can be likened to the extensive social stigma once felt by the LGBT community in England and Wales, where decriminalisation was the first step towards achieving lasting and progressive social change to reducing such stigma. Thus, highlighting the difficulty in reducing stigma in New Zealand is not to argue that a system of decriminalisation cannot reduce this harm, but to demonstrate the difficulty in doing so. In any harm-minimising regime, there should be a proactive and committed resolution to include the sex worker within the society she

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<sup>118</sup> Gillian Abel et al, N80, 239

<sup>119</sup> Petal, a private worker, in Gillian Abel *et al* *ibid*, 241

<sup>120</sup> New Zealand Government, N94 152

<sup>121</sup> Ronald Weitzer, N37 100

<sup>122</sup> Lars Ericsson, ‘Charges against Prostitution: an attempt at a Philosophical Assessment’ (1980) *Ethics* 90, 362

exists, this will not happen simply after removing the criminal laws surrounding sex work but will take place over time and only with a societal commitment to such a social change.

## **Conclusion**

Through exploring regimes of criminalising the client, legalisation and decriminalisation, this chapter has demonstrated the power of the law to structure and respond to the harms endemic in selling sex today. It has shown the dangerous effects of regimes that criminalise the client, where sex workers adopt the role of client protectors, taking more dangerous risks to protect their form of work, and it has shown the vulnerability such an approach has created within the indoor sector by failing to provide any labour or civil protections from exploitation. Next it showed the similarly dangerous effects regimes of legalisation can have on the lives of sex workers. Here, such strict controls and regulations often have the effect of creating a two-tiered system, where women failing to become recognised in law are pushed into unregulated underground industries with little protection from violence or exploitation.

Following the ineffectiveness of these regimes to decrease the harm experienced by the sex worker, this chapter illustrated the potential of regimes of decriminalisation to reduce harm. Importantly, it did not argue that the decriminalisation scheme has reduced all harms stemming from sex work, indeed there is a significant way to go to de-stigmatise the sex worker and effectively improve relations between sex workers and the police. However, over criminalisation and legalisation, it is decriminalisation that could provide sex work with a positive framework that better protects the safety of sex workers from exploitation, stigma and violence. The next chapter then, will examine how decriminalisation could work in the UK, taking into consideration the socio-legal context in which it would exist and the historical and political context in which it would be introduced.

## **CHAPTER 5**

### **DECRIMINALISATION IN ENGLAND AND WALES**

Through an examination of the current practice in England and Wales and the various alternative regimes across the world, this thesis has demonstrated the power of law to shape and influence the stigma, violence and exploitation experienced by the sex worker, and more specifically, the power of regimes of decriminalisation to reduce those harms. Following this, the final chapter of this thesis will propose an introduction of legislation that decriminalises sex work in England and Wales to effectively respond to the harms currently endemic within the industry. In so doing, it will look at the myriad of factors that make selling sex in England and Wales a complex phenomenon and the social and political factors that would shape such a decriminalisation regime. As has been demonstrated throughout this thesis thus far, the success of a response to sex work is not purely dependant on black-letter law reform but instead about holistic and dedicated change. To effectively reduce harms in sex work, a society must actively engage and respond to the complex demands of such a task. Simply changing the law will only achieve a symbolic dividend, we must push for holistic law reform that not only sees a legislative change, but also changes the political, legal and social structures that interact with and surround sex work. It is only then that we can reduce the violence, exploitation and stigma that are so endemic in the daily lives of sex workers today.

Using the New Zealand Prostitute Reform Act as a framework on which to build a decriminalisation regime, this chapter will argue for an introduction of a comprehensive and clear regime of decriminalisation in England and Wales. Through establishing sex work within decriminalisation framework, this proposal aims to shift discourse from a moral to a health and safety perspective, allowing the focus of such a legal change to centre upon reducing harm. However, one of the key points to be made here is that the content of this chapter is simply a suggestion for reform, it is not intended as a blueprint for legal change. It will however, argue that there are three main and fundamental protections that should be included within any decriminalisation regime and seek to demonstrate how they may interact with current offences. Such a development of these three protections, and other protections and provisions to be included within the Act should be developed through an inclusive consultation process with sex workers themselves. Such political participation of sex workers in reform has two main aims. Firstly, the process of consulting and approaching sex workers within the legal development is part of the de-stigmatising process that challenges the

construction of sex workers as passive victims or deviants.<sup>1</sup> The inclusion of sex workers in official debate has significant symbolic power, instead of being silenced by the law, sex workers become part of the process and thus acknowledged and empowered. Secondly, the importance of including sex workers lies on a practical level. As has been re-iterated throughout this thesis, the lives of sex workers and their experiences of harm is complex and subjective, and has been historically misunderstood and ignored by officials and law-makers. Through creating a dialogue between sex workers, policy makers and enforcement agencies, safety and management strategies can be re-evaluated and understood, giving insight and knowledge into the construction of the law that has not occurred before.

To make the first steps towards such an inclusive process, this chapter will begin with an aim to contextualise the sex worker in England and Wales, placing her and her complexities and the forefront of an approach to reform. After this, I will suggest three main and fundamental protections to be offered within any Act of decriminalisation that would make crucial steps towards protecting the worker from stigma, violence and exploitation.

### **Putting Sex Work into Context – England and Wales**

Although the Prostitute Reform Act in New Zealand will be used as a framework on which to develop reform, it will be done so with recognition of the specificity of selling sex in England and Wales, adapting reform to suit its local context and current legal framework. As has been demonstrated throughout this thesis, sex work is a complex phenomenon that manifests itself in a myriad of different ways, often depending on the surrounding environment and society in which it exists. With this in mind, before proposing any new system of regulation discussed in the previous chapter, the complex nature of sex work within the locality in question should be understood. This is in recognition of the dangers of simply legally ‘transplanting’ one country-specific model onto another domestic context, or in this case, simply arguing for a transplantation of the New Zealand model of decriminalisation onto England and Wales. As Vanessa Munro warns,

‘The assumption we can take up a model from any jurisdiction and predict the consequences of transplanting it into another, which has tended to animate much of the contemporary discussion on comparative prostitution policy, is problematic – at least to the extent that it

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<sup>1</sup> Jane Scoular and Maggie O’Neill, *Regulating Prostitution: Social Inclusion, Responsibilisation and the Politics of Prostitution Reform*, (2007) *Brit. J. Criminol* 47, 766

tends to ignore or trivialise the peculiarity of the cultural environment of comparator countries'.<sup>2</sup>

Following this then, this chapter will take into account the socio-economic status of women selling sex in England and Wales, the general wider societal issues of violence against women, the nature of governance and the moral and political discourse that inform women's situation in society more generally.

### **To be a woman in England and Wales**

Despite the commonly deployed rhetoric of equality, social relations of gender *inequality* continue to form the basis of the socio-economic society in England and Wales, forming the backdrop against which women sell sex.<sup>3</sup> In her efforts to contextualise the modern sex worker, Jo Phoenix highlighted that, 'being a woman in contemporary British society is to be actively engaged in the business of 'risk' – of negotiating and calculating insecurities, uncertainties, costs, potential harms and benefits.'<sup>4</sup> Under our current socio-economic climate, sex work is an inevitable result of the 'feminisation of poverty',<sup>5</sup> the factors of which are beyond the control of women selling sex. Reflecting the wider unjust gender relations, women in England and Wales are at a much higher risk of poverty and the social and personal difficulties that often accompany it, such as homelessness, housing difficulties and poor health, than men.<sup>6</sup> Today, women earn on average 16.4% less than men, whilst, as carers, women spend nearly two thirds of their own money to support the people they care for.<sup>7</sup> At present, lone parent families are more likely to live in poverty, with ninety per cent of the heads of families are women.<sup>8</sup> Furthermore, women have been cited by countless academics as the central recipients of the cuts made under the modern recession by the Conservative government. A recent report has predicted

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<sup>2</sup> Vanessa Munro and Marina Della Giusta *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Ashgate, 2008) 5

<sup>3</sup> Eileen McLeod *Women Working: Prostitution Now* (London: Croom Helm, 1982); Jo Phoenix, *Making Sense of Prostitution* (Pallgrave, 1999)

<sup>4</sup> Jo Phoenix, *Making Sense of Prostitution* (Pallgrave, 1999) 73

<sup>5</sup> Diana Pearce, *The Feminization of Poverty: Women, work and welfare* (1978) *Urban and Social Change Review* 11, 28-36

<sup>6</sup> Jo Phoenix, *Regulating Sex for Sale* (The Policy Press, 2009) 4; European Commission (2008) *Report on equality between men and women*, European Commission, Directorate-General for Employment, Social affairs and Equal Opportunities, Luxembourg

<sup>7</sup> The Fawcett Society, *What about women? Key Questions for parliamentarians concerned with advancing women's equality and human rights in the UK*, (2010) <http://www.fawcettsociety.org.uk/wp-content/uploads/2013/02/Fawcett-Society-What-About-Women-report-low-res.pdf>

<sup>8</sup> *Ibid*, 8

that 69% of the people to bear the brunt of the government cuts to be made in 2014/15 will be women.<sup>9</sup>

Thus managing the risks stemming from such a difficult economic climate is a very real aspect of the daily lives of poor women. As a reasonable response to such risk, many consider sex work as a viable means by which to survive. Under this understanding, sex workers are not a separate group, detached from society but women responding to their economic situation *within* society. Treating sex work as an isolated social phenomenon denies ‘the complex aetiology that explains the purchase of sex within a cultural, gendered and economic context.’<sup>10</sup> By treating sex work as an exception, our current government fails to acknowledge the everyday nature of women who sell sex, and the fact that, for these women, their decision to sell sex is inextricably linked to their disadvantaged position within society on the whole. As observed by Eileen McLeod in the 1970s and still ringing true today, ‘prostitution is not a world apart. It is bound up with wider social processes and permeated by assumptions current in society at large.’<sup>11</sup> Therefore, it is crucial that any new system of regulation should be built upon the clear understanding that first and foremost, female sex workers are simply female members of our society, grappling with the same disadvantage and needs as other lower-class women. As Jo Phoenix highlighted within her study, many of the sex workers she interviewed were ‘unremarkable, mundane and ordinary,’ and ‘struggled to live on social security benefits, were dependant on men who had ‘let them down,’ left them or from whom they were desperate to escape.’<sup>12</sup> Removing sex work from the criminal law makes the fundamental acknowledgement that women’s involvement in the industry is intrinsically linked with our socio-economic structures. With this wider context in mind, an adoption of a decriminalisation regime in England and Wales would represent the acknowledgement that instead of ‘risky subjects’ sex workers are ‘sentient subjects who manage risks,’ that is, the risks involved with being a woman in today’s society.<sup>13</sup> By adopting a system of decriminalisation, the government is acknowledging its role in the lives of women who sell sex. It is the official acknowledgement that sex work is not something that can be eradicated, but something that is inextricably linked to wider social and economic inequalities, making a symbolic and practical recognition of the way society has shaped their entrance into sex work and makes the crucial steps towards supporting women in that occupation.

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<sup>9</sup> Joseph Rowntree Foundation ‘Living standards, poverty and inequality in the UK’ (Economic and Social Research Council, 2014)

<sup>10</sup> Ibid, 20

<sup>11</sup> Eileen McLeod N3, 1

<sup>12</sup> Jo Phoenix, N4, 73

<sup>13</sup> Jane Scoular and Maggie O’Neill, N1 770



## Decriminalisation in England and Wales – A Proposal

With the importance of the lived experiences of sex workers in mind, it is important to reiterate here that this chapter does not aim to propose a full and comprehensive outline of a regime of decriminalisation in England and Wales. Such a legislative proposal should be made with the viewpoints and experiences of sex workers themselves, service providers, enforcement agents and policy makers, going far beyond the remit of this thesis. Without disqualifying other forms of protections, this proposal argues that any decriminalisation scheme introduced in England and Wales should include three fundamental protections under the Act which may, it is suggested here, work in tandem with current laws. Firstly, the sex worker should be recognised in law as a labourer, and thus eligible for employment rights and protections. Secondly, a regime of decriminalisation in England and Wales should include a system of licensing for brothels to provide sufficient safeguards against exploitation in the workplace. Thirdly, any effective regime should provide protection for the sex worker from coercion and abuse in the form of strict and clear criminal sanctions, these may work together with the current provisions of s52 and s53 of the Sexual Offences Act 2003, providing the necessary clarifications and amendments took place. The potential for these protections to reduce that stigma, exploitation and violence experienced by sex workers will be interweaved throughout such proposals. The specific nature and exact wording of provisions within such protections provided here are only speculative and suggestive; they are intended to be used as a sounding board on which to develop and construct with the input of sex workers themselves. Further, I do not argue that these three points should be the only forms of protection from violence, stigma and exploitation, but that a decriminalisation regime in England and Wales could not provide sufficient safeguards against harms without their inclusion.

In proposing three protections, this thesis does not propose a system of ‘pure’ decriminalisation. States that liberalise their laws rarely decriminalise sex work without joining it with some kind of further regulation. Like any totally unregulated industry, a lack of further safeguards would undoubtedly put workers at significant risk.<sup>14</sup> Even schemes that are widely described and viewed as adopting a process of ‘decriminalisation’, such as New Zealand, have some form of further governmental regulation – for example brothel regulation and criminal laws protecting involuntary and underage people in the industry. A clear distinction should be made here between minimising the harms for voluntary workers (through licensing, rights and unionisation) in a decriminalisation regime and ensuring the protection of those vulnerable within the industry through prosecution within the

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<sup>14</sup> Ronald Weitzer, *Legalising Prostitution: From Licit vice to Lawful Business* (New York University Press, 2012) 77

criminal law under legalisation. This thesis argues for a minimal regulatory scheme for sex workers that sees no individual registration of sex workers or zoning of sex work but ensures safe working practices through the use of a licensing system of brothels and the availability of the same employment and civil rights available to any other worker. It is to such protections this chapter will now turn.

### **Provision 1 - Safeguarding the Rights of Sex Workers through Accessibility to Labour Rights and Tackling Exploitation**

The first Provision to be suggested here is ensuring the basic rights of sex workers are safeguarded through employment rights and protections. Such a provision would provide the sex worker with safeguards against exploitation in the work place, it would entitle her to safe working conditions and provide her with protections against exploitative third parties. Recognising sex work as an aspect of the wider work force would make the crucial first steps towards recognising the most basic rights of the sex worker, and towards recognising her right in undertaking her work without managing risk of exploitation and violence in the workplace. Despite significant potential in improving safety through labour protections, there has been a significant unwillingness of the government of England and Wales to research the advantages of understanding sex work as an economic transaction, despite vast research illustrating that is precisely how sex workers understand their trade.<sup>15</sup> As Marina Della Giusta notes, even within our capitalist society there has been a ‘curious reluctance’ to engage with sex work as an area of socio-economic life that mobilises large numbers of people and vast amounts of financial resources internationally.<sup>16</sup> It is only until we recognise sex work as a legitimate form of labour that we can empower the sex worker through recognising her labour rights and protections and impose effective working practices onto third parties and sex workers themselves, significantly improving the safety of the sex worker.

However, the means of empowering and protecting the sex worker from exploitation in this way are debated. As will be demonstrated, simply introducing sex workers to the current labour law in England and Wales would not be sufficient in ensuring their protection from exploitative working conditions and third party control. This section will aim to demonstrate here that due to the complexity of the Employment Act 1996 together with the historical reluctance of the courts to move

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<sup>15</sup> For more explanation, see Chapter 2

<sup>16</sup> Marina Della Giusta, ‘Simulating the Impact of Regulating Changes on the Market for Prostitution Services’ in David Canter, Maria Ioannou and Donna Youngs, *Safer Sex in the City* (Ashgate Publishing, 2004) 121

aspects of the sex industry into public law, under a decriminalisation approach in England and Wales there should be an explicit provision that gives sex workers employment rights and protections in law. This provision should explicitly list the rights and protections the sex worker is entitled. Such clarity then, would avoid a situation where, as would occur if sex workers were simply introduced into current labour law, sex workers would be understood as *de facto* employees, yet would have access of fewer rights and protections than other legally recognised employees in other forms of work.<sup>17</sup>

### **Labour Law in England and Wales**

To properly protect sex workers from exploitative working conditions and practices, a decriminalisation regime should include clear and explicit provisions that outline the working rights of sex workers, as argued by Katie Cruz, as simply introducing sex work into the labour market of England and Wales may not be as empowering as we may hope.<sup>18</sup> The main difficulty here is the delimitation of English labour law and its benefits between those classified as ‘employed’, ‘self-employed’ and those understood as ‘workers,’ defined under the Employments Rights Act 1996.<sup>19</sup> Those classed as within an employee/employer relationship and thus working under a contract of employment are given the full protections of labour law, including maternity and paternity leave, the right against unfair dismissal, statutory redundancy pay and all the rights given to ‘workers.’<sup>20</sup> Those classed as self-employed on the other hand, do not have explicit employment rights as they are technically their own bosses and can set their own obligations and benefits. As it will be demonstrated here, like Katie Cruz, I argue that it remains likely sex workers would be understood as self-employed persons and thus, the potential protections are likely to be strictly limited, with few effective safeguards against exploitative third party practices and health and safety conditions.

### **The Sex worker as an Employee under Current Law**

As explored in chapter 1, despite the assumed self-employed status of the sex worker, in reality, they are often subject to exploitative and controlling conditions by third parties, severely limiting the independence normally associated to those self-employed. Specifically to England and Wales, the level of control and degrees of professionalism amongst brothels varies significantly, with some

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<sup>17</sup> Jane Pitcher and Marjan Wijers The Impact of Different Regulatory Models on the Labour Conditions, Safety and Welfare of Indoor-Based Sex Workers, (2014) *Criminology and Criminal Justice*, 22, 12

<sup>18</sup> Katie Cruz, Unmanageable Work, (Un)liveable lives: the UK Sex Industry, Labour Rights and the Welfare State (2013) *Social Legal Studies*, 10

<sup>19</sup> s230, The Employment Rights Act 1996

<sup>20</sup> Ibid, s230

establishments offering more favourable working conditions and safety strategies than others.<sup>21</sup> Common restrictions on indoor workers include regulating what sex workers wear during working hours, the amount of hours they work, the per cent of money they pay to the brothel owners and how much they charge for their services.<sup>22</sup>

Despite the common controls over indoor sex workers in England and Wales, Katie Cruz has argued that without specific legislation acknowledging the eligibility of sex workers for labour law, officials may be reluctant to include sex work into labour law.<sup>23</sup> In examining the potentially limited accessibility of current labour law, many academics have found analysis of the new labour regulations surrounding erotic dancers as useful indicators as to how the court may treat indoor sex workers, as erotic dancers often have very similar working codes and ethics. The case of *Quashie v Stringfellow Restaurants Ltd*,<sup>24</sup> demonstrates the reluctance to recognise the relationship between an erotic dancer and the owner of the premises in which she worked as one of employee/employer relationship. In this case, a dancer argued that the levels of control over workers in an exotic dancer setting constituted as an employee/employer relationship, not one of self-employment, aiming to rely on the rights against unfair dismissal given to employed persons. *Quashie* argued her status as an employee was determined by the degree of control over her working conditions, her argument pointed to the fact she was forced to work a minimum of three nights a week, follow a strict dress code, was prevented from working elsewhere, told how much she could charge, ordered to attend weekly meetings and to abide by a strict code of conduct for which she could be fined if rules were not kept.<sup>25</sup> In this sense, like indoor workers, Teela Sanders and Kate Hardy argue that erotic dancers work under the same ‘myth of self-employment’ than indoor workers, that is, where managers introduce strict codes of conduct and control over many aspects of the conditions of working within their premises whilst sex workers still retain the title of self-employed.<sup>26</sup> Despite this level of control, the legal system was still extremely reluctant to understand this relationship as one of an employer/employee contract as she was understood as self-employed at the Court of Appeal.<sup>27</sup> As Cruz argues, this decision ‘suggests that notwithstanding high levels of control, employee status will rarely be found where an erotic dancer is deemed to have taken on the financial risk and to be paid by third parties.’<sup>28</sup> It seems reasonable to conclude that the same status of labourer will be transferred to indoor workers if labour

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<sup>21</sup> Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005) 17

<sup>22</sup> Katie Cruz, N18, 14

<sup>23</sup> *Ibid*, 14

<sup>24</sup> [2012] EWCA Civ. 1735

<sup>25</sup> Teela Sanders and Kate Hardy, *Flexible Workers: Labour, Regulation and the Political Economy of the Stripping Industry* (Routledge, 2014) 73

<sup>26</sup> *Ibid*, 72

<sup>27</sup> Katie Cruz, N17 10

<sup>28</sup> *Ibid*, 10

law was made available to them as the working relations for erotic dancers and indoor sex workers remains very similar.

### **Effective Protection from Exploitation: Specific Provisions Empowering the Worker**

Without clear and specific provisions within decriminalisation legislation that recognises the sex worker's status as 'employee', as demonstrated by Cruz, their official interpretation as 'employees' or 'self-employed' will largely depend on how they are interpreted by the courts and employment tribunals. With this in mind, in order to make any steps towards the effective reduction of the exploitation endemic in sex work, it is important that in any post-decriminalised system the intended labour laws available to sex workers are clear to all parties involved. The legal difficulties that can arise within an uncertain system can be seen within the use of the labour laws post-decriminalisation in the Netherlands where the legal status of the sex worker has led to confusion in the court systems and for the sex workers themselves, with sex workers either rarely relying on their rights or little knowledge of their new rights in the first place<sup>29</sup>. In his evaluation of the success of the labour rights under the system in the Netherlands, Gall concludes that having legitimate status is not sufficient alone to facilitate labour organising of sex workers.<sup>30</sup> He notes that since the lifting of the ban of brothels in the Netherlands there has been major confusion about the working relationships in brothels and tax rules, especially whether an employment relationship exists.<sup>31</sup> In the Netherlands, this poor implementation of the reforms together with a lack of proper monitoring has led to variable working conditions and labour rights for sex workers and a lack of significant improvement for the protection of indoor sex workers. As Jane Pitcher and Marjan Wijers note, in practice there is little control over whether the operator adheres to the conditions and sex workers mostly do not feel in a position to claim their rights.<sup>32</sup> Despite the harm minimising approach behind the introduction of reform in the Netherlands, the lack of clarity has resulted in a significant curtailment of the potential to reform the unprotected status of the worker.

One potential route for clarity under decriminalisation, is the introduction of a specific provision that establishes the sex worker as an 'employee' under the Employment Rights Act 1996. Following such a recognition, the sex worker would be eligible for a number of rights including; the right not to be unfairly dismissed, statutory redundancy pay, national minimum wage, rest breaks, protection against

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<sup>29</sup> Ronald Weitzer, N14, 201

<sup>30</sup> Gregor Gall, *An Agency of Their Own: Sex Worker Union Organising*, (Zero Books, 2012) 55

<sup>31</sup> *Ibid*, 55

<sup>32</sup> Jane Pitcher and Marjan Wijers N18, 7

unauthorised deductions from pay, protection from unlawful discrimination and rest breaks, including aid holidays.<sup>33</sup> Such an approach is adopted within the Prostitute Reform Act of New Zealand, which makes explicit that ‘a sex worker is at work for the purposes of the Health and Safety in Employment Act 1992 while providing commercial sexual services.’<sup>34</sup> Following this then, such a clear provision would leave little room for the dissolution of intended labour rights by the courts, regulatory bodies or managers by clearly and explicitly providing working rights to sex workers. It would ensure protections for the women selling sex, where, as previously demonstrated, the courts have been reluctant to establish women working in the sex industry as part of an employment contract.

However, one of the major limitations in including such a provision in the Act could come from sex workers themselves. Despite the common controls imposed by brothel owners, sex workers have often resisted being labelled as ‘employees’ due to the perceived negative connotations with such a label. Indeed, as Cruz argues, sex workers have ‘campaign[ed] vigorously for the right not to be told how to do their work, whom to do it for and under what conditions.’<sup>35</sup> This ‘desire to remain unmanaged’<sup>36</sup> could mean that the introduction of such a provision recognising sex workers as ‘employees’ may be met with significant resistance from sex workers themselves. As Jane Pitcher and Marjan Wijers note, research has shown sex workers consider the disadvantages, such as increased bureaucracy, loss of anonymity and independence and the obligation to pay tax, as greater than the advantages of a regular employment relationship, that is, clarity about rights and duties, a secure income, sick pay and entitlement to welfare provisions.<sup>37</sup> Thus, even if it were possible to understand sex workers as employees, this may be very difficult in the light of the sex worker movement itself.

A solution to this is the introduction of a specific set of labour protections within the decriminalising legislation. Such a provision would protect the sex worker from similar exploitative conditions and actions as within the Employment Act 1996, but would be created by and for sex workers. They could include protections against arbitrary fines from managers, health and safety conditions, limited number of working hours, break requirements and so forth. By constructing such labour protections within an inclusive dialogue with sex workers, the risk of imposing management where it is not wanted and will be resisted would be reduced, as legislation could focus exclusively on preventing exploitative situations and conditions from arising. However, as Ronald Weitzer notes, with regards to introducing labour rights for sex workers change cannot be instant. As a population that is stigmatised

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<sup>33</sup> The Employment Rights Act 1996

<sup>34</sup> *Ibid*, s10(1)

<sup>35</sup> Katie Cruz N18, 478

<sup>36</sup> *Ibid*, 478

<sup>37</sup> *Ibid*, 16

and has never had rights, it cannot be expected that sex workers will suddenly begin claiming them.<sup>38</sup> The transition from criminalisation to rights will be a difficult and long process. Indeed, ‘a change in their legal situation does not necessarily translate into empowerment, even when workers are aware of their rights and the specific avenues for holding employers and customers accountable.’<sup>39</sup> However, if such a change was constructed and introduced within such an inclusive process, sex workers would arguably be more likely to rely on such protections that more accurately reflect the complexities of their occupation than the ‘employee’ status, under the Employment Act 1996. Post-decriminalisation, such further legal protections would make the crucial first steps towards reducing the exploitation endemic in the lives of sex workers today by improving the working conditions and management practices in the sex industry.

## **Provision 2 – Licensing Brothels and Health and Safety Requirements**

The second provision to be introduced under this model of decriminalisation is one establishing the licensing of brothels. Firstly, the current offence of ‘keeping a brothel’<sup>40</sup> would be abolished, thus allowing sex workers to work together, for brothels to be organised and managed efficiently and to ensure transparency and legitimacy in brothels. As Teela Sanders argues, ‘the only way to ensure that sexual exploitation in the indoor markets is stamped out is through a regulatory system that checks the management, premises and working conditions.’<sup>41</sup> Further, including a licensing provision within an Act of Decriminalisation would, like in the Prostitute Reform Act of New Zealand, require that ‘every operator of a business of prostitution (other than a company) must hold a certificate,’<sup>42</sup> if not found to have a certificate, the premises should be subject to significant fines.

It is argued here there should be two main qualifications to obtaining such a certificate. Firstly, like New Zealand, individuals applying for such a certificate should have been previously convicted of a serious crime, suggested within the Prostitute Reform Act as punishable by 2 or more years’ imprisonment.<sup>43</sup> Thus safeguarding the sex worker from exploitative and potentially dangerous management conduct. Secondly, a licensing requirement could take into consideration certain health and safety and working practice standards that should be reached before issuing certification before establishing a premises as a legitimate and safe working establishment.

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<sup>38</sup> Ibid, 197

<sup>39</sup> Ibid, 197

<sup>40</sup> Sexual Offence Act 1956, s33 and 33a

<sup>41</sup> Teela Sanders, UK sex work policy: eyes wide shut to voluntary and indoor sex work, in Jo Phoenix, *Regulating sex for sale: Prostitution policy reform in the UK*, (Polity Press, 2009), 74

<sup>42</sup> Prostitute Reform Act, New Zealand, Part 3, s34

<sup>43</sup> Ibid, s36 2(b)

### **Benefits of Licensing System: Reducing Stigma, Violence and Exploitation**

Within a regime of decriminalisation, a clear and inclusive licensing system could provide extensive safeguards against the violence, exploitation and stigma suffered by sex workers. Such a licensing system has the potential to include specific requirements that would provide a working framework for brothels that would ensure sufficient safeguards against violence, exploitation and stigma in the workplace. Secondly, as premises would be kept on a database such efficient catalogues would allow enforcement agencies to routinely check establishments for safe working conditions and non-exploitative practices. As found by Brents and Hausbeck, the licensing of indoor sex work premises ‘brings a level of public scrutiny, official regulation and bureaucratization to brothels that decrease violence.’<sup>44</sup> Through placing indoor sex work premises on a central system, measures that check the management, health and safety and working conditions are then able to focus clearly on the risks of harm within the establishments and promote good working relationships between sex workers, brothel owners and the police. As illustrated in the previous chapter by the differing success of licensing regimes in Victoria and New Zealand, the process should be as easy and inclusive as possible to ensure the maximum protection of sex workers. This would mean the requirement of a minimal licencing fee to ensure maximum compliance and realistic and achievable health and safety requirements. The specifics of these provisions and precisely how they will reduce the violence, exploitation and stigma suffered by sex workers should be drafted and designed with the input from sex workers themselves.

### **Listening to the Sex Worker**

When it comes to the introduction of such a provision into law, sex workers should remain a key source of knowledge of safety practices and routines that may be introduced into law. In England and Wales, there has been various research projects that has documented the systematic and professional manner in which brothels are organised and the unofficial rules that govern them, meaning that the introduction of a brothel licensing system could be a relatively easy development.<sup>45</sup> This systematic nature of the brothel industry in England and Wales has been extensively documented by the academic Teela Sanders. Throughout her research she has noted there already exists a hierarchy of

<sup>44</sup> Barbara Brents and Kathryn Hausbeck, Violence and Legalised Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy (2005) *Journal of Interpersonal Violence* 20 (3), 270

<sup>45</sup> Teela Sanders, N40; Joanna Brewis and Stephen Linstead ‘Managing the sex industry’ (2002) *Culture and Organisation*, 8 (4) 307-326; Dawn Whittaker and Graham Hart ‘Research note: Managing risks: the social organisation of indoor sex work’ (1996) *Sociology of Health and Illness*, 18: 3, 399-414



types of premises based on their professionalism and good practices as most sex workers distinguish between ‘good’ and ‘bad’ management.<sup>46</sup> To introduce a system of licensing under the Act, would be to make official the ‘substantial level of coherence and continuity’ found by many within the current indoor sex establishments.<sup>47</sup> It is from these informal codes of conduct and safety mechanisms that England and Wales could form a set of standards of which establishments should commit in order to obtain a licence.<sup>48</sup>

Here such specific requirements to safeguard the sex worker from violence and exploitation may be sought using the general ‘social codes’<sup>49</sup> and ‘etiquette and rules’<sup>50</sup> found at present in many indoor premises, such as consistent condom use and a fixed price code to empower workers from exploitative clients.<sup>51</sup> Further, it could result in a Code of Conduct introduced along such an Act, which could outline how to establish safe working practices in indoor premises. In this sense, the introduction of brothel licensing would be making informal practices established in law, setting clear rules for brothel owners and managers for safe and legal ownership of premises used to sell sex. It would judge the legitimacy of indoor premises by their ability and efficiency in protecting the sex worker, placing safe working conditions as a fundamental and crucial aspect of legally selling sex. Such a system would place reducing exploitation, violence and stigma in the workplace at the heart of legitimising a sex work business. Under an effective licensing system, legally selling sex would be synonymous with safe working conditions, fair working practices and extremely low instances of violence. Such a move would make the official recognition that such harms are not inevitable in the sex industry, but are the responsibility of business owners, enforcement agencies and sex workers themselves as they work together to manage and eliminate risk through a system of licensing premises.

### **Protection 3 - Protecting the Sex Worker from Exploitation and Violence**

The last protection to be recommended here is the legal recognition that sex workers have a right to work safely, without risk of violence and exploitation. Using New Zealand’s Prostitute Reform Act on which to base these protections, it is suggested here that a clear recognition of the rights of sex workers should be made in law, which could clarify and guide further interpretations of the law regarding sex work for enforcement agencies. This way, current laws and provisions such as s52 and

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<sup>46</sup> Teela Sanders, *Sex work: A Risky Business* (Willian Publishing, 2005), 160

<sup>47</sup> *Ibid*, 161

<sup>48</sup> *Ibid*, 75

<sup>49</sup> Karen Sharpe *Red Light, Blue Light: Prostitutes, Punters and Police*: (London Ashgate: 1998) 80

<sup>50</sup> Graham Hart and Catherine Barnard, ‘Jump on top, get the job done’: strategies employed by female prostitutes to reduce the risk of client violence’ in Elizabeth Stanko *The Meanings of Violence* (Routledge, 2003) 36

<sup>51</sup> Teela Sanders, N46, 160

s53 of the Sexual Offences Act would be further clarified in order to provide the sex worker with effective protections from exploitation and violence whilst recognising her rights and autonomy. As stated in the Prostitute Reform Act of New Zealand (hereby PRA), the aim of decriminalisation is to ‘safeguard the human rights of sex workers and protect them from exploitation.’<sup>52</sup> Crucially, this explicit provision recognises that sex workers have fundamental rights that should be protected, one of which, is a freedom from exploitation. It is with this provision in mind that all other laws and regulations governing the decriminalisation in New Zealand should be interpreted. Section 3(a) of the Act further clarifies what it means to be a sex worker under the New Zealand decriminalisation regime by explicitly recognising and safeguarding the following rights: the right for adults not to be forced to engage in sex work, the right to refuse a particular client or sexual practice; and the right not to be subject to exploitative, degrading employment practices.<sup>53</sup>

Using this approach, similar recognitions should be placed within any decriminalisation legislation to ensure protection from exploitation and violence. A decriminalisation approach could still include provisions currently in place, such as s52 and s53 of the SOA, yet explicitly outline the legal status of the sex worker by recognising her rights, providing the police, courts and organisations with a basic framework on which to interpret various offences and leaving little risk of the regressive and damaging interpretations of the law that pervade the landscape of sex work regulation today.

Therefore, taking inspiration from s3 of the New Zealand Act, a framework setting out the rights of sex workers should be introduced within the decriminalisation legislation that sets out the key rights of sex workers and thus the protections that all provisions relating to sex work should ensure. These should focus upon recognising sex workers as autonomous human beings with the same rights to protection from harmful conduct as any other member of society. These could include the right for adults not to be forced to engage in sex work, the right of sex workers to refuse clients or sexual practice and protect them from exploitative and degrading employment practices. Framing the legislation around rights would provide authorities with key guiding principles on which to interpret further legislation and best protect the sex worker. That is, it would provide the key ethos of the legislation, that sex workers are human beings that deserve the same rights and protections as all others. With these rights in mind, s52 and s53 of the SOA would be used for explicit cases where adults have been induced or compelled by another person to provide sexual services or have been subjected to exploitative and harmful third party conduct, not, as in current law, to prevent sex workers from working with non-exploitative third parties and partners. This approach should allow for the law to specifically target client violence, parasitical pimping, sexual harassment by managers,

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<sup>52</sup> The Prostitute Reform Act 2003, New Zealand, s3(a)

<sup>53</sup> Ibid s3

coercive or fraudulent trafficking and under-age women selling sex.<sup>54</sup> Placing such provisions within a legal framework that recognises sex workers' rights ensure these provisions could be used in a progressive manner that protects the sex worker from violence and exploitation whilst recognising her right to work autonomously and without prosecution from the law. This, then, would mean that those voluntarily undertaking in sex work are no longer forced into dangerous situations to escape the law and reduce the chance of being discovered by the police, which, as shown in chapter 2, often exposes women selling sex to a far greater risk of harm.

### **Protecting Underage Workers**

As required under the UN Convention on the Rights of the Child, a second element of sex work that should continue to be regulated by the criminal law is that of under-age sex workers. As currently exists in New Zealand and many other jurisdictions, prohibitions should be put in place on people who assist anyone under the age of 18 years in providing sexual services. In New Zealand, this also includes anyone who receives earnings from such services, or anyone who contracts someone under the age of 18 years for commercial sexual services, with a prison sentence for up to 7 years.<sup>59</sup> Crucially, no person under the age of 18 should be charged as a party to the offence to truly focus the law on the vulnerable and exploited. Here, the current offence of 'paying for sex with someone under the age of 18' under s47 of the Sexual Offence Act 2003 should remain. Under these provisions, a person commits an offence if they intentionally obtain the sexual services of another and do not reasonably believe that the worker is over 18 or if the individual in question is under the age of 13.<sup>60</sup>

### **Effectively Reducing Violence and Exploitation in England and Wales – Limitations and Potential Set-backs**

One of the major limitations of provisions aiming to reduce the violence and exploitation experienced by sex workers is the wider context of violence against women in England and Wales and the historic ineffectiveness of enforcement agencies to target such violence, especially sexual violence against women. As previously explored, violence in sex work is complex and inextricably linked to both the social stigma suffered by sex workers and the wider endemic of violence against women within our

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<sup>54</sup> Ronald Weitzer, N14 221

<sup>59</sup> Sections 20-22, Prostitute Reform Act 2000, New Zealand; Gillian Abel, *et al* N55 80

<sup>60</sup> s47(1), Sexual Offences Act 2003

society. With this in mind, a decriminalised approach cannot wholly eradicate the threat of violence from sex work, and subsequently that towards women in our society more generally. At present England and Wales faces alarming rates of sexual offences and violence against women, with a 2014 joint Home Office and Ministry of Justice Report estimating that on average, 404,000 females a year are victims of sexual offences.<sup>61</sup> Further, the report estimated that only 0.5 per cent of females then reported being a victim of the most serious offences of rape or sexual assaults with under two thirds resulting in a conviction.<sup>62</sup> Reducing the endemic issue of violence suffered by sex workers will be no easy feat and will not happen after a simple legal change. This was demonstrated in New Zealand post-decriminalisation, where most notably the street sex worker, she found little improvement to her safety from violence. Since the introduction of the Act in 2009, three street based-sex workers have been murdered in Christchurch and in their research, Gillian Abel and Lisa Fitzgerald found that still street sex workers accepted their susceptibility to violence, stating that there was ‘nothing much you can do about it.’<sup>63</sup> From the experience of New Zealand, it is clear that black-letter law reform will not directly result in reducing the street sex workers experience of violence, such reform should recognise the entrenched and endemic nature of violence against street sex workers, as a magnification of the wider issue of violence against women more generally.

Here, policy reformers do not only have to aim to combat the institutionalised stigma against sex workers, but the institutionalised biases that govern reporting and prosecuting sexual offences within our current socio-legal system. However, removing the criminalised status from the sex worker and recognising the existence of voluntary sex work would pave the way towards significantly reducing the frequency of violence experienced by sex workers whilst putting in place an effective official support system to deal adequately with crimes committed against them, empowering the worker and encouraging her to report violence against them. In the context of England and Wales especially, this is no easy feat. There exists a double stigma, firstly as women reporting sexual violence and secondly as sex workers, experienced by sex workers within our society that makes an increased reporting for sexual violence committed by sex workers a very difficult task. As explored in chapter 1 of this thesis, sex worker often believe that they will not be taken seriously by the police or the courts because of their application, and believe that the common attitudes of the police is that sex workers get what they deserve.<sup>64</sup> To combat this, there should be holistic reform that reaches beyond legal change, to improve the attitudes and methods employed by the enforcement agencies that are often viewed as the most significant barrier to justice from violence and exploitation for sex workers.

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<sup>61</sup> *An Overview of Sexual Offending in England and Wales*, Ministry of Justice, Home Office and Office for National Statistics, 10 January 2013

<sup>62</sup> *Ibid* 7-8

<sup>63</sup> Gillian Abel, *et al* N55 226

<sup>64</sup> Rosie Campbell and Hillary Kinnell, ‘We shouldn’t have to put up with this: Street sex work and violence’ (2008) *Criminal Justice Matters*, 42, 12-13; Phil Hubbard, ‘Out of Touch and Out of Time’ in Rosie Campbell and Maggie O’Neill, *Sex Work Now* (Willian Publishing, 2006);

## **Enforcement of the Criminal Law – A Holistic Approach to Reducing Violence and Exploitation**

Thus, in order to ensure the protection proposed here is effective in reducing harm, one of the key issues is improving relations between sex workers and the police. An effective decriminalisation regime would facilitate the reporting of abuse by educating police and other authorities to treat sex workers as persons with rights, whose protections is the responsibility of state officials.<sup>65</sup> A key change to be suggested here would be to treat crimes against sex workers as ‘hate crimes.’ Not to be understood as an alternative to decriminalisation, treating crimes against sex workers as hate crime should work in tandem with such a regime to effectively tackle the endemic level of violence.

### **Labelling Crimes Against Sex Workers as Hate Crimes**

The specific provisions against violence, exploitation and underage workers aim to prevent such harms from occurring in the first place, to act as deterrents and mechanisms to empower and protect the sex worker. However, I also argue that within a decriminalised environment there should be further steps to effectively provide recourse for justice if such violations do occur. Labelling crimes against as sex workers as hate crimes could provide enforcement agencies with the tools needed to understand and respond to such violence alongside such a provision. Importantly, this would work alongside a preventative approach, as will be discussed further below. A close example of the potential benefits of this model of policing can be seen within the model found in Merseyside, England. Here, through labelling crimes against sex workers as hate crimes, the Chief Constable acknowledged that sex workers were a maligned minority who were disproportionate victims of prejudice and who therefore required an ‘enhanced service.’<sup>66</sup> Due to the highlight stigmatised status of the sex worker, the police force noted the need to ‘gain the confidence of victims and their families’ if they were to actually reduce the frequency of violence experienced against sex workers and their capacity for justice. Here, ‘emphasis fell on public protection over eradication and disruption of sex work markets.’ This enhanced service saw local use of the media to publicise the message that crimes against sex workers would not go unpunished, importantly it also saw the creation of the first specialist independent sexual violence advisor for sex workers to assist sex workers in seeking justice.<sup>67</sup> Further, in Merseyside they also have two ‘police sex work liaison officers’ who work

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<sup>65</sup> Ronald Weitzer, N14 212

<sup>66</sup> Andrew Boff, ‘Silence on Violence: Improving the Safety of Women’ (*GLA Conservatives*, March, 2012) <<http://glaconservatives.co.uk/campaigns/silence-on-violence/>> 36

<sup>67</sup> *Ibid*, 37

closely with local support projects to encourage sex workers to report crimes and access appropriate support services and also link the Ugly Mugs scheme to their police intelligence.<sup>68</sup>

This special focus on improving relations between sex workers and the police, despite a long history of hostility had unprecedented results in both reducing harms experienced by sex workers and prosecuting those harms committed against them. The results of Merseyside model of policing speaks volumes about the potential impact of a specialised approach to responding to crimes against sex workers in England and Wales. They saw an almost 400% increase in the proportion of people giving consent to share full details with the police, an 83% conviction rate for all cases going to court and a 67% conviction for rape (this compares to the national average conviction rate of just 6.5%). Despite the wider societal context of extremely low attrition rape and sexual assault cases, Merseyside police achieved extremely progressive results, even within the narrow legal abolitionist framework. Through labelling crimes as ‘hate crimes’ they were able to prioritise the crimes against the sex work over crimes she may have committed during her work. The Merseyside model illustrates the potential of decriminalising sex work and reforming police relations with sex workers themselves, once the criminal law is removed from regulating the lives of sex workers there can be renewed focus on improving relations and providing sex workers with justice from harms whilst deterring people from committing crimes against them.

Alongside such a holistic approach to the enforcement of provisions that criminalise the exploitation and violence of sex workers, the law would make a clear and symbolic stance on the status of the sex worker, that her liberty and autonomy is as deserving of protection as any other member of our society. It would see a legal obligation on enforcement agencies to treat sex workers as autonomous individuals, as seen in Merseyside. Especially due to the wider societal problem of entrenched violence against women, reducing the violence experienced by sex workers will be extremely difficult and by no means guaranteed after legal change. It should come hand in hand with improved police training and a holistic reform on how the force deals with sex workers as victims of assault, that is, as hate crimes as seen in Merseyside.

### **Beyond the Law and Tackling Stigma**

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<sup>68</sup> Ibid, 38

This chapter is not to argue that a change in law will automatically result in the societal acceptance of female sex workers as any other group of working women. As Vanessa Munro warns, although, the law is a powerful tool that can significantly reduce the harms experienced by the sex worker, ‘to assume that legislative change will – in and of itself – bring about attendant social change, let alone predictable social change that can be mapped from experience in another socio-spatial context, places far too much faith in the power of law as a reformist institution.’<sup>69</sup> Within such a proposal for legal change we should also recognise the limits of the law and black letter law reform, and the importance of aiming for holistic and lasting change. As has been emphasised alongside each of the three provisions here, the surrounding structures and institutions that will exist in tandem to such legal change must also be re-examined to place reducing harms of sex workers at the forefront of their psyche. We must empower and protect workers through all levels of our society; be it on a legal, political and social level, to truly ensure they feel valued and protected to as a community.

### **Fighting Social Stigma**

Thus, going beyond the law, the wider societal attitudes that regard sex workers as second-class citizens often pose as much of a threat to increasing risk of harm than the increased risks due to hostile and criminalising legislation.<sup>70</sup> Any decriminalisation strategy must therefore have a holistic approach to resisting stigma that proactively and explicitly aims to reduce the Othering of the sex worker from all aspects of society, including the legal sphere, enforcement agencies, courts, outreach groups and education. As Bernard argues, even after positive legal change there ‘remains a need for a sea of change in the public perception of prostitutes as second class citizens who do not qualify for the same civil liberties as the rest of the population.’<sup>71</sup> As found in the research undertaken by Abel and Fitzgerald and Armstrong, even post-decriminalisation the majority of sex workers interviewed felt they remained a stigmatised population and ‘overwhelmingly referred to the need to change negative attitudes towards them amongst the general public.’<sup>72</sup> Thus, from the New Zealand approach we can learn that after any legal change there should remain a prioritisation to challenging the negative attitudes towards women who sell sex that cast them as marginalised people on the peripheries of our society.

As we can see from New Zealand, this will be no easy task. There are considerable barriers to reducing the stigma that has evolved over centuries within England and Wales. This stigma is deeply ingrained within societal views on female sexuality and gender expectations, developed over centuries

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<sup>69</sup> Ibid, 5

<sup>70</sup> Marina Barnard, ‘Violence and vulnerability: conditions of work for street-working prostitutes’ (1993) *Sociology of Health and Illness*, 15(5), 683-705.

<sup>71</sup> Ibid, 702

<sup>72</sup> Lynzi Armstrong, ‘Managing risks of violence in decriminalised street-based sex work: a feminist (sex worker rights) perspective’, (Victoria University of Wellington, 2011) 194

where victim blaming and judgements towards women with numerous sexual partners remain rife. The development and nature of stigma suffered by workers in England and Wales was explored in chapter 2, which showed how sex workers have remained one of the most excluded and alienated groups within our society since the Vagrancy Acts of 1824. Accordingly, it remains a ‘hugely problematic task because some people believe so strongly in the validity of their preconceptions about street-based sex workers’<sup>73</sup> that aiming to instigate change in this respect remains exceptionally difficult. This is not to argue that reducing the stigmatised status of sex workers is an impossible task. It is however, to argue that reducing the stigma of women who sell sex will be a lengthy process and will not happen instantly after legal change.

In her research Lynzi Armstrong found that negative ideas about sex workers were linked to a wider lack of knowledge and understanding of the nature of sex work and women selling sex in mainstream society, as a result of not being familiar with any real people working on the street.<sup>74</sup> In order to aim to reduce this deeply ingrained social stigma, there ought to be more information available to the public about sex workers that shows the actual lived experiences and realities of women selling sex. As one informant from the New Zealand Prostitutes Collective stated to Armstrong, effecting this change relies on ‘the establishing of human faces of sex workers and particularly human faces of street-based sex workers.’<sup>75</sup> Steps towards this de-Othering are already being taken place within the media in England and Wales, where recently there has been a significant proliferation of documentaries seeking to explore the real-lived experiences of women selling sex, their selfhood and their socio-economic background. This movement towards humanising sex workers is a crucial aspect of reducing their harms suffered and would represent significant steps towards their inclusion within society on the whole.

## Conclusion

Thus, this thesis has culminated with a proposal for a reform of decriminalisation in England and Wales. Throughout this thesis I have aimed to demonstrate the importance of including sex workers in debate and reform as a fundamental step in understanding and reducing their harm suffered. Although I have not proposed a comprehensive system of reform due such a necessary step, I have suggested that there are three fundamental protections that should be integrated within any proposal for decriminalisation if such an approach is to be effective in reducing harm. With a specific provision that protects the sex worker from exploitative and coercive conduct, clear provisions that ensure the

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<sup>73</sup> Ibid, 197

<sup>74</sup> Ibid, 197

<sup>75</sup> Ibid, 198



sex worker can access labour protections and the introduction of a licensing system in England and Wales, the government could make progressive and promising change to the lives experienced by sex workers, and the harms they currently suffer on a daily basis.

## CONCLUDING THOUGHTS

At present in England and Wales there seems to be an official movement towards criminalising the client of sex workers, as recommended in the report *Shifting the Burden*.<sup>1</sup> Despite this, this thesis aimed to propose a system of decriminalisation in England and Wales that would have the central aim of reducing the harm of violence, exploitation and stigma experienced by the sex worker. There were four clear steps in achieving such a conclusion. Firstly, I argued that the harm in sex work is endemic, not inherent in the lives of sex workers and could be more accurately described into the three further categories of stigma, violence and exploitation. Secondly, I argued that the current system of regulating sex work in England and Wales only serves to further endanger the sex worker and maintain the harms she suffers. Thirdly, I analysed the differing regimes of criminalising the clients, legalisation and decriminalisation, maintaining that regimes of decriminalisation offer the best potential for protecting the sex worker. Finally, the concluding chapter of my thesis proposed a regime of decriminalisation in England and Wales and proposed three fundamental protections that should be codified in law to ensure that sufficient steps are taken towards reducing the violence, exploitation and stigma suffered by the sex worker.

### Understanding the harm in Sex Work

The first recognition any legal reform on sex work should make is that harm is endemic, not inherent, in the lives of women selling sex. Here it is important we don't understand selling sex as either inherently harmful or wholly empowering and instead, aim to recognise harm in its multiplicity and complexity. The key problem with academic theory that explains harm in sex work through a gender and violence perspective is that it forgets 'the variety of meanings that participation in a 'single' practice can have for different individuals or groups'<sup>2</sup> as the harm experienced by sex workers both individually and collectively, are simultaneously essentialised and victimised. When exploring the nature of harm in sex work, instead of such

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<sup>1</sup> *Shifting the Burden: Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales*, All-Party Parliamentary Group on Prostitution and the Global Sex Trade, March 2014

<sup>2</sup> Shannon Bell, *Reading, Writing and Re-Writing the Prostitute Body* (Indiana University Press, 1994) 73 in Noah Zatz, 'Sex Work/Sex Act: Law, Labour and Desire in Constructions of Prostitutions' (1997) *Signs* 22 (2), 280

all-encompassing viewpoints, we must recognise the importance of context in understanding sex work and the complexity of the lived experiences of sex workers and their experiences of harm. It is crucial to recognise that ‘context’ is not itself unitary; rather, context is always fraught with heterogeneity, paradox, and difference that may, for instance, make the same ‘event’ transpire in different ‘contexts’ for different individuals.’<sup>3</sup>

Such recognition enables the personal and social effects of engagement in sex work to be separated from one another.<sup>4</sup> Instead of accepting harm as an inescapable aspect of selling sex, this approach allows for a re-examination of the nature of harm and the situations in which it occurs, allowing for the categorisation of harm into ‘stigma,’ ‘violence’ and ‘exploitation,’ that accurately reflects how sex workers themselves view their own risk.

### **The need for reform in England and Wales**

The second crucial point that should be recognised in the context of sex work in England and Wales is the need for reform. Starting with the Contagious Disease Acts, the historical construction of the prostitute as the Other, has seen women who sell sex subject to laws that reduce their autonomy, take away their civil rights and place them at increasingly heightened risks of violence, exploitation and stigma. Throughout history, the harm experienced by the sex worker has been created, structured and maintained through criminalising legislation that has silenced the voice of sex workers and ignored the realities of their harms.

At present in England and Wales, the current legal landscape of sex work is underpinned by an aim to ‘challenge the view that prostitution is inevitable and here to stay.’<sup>5</sup> Such an ideology has resulted in laws that not only ignore the realities of the sex worker, but maintain and further increase her harm suffered. The present laws regulating sex work significantly curtail the activities relating to selling sex, making it extremely difficult for sex workers to remain within the law. The introduction of Anti-Social Behaviour Orders<sup>6</sup> for sex workers and strict regulations criminalising soliciting and kerb-crawling<sup>7</sup> have displaced the street sex worker, pushing her into darker and more isolated locations, where she is at a great risk of

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<sup>3</sup> Ibid, 280

<sup>4</sup> Teela Sanders, Maggie O’Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics* (Sage Publications, 2009) 4

<sup>5</sup> Home Office, *A Coordinated Prostitution Strategy* (London: HMSO, 2006) 1

<sup>6</sup> Crime and Disorder Act 1998

<sup>7</sup> Street Offences Act 1959, s1

violence and exploitation. For the indoor worker, she remains isolated and unprotected with no protections from dangerous working conditions or non-exploitative management. Paradoxically, the current laws regulating indoor sex work place the most law-abiding worker at the highest risk of harm, ‘effectively discouraging safe working conditions and collective business relationships’<sup>8</sup> as the only way to legally sell sex is working alone, without other workers, managers or even persons providing security or protection.

Today, women who sell sex are faced with serious risks of harm and a government that, through an adoption of a convenient ideological position, refuses to protect them from such risk. At present, the law in England and Wales firmly establishes the status of the sex worker as a second-class citizen, unable to rely on the police for protection yet at extreme risks of harm. It is due to this dangerous position of the sex worker that places the law regulating sex work in England and Wales at desperate need of reform.

### **Legalisation, Criminalising the Client or Decriminalisation?**

There are a number of various alternative legal regimes regulating sex work. This thesis focused on the options of criminalising the clients, legalising the sex industry and that of decriminalisation. Each regime is underpinned by clear understandings on the origins of ‘harm’ in sex work, with differing aims and goals of each legislation. Firstly, through an exploration of the introduction of legislation that criminalises the clients of sex workers, I demonstrated the danger of regimes that seek to eradicate sex work. As seen in Sweden, through adopting an understanding of sex work as intrinsically violent against women, the Swedish government were able to justify legislation that denies the role of the government in shaping, constructing and maintaining the harm experienced by the sex worker. When countries adopt an understanding of the harm in sex work as one of inescapable violence against women they are able to legitimise their own inactivity in reducing the harms suffered by sex workers on a daily basis and maintain the marginalised status of the sex worker.

One alternative to criminalising the clients is a scheme of legalising sex work. Such a regime would make sex work legal under specific conditions and requirements. However, on exploration I demonstrated that although they may have a strong symbolic rhetoric, regimes of legalisation similarly risk endangering the sex worker. Through the introduction of strict working requirements and governmental controls, regimes of legalisation run the great risk of

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<sup>8</sup> Teela Sanders and Rosie Campbell, ‘What’s criminal about indoor sex work?’ In Kate Williams, Phillip Birch, Gayle Letherby and Maureen Cain (eds), *Sex as Crime* (Willian, 2007)

creating a two-tiered system, in which a large number of sex workers remain in the underground, unregulated sex industry where they are at extreme risk of violence and exploitation.

In response to these alternatives, this thesis proposed decriminalisation as a potential solution to the violence, stigma and exploitation endemic in sex work. The adoption of such an approach would signify an official acknowledgement of the role the law plays in constructing and maintaining the harms experienced by the sex worker, and could make the first step towards reducing such harms. As seen in New Zealand, under decriminalisation sex work and all activities relating to it are decriminalised, leaving the official focus upon reducing the harms experienced by the sex worker and ensuring safe working premises, effective health and safety regulations and providing the sex worker with the same rights and protections as any other working citizen. Here, decriminalisation regimes make the crucial recognition that sex workers are part of the wider society, and thus deserve the same equal protections than any other member of the public.

## **Conclusion**

Thus, in the final chapter I proposed the introduction of a decriminalisation regime in England and Wales. In doing so, I argued that such reform should not take place without the proper consultation and inclusion of the experiences of sex workers themselves. However, I forwarded three fundamental protections to be introduced within a decriminalisation regime that would effectively tackle the harms experienced by the sex worker. Those were, a specific provision that would protect the sex worker from exploitative and coercive conduct, a provision that would clarify the accessibility of the sex worker to labour rights and protections and the introduction of an indoor premises licensing system. These three protections, I argue, are imperative to any regime that seeks to realistically reduce the harm suffered by the sex worker.

Finally, it is important to note that this thesis did not argue that such legal change would directly result in a reduction of harm for the sex worker. Simple black-letter law reform will only improve the safety of the worker so much. After the introduction of a decriminalisation regime, it is crucial that societal changes are enacted. The community in which sex work takes place, the individuals that enforce the protection within the provisions and the societal attitude in general all need to change in order to achieve lasting positive social change for the

sex worker. It is only through recognising the importance of such holistic law reform, that we can truly make strides towards making sex work safe.

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