

# Exploitation: The Role of Law in Regulating Prostitution

SUZANNE JENKINS

## I. INTRODUCTION\*

There has always been considerable controversy about what role, if any, law should play in regulating prostitution, and although in Britain prostitution<sup>1</sup> remains legal in itself, existing legislation does make it very difficult for a prostitute to work without potentially contravening one law or another. The current laws have evolved in a piecemeal fashion. For example, under the heading of sexual offences, the system criminalises procurement, pimping and brothel-keeping, whereas loitering and soliciting for the purpose of prostitution, and kerb-crawling are public order ‘street offences’. Anti-social Behaviour Orders, created by the Crime and Disorder Act (1998), have also been increasingly used against street prostitutes. These laws have been subject to ongoing review and reform in recent years, yet there remains little consensus about the best way to proceed in terms of policy. Instead, the result has been what Agustin (2006, p 34) describes as ‘an endless, repetitive debate’ in the literature on female prostitution, between the benefits of regulation, prohibition and legalisation or decriminalisation. Within the context of such debates, and perhaps in recognition of its significance as a feminist issue, there has been a tendency to think of a prostitute as a woman. Consequently, debates about the value and purpose of laws regulating commercial sex almost exclusively focus on the female prostitute. Indeed, until recently, in legal terminology ‘a prostitute was, by definition, a woman, and a client was, by definition, a man’ (Brooks-Gordon, 2003, p 28). With no male equivalent for the term ‘common prostitute’, the activities

---

\* I am grateful to Marie Fox and John Scott, and to the participants at the 2007 Cambridge Socio-legal Group seminar for helpful comments on earlier drafts of this chapter.

<sup>1</sup> In this chapter, the term ‘prostitute’, rather than ‘sex worker’, is used neutrally, simply to differentiate from other types of sex work such as exotic dancing or pornography.

of male prostitution were regulated primarily by section 32 of the Sexual Offences Act (1956). However, in May 2004, when the Sexual Offences Act (2003) came into force, all existing legislation relating to commercial sexual offences was rephrased to employ gender-neutral terminology (section 56). Therefore, all new clauses apply equally to both men and women who sell sex. It has been suggested that by extending gender-neutrality in this way, male prostitutes may now be at risk of becoming criminalised to the same degree as female prostitutes (Bainham & Brooks-Gordon, 2004, p 282). In other words, an already controversial set of laws governing female prostitutes can now be extended to men who sell sex. According to Brooks-Gordon (2003, p 29), 'this retrograde step may make men as vulnerable as women to the law's interference in people's private lives'.

The existence of male prostitution has long been documented, and there is no doubt that male prostitution is a significant practice both nationally and internationally (Kuo, 2002, p 14). Like female prostitution it is difficult to quantify with any accuracy, however, in the UK at least, 'a generally accepted ratio of four females to one male involved in prostitution is widely held' (Barrett, 1998, p 476). The most notable difference between female prostitution and male prostitution is that the latter is largely, though not exclusively, homosexual prostitution. Of course, like their female counterparts, male prostitutes work in a number of different ways and in various venues. This includes both the more visible street-based industry as well as indoor markets such as brothels/massage parlours and increasingly as escorts operating either via agencies or independently. It is also ever-changing, and as Archard (1998, p.104) explains, not only can the economic and social status of prostitutes vary across cultures and historical periods, but they can also vary dramatically within one and the same society; that is, the prostitute can 'work the street or inhabit the penthouse'. Historically, however, regardless of the working environment, women have consistently been arrested and prosecuted more frequently for prostitution-related offences than have men (O'Neill, 1999, p 182).

In this chapter I address the gendered nature of prostitution and argue that while changes in legislative terminology do signify an important change symbolically, it is doubtful whether this move heralds any substantive transformation in gender equality. This, I contend, is the result of prevailing double standards about what constitutes appropriate male and female behaviour. In particular, this includes a tendency to neglect women's equal autonomy, in the sense of their freedom to act in accordance with their own moral values. I conclude by

highlighting that, unless and until the state accepts that women can make rational, autonomous decisions to work in prostitution as men do, it is unlikely that there will be significant consequences of extending laws to male prostitutes. Despite the tinkering with the wording of legislation, women will continue to represent the target of prostitution legislation by those involved in initiating and processing criminal justice.

## II. THE ROLE OF LAW

The role that law should play in regulating prostitution has long been contested. As Childs (2000, p 205) observes:

There is disagreement not just about the scope and manner of regulation, but also as to whether law has *any* legitimate role to play in controlling this behaviour.

To address this issue, we need to consider the role of law in our society more generally, and, in particular, how decisions are made about what law should be aiming to achieve. This is not a simple task, however; as Sharpe (1998, p 151) explains, ‘In a morally pluralistic society, the scope of the law is difficult to define.’ For some, the role of law includes the signalling of what constitutes morally acceptable behaviour by prohibiting that which is considered to be ‘wrong’. The Christian Institute, for example, remonstrates:

The law is there to tell us what is good, helping us to define the right course of action ... in the absence of all other absolutes ... we look to the law to remind us what we believe (Mills, 1997, p 2).

In other words, law provides guidance in areas where doubt and uncertainty exist, including where the acceptability of certain sexual behaviours is concerned. The law does this by prohibiting particular acts, and also by governing others through formal regulation. In this way, as Anderson (2002, p 770) suggests, ‘the legal and social discouragement of prostitution is seen as a way for our communities to intentionally regulate or constrain our sexual activities’.

Furthermore, because law operates ‘within the context of a powerful discourse; one which is placed highly on the hierarchy of knowledges’ (Smart, 1995, p 82), the guidance provided in law is deemed ultimately authoritative and thus is both highly persuasive and widely influential.

However, it can be argued that it is not the role of law to provide answers where ambiguity exists. For example, while there are fears that legalising prostitution would signify the state's validation of the use of women's bodies as commodities, those who advocate the decriminalisation of prostitution insist that decriminalisation 'does not, and would not, signify state approval of prostitution or make a judgment as to its moral status' (Sharpe, 1998, p 159). In this view, law is not about signifying or denying moral approval; individual morality is a personal judgement. It is also important to distinguish between prostitution's wrongness and the legal response that we are entitled to make to that wrongness (Satz, 1995, p 81). Therefore, although it is commonly argued that prostitution is not in the best interest of the prostitute, even if this were true, this would not necessarily warrant using the law to protect the prostitute from himself or herself. That is, even if we were to accept that exchanging sex for money is fundamentally wrong, it can still be argued that doing so does not necessarily warrant legal intervention. Barry (1979, p 236) argues, for example, that:

It should not be the function of the law to enforce morality or values by making them legal standards under which people must live.

Similarly, Sharpe (1998, p 160) points out that there are many contentious areas of human behaviour that do not lend themselves to statutory prohibition. Indeed, this was the clear conclusion of the Wolfenden Committee, who in their report published in 1957 made radical recommendations for law reform, reflecting the argument that prostitution should be regarded as a matter of private morality. The basic attitude of the Wolfenden committee was that private sexual practices, whether commercialised or not, were not a matter for the interference of the criminal law, but a matter of private morality. In the view of this committee, accepting that the eradication of prostitution was unlikely, the role of law remained only to regulate the more exploitative aspects of the industry and to protect vulnerable individuals who become involved.

Historically, of course, prostitution has been viewed largely as a public health concern, an issue which has been rekindled in recent decades in recognition of fears about HIV/AIDS. Nevertheless, the principles as laid down by the Wolfenden committee remain the principles upon which much of UK prostitution legislation today is based. Therefore, although it is predominantly shaped by an understanding of prostitution as a problem of public nuisance, the role of the law still, ostensibly at least, depends on the question of whether any harm results, rather than on individual morality. Accordingly, Crown Prosecution Service

guidelines state that the general objectives are fourfold: to encourage prostitutes to find routes out of prostitution and to deter those who create the demand for it; keep prostitutes off the street to prevent annoyance to members of the public; to prevent people leading or forcing others into prostitution; and To penalise those who organise prostitutes and make a living from their earnings (CPS, 2005). Therefore, not only is the law's objective to reduce both the incidence and public visibility of prostitution, but legal intervention is also justified by the need to protect the individual prostitute from being exploited by third parties profiting from their prostitution. This has become a particularly contentious issue. In female prostitution, for example, women are regarded as being in need of protection from exploitation, be this in the form of sexual domination or material exploitation. The extent to which this protection is warranted or desirable, however, in the view of those women who choose to work in prostitution, is controversial; not all female prostitutes relate to the notion that they are being exploited by anyone in the work that they do. In order to evaluate the role of law and its usefulness in protecting prostitutes, we need to consider the question of whether prostitutes are necessarily always victims of exploitation.

### III. NOTIONS OF CHOICE

It has long been documented that feminists disagree on the question of whether a woman can validly seek recognition of her choice to engage in prostitution (Childs, 2000, p 221). Childs notes, for example, how some have compared this issue to that of abortion, arguing that feminists must defend a woman's right to choose prostitution, just as they defend a woman's right to choose abortion. Other feminists, however, argue that this type of 'choice' is as controversial as the choice to stay in an abusive relationship. Many question whether prostitution can ever be freely chosen; indeed, likening prostitution to gang rape, radical feminist, Dworkin (1992) insists, 'prostitution could not, no matter how defined, be accepted as a free choice by any woman'. Challenging dominant power relations, many feminists contend that prostitution is undoubtedly about men's power over women (Millett, 1975, p 33; Pateman, 1988; Kuo, 2002, p 143). Moreover, Pateman (1988, p 207) contends that prostitution is unlike other labour because the body cannot be separated from the individual self: 'when a prostitute contracts out use of her body she is thus selling herself in a very real sense'. However, any arguments about body ownership and one's ability to sell or hire one's

body out can be interpreted as the very reason *why* women *should* be granted the right to choose to work in prostitution. As Petchesky (1995, p 395) argues:

Feminists like Pateman, who invoke ‘women’s right to own their bodies’ are reinforcing a language that can just as well validate their ‘right’ to sell their bodies’ ... saying we ‘own our bodies’ means and can only mean that we are ‘free’ to sell our bodies.

The discourse of choice in relation to prostitution was brought to the fore in the late 1990s, when debate began focusing on the issue of women being trafficked for the purpose of sexual exploitation. This issue, which is now on the agenda of all major governing bodies, relies upon international human rights rhetoric, and raises the question of a dichotomy between free and forced prostitution. This discourse, which rejects issues of individual agency and consent, tends to deploy victimising terms such as ‘prostituted women’ and ‘sexual slavery’ for all migrant sex workers, rejecting the difference between ‘free’ and ‘forced’ sexual labour (see Weitzer, 2007). The belief is that no one can truly consent to prostitution and therefore any woman who is engaged in prostitution is a victim who requires rescuing from sexual slavery. However, not only has the occurrence of trafficking proved to be extremely difficult to measure, but much confusion arises from different use of terminology resulting in the conflation of both ‘free’ migrants who sell sex and those who have been trafficked (Agustin, 2005; 2006). It has also been argued that such sweeping generalisations ‘fail to recognise the complexity and diversity of both the experiences of prostitutes and their motivations for working in prostitution’ (Kuo, 2002, p 25). That a woman has chosen to travel to another country to seek work should not compromise her capacity to choose the nature of that work. As Agustin (2003, p 8) rightly asserts,

we should be able to give credit where it is due to women and transsexuals, as well as men, who dare to make decisions to better their lives by leaving their homes to work abroad, no matter what kind of work they have to do.

Moreover, Agustin highlights how it is that, while women who work in the sex industry are consistently described in a victimising discourse, the experiences of men and transgenders who sell sex are ignored. This focus on women, insists Agustin, is because although there are many transgenders and men in the same situation, it is women that provoke the scandal (Agustin, 2007, p 11).

The negative aspects of prostitution within trafficking discourses remain widely influential both in the academic literature and the media. One particular difficulty, argues

Weitzer (2007, p 451), is 'the claim that prostitution is intrinsically evil is an essentialist tenet that does not lend itself to evaluation with empirical evidence'. Furthermore, although it is often argued that people cannot give meaningful consent to the violation of their human rights (see for example, Barry, 1995), drawing upon human rights arguments can be a precarious approach to adopt. As Edwards 1997, p 57) counters:

The prostitution issue is firmly on the human rights agenda, not only represented by a lobby arguing that it is an abrogation of fundamental human rights but represented too by the counter-claim that the right to prostitute is a fundamental human right.

This counter-claim espouses the value of free choice by individual women, and rejects interference with a woman's choice to sell sexual services, unless that choice is not made freely (Childs, 2000, p 223). It is not being suggested that the choice to work in prostitution is one that could or should be taken lightly, but that for some individuals, the option to work in prostitution may be the least unpalatable for them given their particular range of possibilities. There is of course ample evidence that women's choices can indeed be constrained, and as Chapkis (1997, p.52) submits, by being in a disadvantaged position hierarchically, very few women's lives are models of 'free choice'. However, fewer options and constrained choices do not invalidate those choices that are made. As Nussbaum (1999, p 296) maintains,

we may grant that poor women do not have enough options ... while nonetheless respecting and honouring the choices they actually make in reduced circumstances.

In other words sex in exchange for money may not be ideal, but acknowledging that cannot be taken to infer that this somehow nullifies prostitution as a valid choice. Moreover, it is worth noting that many prostitutes stress the absolute voluntariness of their entry into the profession, and indeed may assert its clear preferability to some other far less desirable forms of paid employment (Archard, 1998, p 106). Not only does it remain a valid alternative for some women, but it is neither an irreversible choice nor necessarily even a long-term decision. In fact, Kesler, herself a former prostitute, insists that

some prostitutes state that they enjoy their work, and would choose it again; that, in effect, they do choose it every day.

That is, they choose it in full awareness of what it means to be a prostitute, and as Kesler maintains,

just because someone cannot imagine why a woman would choose prostitution, does not mean that this is not in fact exactly what has happened. (Kesler, 2002, p 223)

## IV. ECONOMIC POWER

The subjects of prostitution and exploitation are often intertwined in discourses that point to the way in which men have taken advantage of women's weaker socio-economic position. Although women are no longer tied to the home, and, ostensibly at least, enjoy equal access to education and employment, the result has not been a universal ability for women to avoid poverty or dependence upon others. It has been noted that 'the proportion of women who engage in commercial sex-work is often directly related to the economy and to levels of unemployment' (Hankins, 1996). In Britain, the 'feminisation of poverty' (Brooks-Gordon & Gelsthorpe, 2003), coupled with the rise in households headed by single females juggling childcare, part-time work and living on welfare benefits, means that the choice of sex work comes to make sense for some women (Phoenix, 1999). The English Collective of Prostitutes (1997 p98-99)?, campaigning for the abolition of the laws relating to prostitution, argue that prostitution is the direct result of economic and social inequalities, and they point to statistics which illustrate the disadvantages faced by many young women.

Although there are many reasons why both men and women enter prostitution, unsurprisingly, economic factors remain the most commonly cited reasons for women (see O'Neill, 1997; Scambler and Scambler, 1997; Phoenix, 1999). However, as Ericsson (1980, p 346) rightly questions: 'How interesting is it, generally speaking, to say of a commercial phenomenon that it has economic causes?' In truth it tells us little about the decision to undertake such work. It must also be acknowledged that not all research supports the notion that economic hardship is the determining factor in turning to prostitution. For example, in her UK study investigating what social factors motivated or facilitated entry into prostitution, Sharpe (1998, p 168) found that poverty was not the sole motivating cause. Similarly Doezema (2000, p 41) explains how

while economic motives often predominate, for many sex work is seen as a route to amassing capital or ensuring later economic independence, rather than a last resort from dire poverty.

Likewise, Kuo (2002, p 151) rejects the view that prostitution is purely the result of poverty and she points towards a number of other personal motivations, such as enjoying sex or the desire for adventure.



This notion that prostitution is not solely class- and poverty-related is borne out in the research findings of ethnographic fieldwork conducted in five US and European cities by Bernstein (2007). This research led Bernstein to question,

if sexual labour is regarded as, at best, an unfortunate but understandable choice for women with few real alternatives, how are we to explain its apparently increasing appeal to individuals with combined racial, class, and educational advantages? (Bernstein, 2007, p 474)

Her study highlights how middle-class call girls drew on their life experiences and a 'distinctive skill set' in order to capitalise on the demands for sexual services, and the majority described themselves as 'nonmonogamous, bisexual and experimental' (Bernstein, 2007, p 477). This reinforces the idea that prostitution can be a voluntary career choice for some women. As Weitzer (2007, p 453) insists, sex workers do not necessarily see themselves as victims lacking agency. Rather, he asserts, some prostitutes, including many independent call girls and brothel workers, make conscious decisions to enter the trade and do not regard their work as degrading or oppressive.

What is being argued here is that rather than necessarily being in response to dire poverty, deciding to work as a prostitute can be in response to a range of factors that are each given weight according to the priorities of the individual. Choosing to engage in a particular occupation is not always about economic survival; it may simply represent a more attractive prospect than the more conventional employment alternatives chosen by others. It seems, however, that in the context of arguments about notions of choice, judgement about the validity of that choice tends to be based simply on the extent or level of desperation and destitution. Therefore, what is considered to be an appropriate (and therefore legitimate) response to that particular economic position rests purely on the degree to which poverty is reported. This cannot be assumed to be the only consideration. Realistically, as O'Neill (2001, p 31) points out,

feminist thought must acknowledge that for some women, prostitution gives a good enough standard of income, relative autonomy and can be fitted in around child care.

In other words, while choosing prostitution over alternative modes of income may not constitute free choice, it is perhaps better perceived as a *rational* choice. It may be that whilst many women may make a reasoned choice to work in prostitution, a totally free choice regarding employment is something very few people truly have. But this is by no means peculiar either to prostitution or to women, and rational choice may be a more pragmatic and

helpful conceptual tool in understanding how men and women make choices about how to earn their living.

Whilst we cannot ignore the social and economic contexts within which prostitution takes place, citing economic factors as they specifically relate to women is insufficient as an explanation for prostitution. Economic power will probably always play some part in justifying the decision to sell sexual services. However, men's superior economic power has never prevented male prostitution, and economic disadvantage does not explain all female prostitution. Citing economic inequalities alone is therefore simply inadequate as an explanation for all prostitution.

## V. FEMALE PROSTITUTES: PATHOLOGISED AND INFANTILISED

Historically, although narratives of both male sex work and female sex work have tended to present prostitution as a product of either economic necessity or individual pathology (Scott *et al*, 2005), it has been noted that the tendency to pathologise is much stronger in relation to female sex workers (Allen, 1987, p 81; ENMP, 2003). Rather than relying on financial explanations, here there is instead a tendency to pathologise and infantilise female prostitutes by an over-emphasis on discourses of victimhood. From this perspective, economic necessity, even absolute poverty, cannot sufficiently explain why women would prostitute themselves. Instead, 'prostitution is seen to have its origins in some form of individual pathology which may be either physiologically or psychologically rooted' (Smart, 1976, p 80). In other words, rather than look to rational explanation for entry into prostitution, the tendency to pathologise manifests itself in an attitude that questions, 'What is *wrong* with these women?'. That is, logical, pragmatic justifications are dismissed in favour of more individual maladies and a tendency to challenge the soundness of mind of such otherwise 'inexplicable' women. Furthermore, women are more likely to have their motivations challenged, because:

Whereas qualities such as strategic agency and activity are granted to both male sex-workers and their clients, they are not imagined to be qualities that are possessed by female sex-workers or their clients, all of whom are seen as suffering from some form of psychosexual deviancy. (ENMP, 2002, p.38)

In addition to this tendency to treat female prostitutes as ‘ill’, to reinforce their victimhood, they tend to also be infantilised in a similar manner. Marlowe elaborates thus:

In contrast to young men, women of *any* age are treated as childlike victims; no matter what their age ... it would appear that age confers maturity and autonomy upon male, but not female, prostitutes, who are rarely represented as anything but exploited. (Marlowe, 1997, p 141)

An example of to what degree this infantilisation can affect how we present and understand prostitution is highlighted by Brooks-Gordon (2003). Referring to the Sexual Offences Bill 2003, she highlights how connections between adult prostitution and child sex offences are taken for granted:

Clauses in the bill dealing with adult prostitution are problematic as they are placed in a section entitled ‘Prostitution and Child Pornography’ and inserted between child offences. This lumps the adult sex-working woman and the child together. (Brooks-Gordon, 2003, p 28)

It is within trafficking discourse that the conflation of women with children is particularly evident. For example, Agustin (2003, p 118) describes how women are infantilised in the name of protecting and ‘saving’ them, which denies their power and agency. Doezema (2000, p 35) argues that it is this blurring of the distinction between child and adult that helps to fix the image of the ‘trafficking’ victim as young and helpless. Similarly, Weitzer (2007, p 463) argues:

Official discourse repeatedly invokes ‘women and children’ victims, arguably to equate women with children’s vulnerability and lack of agency and to stoke popular revulsion and support for draconian measures.

In the US context, this is the result of what Weitzer calls the ‘moral crusades of anti-trafficking discourse’. However, in both US and UK contexts, adult women are treated as though they need state intervention ‘for their own good’. The result is, as Brooks-Gordon (2003, p 28) articulates:

In the rush towards child protectionism, adult prostitute women may be infantilised by the law, have their right to choose removed, and be criminalised as a result.

This tendency to pathologise and infantilise female prostitutes serves not only to encourage notions of victimhood but also to further reinforce the stigmatisation and alienation of female sex workers. As discussed, the law is deemed the ultimate authority, and therefore, this tendency to infantilise women is reinforced when such conflation is given legal endorsement by denying women the right to choose legitimate employment as sex workers. The

combination of being pathologised and infantilised serves to compromise women's autonomous access to the sexual, financial and social independence that is usually conferred with the status of adulthood.

## VI. STIGMA AND SELF-ESTEEM

Another aspect of how women are pathologised is evident in discussions about female prostitutes' mental health and self-esteem. The way in which stigma is experienced by female sex-workers is well documented, and most female prostitutes report being affected, directly or indirectly, by society's negative views of prostitution (see, for example, Kempadoo & Doezema, 1998; O'Neill, 1999; Phoenix, 1999). It is usually considered that working as a female prostitute involves shame and that women would want to avoid disclosing their prostitute identity. The link between female prostitution and poor mental health, including low self-esteem, is similarly highlighted. However, low self-esteem is by no means universal among female prostitutes (see, for example, respondents in O'Neill, 1997, pp78–9; Nagle, 1997) and it has been argued that assuming low self-esteem to be the result of being offered payment for sexual services denies women agency and is often contested by women who choose to make their living this way (see, for example, Nagle, 1997; O'Connell Davidson, 1998). Nevertheless, discussion of female prostitution inevitably includes references to the low self-esteem resulting from involvement in prostitution. According to Bullough and Bullough (1998, pp 36–7), this argument is based on the culturally supported assumption that men enjoy, need and desire sex more than women do.

Similarly, the stigmatisation of female sex workers, argues Marlowe, is associated with a 'good girl'/'bad girl' dichotomy and the associated expectations of hegemonic femininity. Marlowe (1997, p 142) contends that boys and girls are conditioned differently in their acceptance of sexual agency and activity. He asserts that

Adolescents learn that 'good girls' abstain from sex while 'bad girls' don't, but that good boys and bad boys alike strive to have sex as often as possible as part of a normal and healthy sex drive.

Vanwesenbeeck (2001, p 268) elaborates:

The contrast with female sex-workers may be in the possible association with biological models of masculinity, viewing sexual activity for men as normal in ways that female sex-work can never be associated with biological models of femininity and female sexuality.

Of relevance here, is the way that male prostitution can be understood and rationalised within traditional perspectives of male sexuality, yet very different pictures of male and female sexuality and sexual agency are presented. Marlowe questions the logic of making assumptions about low self-esteem, maintaining that the very opposite effect is experienced by male sex workers:

Why would a man have low self-esteem if he's being sought out and given money for his body? Among gay men, hustlers are not stigmatised in this way – more likely, they are envied. (Marlowe, 1997, p 142)

Similarly, Parsons *et al* (2004, p 1021) report:

Having clients request their services, they are made to feel empowered, desired, attractive, and important, and this elevates the escort's self-esteem.

In other words, unlike women who are stigmatised, men, in contrast, can be viewed by their peers as having gained in status. This is one of the most glaring differences between male and female prostitution, and this contrast appears to be the direct result of the 'double standards' present in traditional notions of femininity and masculinity.

Not only is overt sexual desire viewed as a characteristic of masculinity, but the notion that sex can be utilised as a commercial resource is similarly considered to be a specifically masculine trait. Browne and Minichiello (1996) report how it is men's ability to draw upon notions of masculinity and masculine work ethics that enables male prostitutes to adopt an occupational perspective towards their work in order to legitimise what they do (p 87). Browne and Minichiello explain how, for male prostitutes,

being able to capitalise on personal resources in order to make money is an acceptable and legitimate way in which to prove one's masculinity and worth to society

In contrast, the same expectations cannot be applied to female prostitutes because femininity is not associated with business aptitude, and so 'the female sex-worker breaks, rather than reinforces, the rules of "proper womanhood"' (Browne and Minichiello, 1996, p 90). Therefore, men can justify and defend their decisions to use personal resources such as the sale of their sexual services. In contrast, women must be seen to conform to predominant

hegemonic notions of femininity, which clearly, it seems, do not include using their sexuality instrumentally.

## VII. GENDERED POLICING

The UK is not the first country to make the laws pertaining to prostitution gender-neutral. For example, Alexander (1996, p 226) notes how until the early 1990s, most, if not all, of the 50 US states' statutes explicitly defined prostitutes as female. Alexander cautions, 'despite the changes to gender-neutrality, the enforcements of such laws continue to be discriminatory'. Similarly, Allman (1999, p 14), commenting on prostitution laws in Canada, which have been gender-neutral for some time, observes how, nevertheless, 'the laws have never been applied in the same way to male sex-workers as they have been to female sex-workers'.

This may, in part, lie in police officers' discomfort in confronting gay men. Police attitudes are not influenced merely by the fact that prostitutes are commonly perceived as female, but that men engaging in male-to-male prostitution represents a particularly difficult set of challenges to confront. As West's interviewees reported, in the London Metropolitan Area, 'The Metropolitan police hated rent boys – hated the whole idea of it'. It is likely, according to West (1992, p 289), that

such a reluctance to acknowledge and pursue men soliciting for prostitution may result, whether consciously or subliminally, in a blind eye being turned.

This tendency to avoid confronting potentially unfamiliar and possibly uncomfortable situations is similarly evident when it comes to policing off-street venues. For example, West (1992) explains how prostitutes working as masseurs or in brothels could potentially be subject to entrapment by police masquerading as clients, as women often are. However, with male prostitutes this could provoke controversy (West, 1992, p 300). Perhaps adopting the role of a potential client seeking homosexual services would be a more difficult task to perform, given stereotyped 'macho' police culture (see, for example, Reiner, 2000). Consequently, the difficulty in gathering evidence and therefore successfully securing a conviction may act as a deterrent to those initiating criminal proceedings. This may also in part explain why, as O'Neill (1999, p 180) reports, 'the police may be deploying fewer resources to policing male prostitution with the result that fewer are being detected'.

## VIII. CONCLUSION

Despite having been problematised through various theoretical lenses, prostitution remains a controversial issue, and even today, ‘remains a debate *between* women about ending male dominance – about ending inequality’ (Jolin, 1994, p 69). This is true whether the feminist view being argued is one of sexual dominance or material inequality. However, while few would dispute the need for clear equality and neutrality in the law, in practice, in any criminal justice system, decisions have to be made about which laws will be most vigorously enforced and whom they will be enforced against. As Kuo (2002, p 66) argues, ‘Understanding not just formal but actual patterns of enforcement is fundamental to understanding the nature of prostitution practice.’

In this chapter, I have argued that despite changes to the Sexual Offences Act (2003), it is unlikely that male prostitutes will now be criminalised to the extent that female prostitutes are. Patterns of enforcement are unlikely to change in the UK whilst it is primarily women who are considered to be in need of protection. In the light of a tendency to pathologise and infantilise women by an over-emphasis on discourses of victimhood, and dominant beliefs about what constitutes acceptable masculine and feminine behaviours, the female prostitute is invariably considered to be in need of rescue, moral restoration and rehabilitation. Therefore, women will remain the primary target of laws designed to regulate prostitution.

Sexual autonomy is not only about the capacity to choose what sexual practices to engage in, when and with whom, but it is also about being granted the capacity to utilise personal resources, including sexual resources, to satisfy one’s particular needs and motivations. As Wilkerson (2002, p 37) argues,

sexual agency must be understood as an important, and in some ways, key component of the liberation struggles of all disenfranchised groups, rather than a luxury to be addressed after achieving goals that might be perceived as more basic.

This would equally apply to female prostitutes, who can, and often do, make informed decisions to exercise their autonomy by choosing to work in prostitution in full recognition of the potential for exploitation. Whilst these may not be entirely ‘free’ decisions, they are nevertheless autonomous decisions that the state should accept. Acknowledging this may challenge traditional assumptions about the need for the law to protect prostitutes from

exploitation, and so more clearly establish whether there is any sound basis for the legal regulation of commercial sexual activity between consenting adults.

## BIBLIOGRAPHY

- Agustin LM (2003) 'Sex, gender and migrations: Facing up to ambiguous realities'. *Soundings* **23**, —1-12.
- Agustin LM (2005) 'The cultural study of commercial sex'. *Sexualities* **8**, 618–31.
- Agustin LM (2006) 'The disappearing of a migration category: Migrants who sell sex'. *Journal of Ethnic and Migration Studies* **32**, 29–47.
- Agustin LM (2007) *Sex at the Margins*, Zed Books, London.
- Alexander P (1996) 'Bathhouses and brothels: Symbolic sites in discourse and practice'. In *Policing Public Sex: Queer Politics and the Future of AIDS Activism* (Eds, Colter EG, Hoffman W, Pendleton E, Redick A, Serlin D) Southend Press, Boston, MA, pp 221–50.
- Allen H (1987) *Justice Unbalanced: Gender, Psychiatry and Judicial Decision*, Open University Press, Milton Keynes.
- Allman D (1999) *M is for Mutual A is for Acts: Male sex work and HIV/AIDS in Canada*. Co-published in Vancouver by Health Canada, AIDS Vancouver, Sex Workers Alliance of Vancouver, and the HIV Social, Behavioural and Epidemiological Studies Unit, University of Toronto.
- Anderson SA (2002) 'Prostitution and sexual autonomy: Making sense of the prohibition of prostitution'. *Ethics* **112**, 748–80.
- Archard D (1998) *Sexual Consent*, Westview Press, Oxford.
- Bainham A & Brooks-Gordon B (2004) 'Reforming the law on sexual offences' in *Sexuality Repositioned: Diversity and the Law* (Eds, Brooks-Gordon B, Gelsthorpe L, Johnson M, Bainham A) Hart Publishing, Oxford, pp 261-296
- Barrett D (1998) 'Young people and prostitution: Perpetrators in our midst'. *International Review of Law, Computers & Technology* **12**, 475–86.
- Barry K (1979) *Female Sexual Slavery*, Prentice-Hall Inc, Englewood Cliffs, NJ.
- Barry K (1995) *The Prostitution of Sexuality: The Global Exploitation of Women*, New York University Press, New York.
- Bernstein E (2007) 'Sex work for the middle classes'. *Sexualities* **10**, 473–88.
- Brooks-Gordon BM (2003) 'Gendered provisions in the Sexual Offences Bill 2003: Prostitution'. *Criminal Justice Matters* **53**, 28–33.
- Brooks-Gordon B & Gelsthorpe L (2003) 'Prostitutes' clients, Ken Livingstone and a new Trojan horse'. *Howard Journal of Criminal Justice* **42**, 437–51.



- Browne J & Minichiello V (1996) 'The social and work context of commercial sex between men'. *Australia and New Zealand Journal of Sociology* **32**, 86–92.
- Bullough B & Bullough VL (1998) 'Introduction – Female prostitution: Current research and changing interpretations' in *Prostitution: On Whores, Hustlers, and Johns* (Eds, Elias JE, Bullough VL, Elias V, Brewer G) Prometheus Books, New York, pp 23–44.
- Chapkis W (1997) *Live Sex Acts: Women Performing Erotic Labor*, Routledge, New York.
- Childs M (2000) 'Commercial sex and criminal law' in *Feminist Perspectives on Law* (Eds, Nicolson D & Bibbings L) Cavendish, London, p205-229.
- CPS (Crown Prosecution Service) (2005) 'Offences against public morals and decency – prostitution and related offences: public interest considerations'. Available online at: [http://www.cps.gov.uk/legal/p\\_to\\_r/prostitution\\_and\\_offences\\_against\\_public\\_morals/index.html](http://www.cps.gov.uk/legal/p_to_r/prostitution_and_offences_against_public_morals/index.html) , accessed 16<sup>th</sup> November 2008.
- Doezema J (2000) 'Loose women or lost women? The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women'. *Gender* **18**, 23–50.
- Dworkin A (1992) 'Prostitution and male supremacy'. Speech delivered at a symposium entitled 'Prostitution: from academia to activism', sponsored by *Michigan Journal of Gender and Law*. Available online at: <http://gos.sbc.edu/d/dworkin3.html>, accessed 23 January 2008.
- Edwards S (1997) 'The legal regulation of prostitution: A human rights issue' in *Rethinking Prostitution: Purchasing Sex in the 1990s* (Eds, Scambler G & Scambler A) Routledge, London, pp 57–82.
- English Collective of Prostitutes (1997) 'Campaigning for legal change' in *Rethinking Prostitution: Purchasing Sex in the 1990s* (Eds, Scambler G & Scambler A) Routledge, London, pp 83–104.
- ENMP (European Network of Male Prostitutes) (2002) *Tips, Tricks and Models of Good Practice for Service Providers Considering, Planning or Implementing Services for Male Sex Workers*. Available online at: [http://ec.europa.eu/health/ph\\_projects/2002/com\\_diseases/fp\\_commdis\\_2002\\_exs\\_23\\_en.pdf](http://ec.europa.eu/health/ph_projects/2002/com_diseases/fp_commdis_2002_exs_23_en.pdf), accessed 23 January 2008.
- ENMP (2003) *Working Men Project: Making the Difference*. Activity Report 2003. Available online at: [www.wmplondon.org.uk/documents/wmp\\_rw\\_report.pdf](http://www.wmplondon.org.uk/documents/wmp_rw_report.pdf), accessed 23 January 2008.
- Ericsson LO (1980) 'Charges against prostitution: An attempt at a philosophical assessment'. *Ethics* **90**, 335–66.
- Hankins K (1996) *Human Rights, Women and HIV*, Canadian HIV/AIDS Legal Network, Policy and Law Newsletter, Vol. 2 No. 4, July 1996, [www.aidslaw.ca/maincontent/otherdocs/Newsletter/July1996/01hankine.html](http://www.aidslaw.ca/maincontent/otherdocs/Newsletter/July1996/01hankine.html), last accessed September 2007, no longer available online.
- Jolin A (1994) 'On the backs of working prostitutes: Feminist theory and prostitution policy'. *Crime & Delinquency* **40**, 69–82.
- Kempadoo K & Doezema J (Eds) (1998) *Global Sex Workers: Rights, Resistance and Redefinition*, Routledge, London.

- Kesler K (2002) 'Is a feminist stance in support of prostitution possible? An exploration of current trends'. *Sexualities* **5**, 219–35.
- Kuo L (2002) *Prostitution Policy: Revolutionizing Practice through a Gendered Perspective*, New York University Press, New York.
- Marlowe J (1997) 'It's different for boys' in *Whores and Other Feminists*, (Ed, Nagle J) Routledge, London, pp 141–4.
- Millett K (1975) *The Prostitution Papers*, Paladin Books, St Albans.
- Mills J (1997) 'Throwing in the towel: as concerned MPs publish a report on the issue of prostitution Chief Constables and Judges back legalisation'. *The Christian Institute*, available online at <http://www.christian.org.uk/html-publications/prost.htm>, accessed 23 January 2008.
- Nagle J (Ed) (1997) *Whores and Other Feminists*, Routledge, London.
- Nussbaum MC (1999) *Sex and Social Justice*, Oxford University Press, Oxford.
- O'Connell Davidson J (1998) *Prostitution, Power and Freedom*, Polity Press, Cambridge.
- O'Neill M (1997) 'Prostitute women now' in *Rethinking Prostitution: Purchasing Sex in the 1990s* (Eds, Scambler G & Scambler A) Routledge, London.
- O'Neill M (1999) 'Tackling street prostitution: Towards an holistic approach'. Literature review of research on sexual exploitation, appendix D3-Report, commissioned by the Home Office. Available online: [www.homeoffice.gov.uk/rds/pdfs04/hors279.pdf](http://www.homeoffice.gov.uk/rds/pdfs04/hors279.pdf), accessed 23 January 2008.
- O'Neill M (2001) *Prostitution and Feminism: Towards a Politics of Feeling*. Polity Press, Cambridge.
- Parsons JT, Koken JA, Bimbi DS (2004) 'The use of the internet by gay and bisexual male escorts: sex workers as sex educators'. *AIDS CARE* **16**, 1021–35.
- Pateman C (1988) *The Sexual Contract*, Polity Press, Cambridge.
- Petchesky RP (1995) 'The body as property: a feminist re-vision' in *Conceiving the New World Order: The Global Politics of Reproduction*. (Eds, Ginsburg FD & Rapp R) University of California Press, Berkeley, CA.
- Phoenix J (1999) *Making Sense of Prostitution*, Palgrave, Basingstoke.
- Reiner R (2000) *The Politics of the Police*, 3rd Edition, Oxford University Press, Oxford.
- Satz D (1995) 'Markets in women's sexual labor'. *Ethics* **106**, 63–85.
- Scambler G & Scambler A (1997) *Rethinking Prostitution: Purchasing Sex in the 1990s*, Routledge, London.
- Scott J, Minichiello V, Marino R, Harvey G, Jamieson M, Browne J (2005) 'Understanding the new context of the male sex work industry'. *Journal of Interpersonal Violence* **20**, 320–42.
- Sharpe K (1998) *Red Light, Blue Light: Prostitutes, Punters and the Police*, Ashgate Publishing, Aldershot.
- Smart C (1976) *Women, Crime and Criminology: A Feminist Critique*, Routledge & Kegan Paul, London.

- Smart C (1995) *Law, Crime and Sexuality: Essays in Feminism*, Sage Publications, London.
- Vanwesenbeeck I (2001) 'Another decade of social scientific work on prostitution: A review of research 1990–2000'. *Annual Review of Sex Research* **12**, 242–89.
- Weitzer R (2007) 'The social construction of sex trafficking: Ideology and institutionalization of a moral crusade'. *Politics and Society*, **35**, 447–75.
- West DJ (1992) *Male Prostitution*, Duckworth, London.
- Wilkerson A (2002) 'Disability, sex radicalism, and political agency'. *National Women's Studies Association Journal* **14**, 33–57.

### **Legislation**

Crime and Disorder Act 1998

Sexual Offences Act 1956

Sexual Offences Act 2003