

Edited by Jane Scoular and Teela Sanders

# Regulating Sex/Work:

## From Crime Control to Neo-liberalism?

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# **Regulating Sex/Work: From Crime Control to Neo-liberalism?**

Edited by

Jane Scoular and Teela Sanders



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## Introduction: The Changing Social and Legal Context of Sexual Commerce: Why Regulation Matters

JANE SCOULAR\* AND TEELA SANDERS\*\*

This volume seeks to respond to a particular moment in the study of commercial sex and its governance, pinpointed by an unprecedented rise in, and increased visibility of, sexual commerce and consumption and a corresponding growth in associated forms of regulation. Whilst common themes of controlling sexuality and changes in regulatory frameworks knit these papers into a coherent collection, the diversity of sex markets covered (male sex work, men who buy sex, pornography, bar dancing, legalized brothels, and sex shops) echoes the nuances of the 'sex industry' and challenges traditional academic concentration on narrow forms of prostitution. We discuss these dynamics in the context of post-industrial transformations of culture and sexuality in which what has been described as an 'unbridled ethic of sexual consumption' and 'soaring demand' for a variety of forms of commercial sex, are symptomatic of the way in which sexual commerce is increasingly 'specialised and diversified along technological, spatial and social lines'.<sup>1</sup> This leads to more visible availability in, and demand for, pornography, lap-dancing, escorts, telephone sex, and sexual tourism, especially in developing countries'.<sup>2</sup>

In response, emerging sociological scholarship has sought to expand understandings of commercial sex beyond narrow studies of the traditional prostitution concept into the varied cultural forms which it takes. We can see this focus in, for instance, Agustín's 2007 special edition of *Sexualities* which considers, among other things, the discursive division between

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1 E. Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (2007) 115.

2 E. Bernstein, 'The Meaning of the Purchase: Desire, Demand, and the Commerce of Sex' (2001) 2 *Ethnography* 375–406, at 389.

commercial and non-commercial sex and proposes the integration of cultural studies methodologies to the field. This approach opens up the analytical frame beyond endless moral debate and the over-emphasized and 'perpetually stigmatised' category of women selling sex, and ponder the much wider social and discursive field encompassed by the intersection of 'a range of activities that take place in both commerce and sex'. As Agustín explains:

With the academic, media and 'helping' gaze fixed almost exclusively on women who sell sex, the great majority of phenomena that make up the sex industry are ignored, and this in itself contributes to the intransigent stigmatisation of these women ... commercial sex is usually disqualified and treated only as a moral issue. This means that a wide range of ways of study are excluded. A cultural-studies approach, on the contrary, would look at commercial sex in its widest sense, examining its intersections ... the everyday practices involved and try to reveal how our societies distinguish between activities considered normatively 'social' and activities denounced as morally wrong.<sup>3</sup>

In examining commercial sex, what this in turn requests is that we move beyond classic boundaries of 'prostitution' juxtaposed with other types of sex. There is a need to examine how sex which involves some form of commercial exchange fits into the broader cultural and social landscape. This fresh look at commercial sex examines the increasing mainstreaming and normalization of the sex industry. From their empirical work in the legal brothels of Nevada and examining the wider sex industries in the United States of America, Brents and Hausbeck remark:

It is no longer useful to posit the sex industries as an 'other' to late capitalist industry. Research on the sex industries can tell us much about the effects of the economic infrastructure of mass consumption and the values and attitudes of consumer culture. Employing a framework grounded in economic and cultural shifts promises to add much to analyses of sex work. It historicises our understandings, situates changes in the economic contexts and the cultural meaning of sex in which sex work occurs, and invites examination of the social construction and material conditions of gender, sex and sexuality.<sup>4</sup>

Thus the increased mainstreaming of the sex industry has forced a welcomed adoption of a wider cultural analysis in terms of understanding commercial sex. Despite this, the regulation that has paralleled the industries' expansion remains hitherto under-theorized. This is what we seek to address in this volume.

The apparent 'unbridled ethic' of sex consumption has met with efforts to control the sale and organization of commercial sex via attempts both to stymie its supply and demand through the criminal law<sup>5</sup> and moves to

3 L. Agustín, 'New Research Directions: The Cultural Study of Commercial Sex' (2005) 8 *Sexualities* 618.

4 B.G. Brents and K. Hausbeck, 'Marketing Sex: US Legal Brothels and Late Capitalist Consumption' (2007) 10 *Sexualities* 425, at 436.

5 For an analysis of recent incursions into the demand/supply nexus, see V. Munro and M. Della Giusta (eds.), *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (2008).

recognize the activity and seek to influence it by implementing systems of positive regulation. Phoenix and Oerton note the paradox:

... when sex appears to have become ever more subject to 'free' choice, greater openness and pluralism, there is a simultaneous proliferation of laws, policies and guidelines which seek to define the complex, vast and ever-changing 'rules of engagement' surrounding sex.<sup>6</sup>

Thus, the last decade has witnessed a flurry of regulatory controls across the globe. There have been significant changes in many countries' legislative frameworks for the control of commercial sex. In many cases this has involved an expansion in the punitive dimension, mirroring a wider culture of control which has resulted in behaviours that were not criminal becoming criminalized. Sweden, for example, has pioneered the outlawing of the purchase of sex and the United Kingdom (including Scotland) has sought to criminalize and responsabilize both sex workers and men who buy sex. This has been done through rehabilitation orders, 're-education' programmes, and increased policing – all of which is aimed at disrupting sex markets (see Scoular and Brooks-Gordon in this issue). This punitivism has been strengthened internationally, by a strong 'trafficking' discourse and oversimplified links between migrancy and the demand for commercial sex (see Weitzer in this issue). In punitive regimes, the collapsing into each other of discussions about voluntary commercial sex and forced sexual exploitation has left little distinction between very different types of sex markets and lived experiences. Even where some liberalization exists, it is rarely complete, often accompanied by punitive elements. For example, Sullivan (in this issue) shows that only some forms of prostitution are permitted in Australian states where sex work has been legalized, whilst the Netherlands has closed down several 'toleration zones' and reduced rights for migrant women working in the sex industry. Even the much heralded decriminalization of prostitution in New Zealand has failed to bring street sex work fully within its ambit.

The regulation of sex work in these contexts is, we argue, more complex than simply a case of sexual commerce being either legal or illegal. Just as the forms and analysis of commercial sex have become more complex, so too have its associated modes of regulation. In contrast to the more nuanced work that is developing in the wider field of commercial sex in other disciplines, studies on regulation and law frequently continue to assume not only a static regulatory target, but also home in on narrow modes of regulation – that of the powers at the disposal of the crime control professionals, particularly to control street prostitution. Just as the focus of academic commentary has been forced to move beyond the easy target of the vulnerable street worker to question the commercial sexual relations that are

6 J. Phoenix and S. Oerton, *Illicit and Illegal: Sex, Regulation and Social Control* (2005) 13.

less easy to govern, identify, and understand, so too must analyses of their regulation.

Law is typically characterized according to a legal/illegal dichotomy. Much campaigning follows this pattern, with one group (abolitionists) seeking to harness governmental power to protect those exploited by commercial sex. This 'protection' comes in the form of enticements to exit sex work, in addition to criminalizing purchasers, with the overall goal being the elimination of the sale of sex. Other campaigners seek governmental recognition of 'sex work' as a form of legitimate labour in order to gain the protection and rights that workers should enjoy. Phoenix and Oerton demonstrate how both of these causes are pursued in a context where there are increasing restrictions on sexual freedom as social control extends to the sexual.<sup>7</sup>

In this volume, we hope to move beyond uni-dimensional understandings of commercial sex, characterized by, for example, the overwhelming focus on the relatively insignificant phenomenon of street prostitution and the similarly blinkered approach to regulation apparent in the preoccupation with legal/illegal binaries and narrow sovereign-centered understanding of law (see Scoular's article). This will enable us to more fully appreciate the law's more complex relationship to society, and explore the way law and regulatory norms operate to support or to challenge the structures and conditions of the contemporary sex industry. In essence, we hope to match the increased sophistication in the sociological study of sex with a similarly complex study of the dynamics of contemporary regulation and to highlight that the law has a role in maintaining the current sex industries: for example, some forms of commercial sex have been made relatively mainstream and accessible as a result of economic and legal facilitation. Brents and Sanders argue that this generates a paradoxical need to retain hints of transgression and 'deviance' attached to commercial sex in order to maintain its appeal. The very fact that many aspects of the sex industry are tainted with illegality is its very attraction for many.

Thus, this collection seeks to explore an increasingly complex regulatory scene; one which, we suggest, takes the form of inter-related dynamics that broaden the levels of social control as well as intensifying the ways in which individuals are 'punished', 'rehabilitated', and 'rescued'. There has been a proliferation in modes of regulation – from the amplification of a crime-control model that seeks to criminalize even more participants in commercial sex and the use of new powers (for example, hybrid anti-social behaviour orders, rehabilitation orders) through to the expansion of administrative control via civil licensing and inspection. Much of this control and surveillance is executed by a range of third-party policing agents. Welfare agencies and professionals form a core part of this emerging regulatory machine: neighbourhood officers, outreach support workers, crime reduction

7 id.



officers, therapists, and drug treatment workers are all poised to watch, count, report on, and eventually criminalize those who are considered a nuisance to an imaginary ordered and civil society.

## A MORE COMPLEX UNDERSTANDING OF LAW IN THE REGULATION OF SEX WORK

Thus, in the opening essay, Scoular sets the scene for a more complex reading of law's relationship to society. Arguing against claims that law is merely symbolic, Scoular explains, by drawing upon theories of governmentality, the continued relevance of law in processes which structure subjects, spaces, and forms of power in contemporary sex markets. It is the alignment of these processes with wider forms of neo-liberal governance that helps ensure a continuity across an apparently diverse legal system, which in many late-capitalist systems appears to follow a familiar trend of the denigration of street sex (as urban centres are gentrified) and the selective mainstreaming of other more profitable forms.

This framework allows us to offer a more accurate route map for future studies of the regulation of sex work. Its attraction is that it can accommodate the many contingencies under which sex work materializes and its regulation takes place. Examining the sex industry through a framework of governmentality can also operate according to differing modalities of power, recognizing the variations that emerge across time, space, and culture. Such a framework can allow for local variation as well as examining the sex trade through a global lens. Neo-liberalism is but one of the contexts in which regulation operates, and even then its impact may be varied in different settings. It may, as Kotiswaran notes, be less significant in different cultures where different customs and organization of sexual relations are present. Her paper, 'Labours in Vice or Virtue? Neo-liberalism, Sexual Commerce, and the Case of Indian Bar Dancing', argues that neo-liberalism is a peripheral issue in the context of the increased 'tolerance' shown towards bar-dancing in a recent Mumbai High Court ruling. This judgment, she argues:

has less to do with the totalizing logic of neo-liberalism than a range of disparate factors including the distinct political economies of abolitionism pertaining to both bar dancing and sex work and the modes of resistance that female workers have offered in response.

As this contribution (and indeed others) show, we do not seek or claim some underlying unity between each of the contributions nor are we trying to reveal the traces of a vicious neo-liberal ideology hiding behind every form of regulation that is proposed, considered or implemented. The approach we advance is for a more complex understanding of regulation beyond legal/illegal, appreciating regulation within a wider framework of governmentality, which can then be tied to contingent situations.

This framework can be used across a number of contexts. Hubbard and Coulmont demonstrate in their account of the changing regulation of sex shops in Britain and France over the last forty years how diverse forms of control have combined to restrict the location of sex shops, simultaneously shaping their design, management, and marketing. Describing the emergence of gentrified and 'designer' stores, their paper demonstrates that regulation in two quite different contexts has been complicit in a process of neo-liberalization that has favoured more corporate sex shops – without this having ever been an explicit aim of those who have argued for the regulation of sex retailing.

The governmentality framework can also allow for local variation and careful empirical testing as Sullivan demonstrates in her nimble examination of the partial legalized systems in two Australian states. Sullivan considers, in meticulous detail, the operation of complex regulatory agents and norms in New South Wales and Queensland, both of which have legalized some spaces of sex work. Paying close attention to the impact of similar yet different regimes on the safety, rights, and capacities of sex workers, Sullivan shows how a legalized regime can still create difficult working conditions but that, via legalization of brothels, some opportunities can be created to provide safe spaces for women.

The governmentality framework can help us understand what may appear to be the absence of regulation. What liberalism presents as freedom from law may be as significant as overt criminalization as it does not mean an absence of regulatory norms. As Rose and Miller note, constituting the realms of market and family as outwith direct sovereign governmental control does not free the private sphere from the operation of power.<sup>8</sup> Regulation, as Scoular says, must not be viewed solely in terms of political and state actions, or the imposition of law or police control. Rather, as Rose and Miller note, the separation of public and private spheres denotes a process in which 'liberalism identifies a domain outside "politics", and seeks to manage it without destroying its existence and autonomy'.<sup>9</sup> This 'management' involves the informal regulation by a range of forces and agents: for example, the market, the economy, experts, and individuals themselves. Thus, in the context of the unregulated forms of commercial sex that have proliferated in the United Kingdom following Wolfenden (which proposed to regulate only some public forms of commercial sex, notably indoor work and same-sex commercial work), the market, organized crime, and powerful business owners are key players in regulation, while sex workers, who occupy a position of political non-recognition, lack legal status and protection. This is demonstrated by the combined empirical studies of Sanders and Campbell, who show that the indoor premises are still open to

8 N. Rose and P. Miller, 'Political Power beyond the State: Problematics of Government' (1992) 43 *Brit. J. of Sociology* 173–205, at 180.

9 *id.*

violence, robbery, and unacceptable behaviour in a system that affords neither the workplace nor workers legitimacy or recognition.<sup>10</sup>

Male sex work is generally omitted from overt legislation, but Whowell's empirical snapshot offers an insight into the patterned and ordered nature of this form of commercial sex. The importance of the local dynamics of place and space are demonstrated by this study as Whowell argues:

... history and locality matter in choreographies of sex work, as well as the presentation of bodies through dress and demeanour. The micro-politics of solicitation, in this case, allow for the notion of self-regulation to be employed; and that rather than top-down mechanisms shaping the beat, locally deployed networks are important in the regulation of prostitution in this context. Rarely does policy consider how sex work is operationalized and practised on the ground, and the notion that spaces of commercial sex operating in different locales are shaped by different factors and networks.

Whowell documents thoroughly from her qualitative work how regulation is patterned by many different agents beyond the sex worker: by police, residents, outreach projects, and those who have vested economic interest in the street 'beat'. Therefore, what she terms the 'sexual choreography' of the street markets is regulated by those who are involved in the street beat from a multiple range of positions. Hence, the framework of governmentality goes well beyond official law, policy, and those involved in making it.

## NEO-LIBERALISM AND THE PUNITIVE PARADOX

We have found this framework useful because it allows us to consider the paradox which emerges in many examples of legislative change that we have used as a stimulus to provoke the discussion in these papers. It is therefore our purpose in this collection, by documenting changes in the regulation of a range of sex markets from the United Kingdom, France, the United States, and Australia, to theorize the following paradox. The increase in oppressive and punitive approaches to regulating the sex industry, designed to deter participants and dislocate markets, comes at a time when the evidence suggests that both the supply and demand that fuels the sex markets, the diversification of those markets, and their embedded nature in social and economic infrastructures is more intense than ever. This paradox constitutes the most significant contemporary issue in relation to the study of sexual commerce and its regulation, yet it has not, so far, been explored in a sustained and coherent manner. Thus, we offer a novel departure in the area through our consideration of the production and commercialization of 'new' and shifting sex markets and the associated multifaceted and complex modes

10 T. Sanders and R. Campbell, 'Designing Out Violence, Building in Respect: Violence, Safety and Sex Work Policy' (2007) 58 *Brit. J. of Sociology* 1–18.

of regulation which operate within, and so often advance, neo-liberal power structures. The neo-liberalism in the title is not intended to be prescriptive (its influence is, of course, uneven, see Kotiswaran). However, when posed as a question, it allows us to consider the apparent paradox between the creeping neo-liberalism in many Western states, and the punitive sanctions that frequently accompany the increased mainstreaming of part of the sex industry.

Indeed it is ironic that, in the United States, where the proliferation of the sex industry is acutely visible in certain states, perhaps the most virulent moral campaigns and governmental embargos have taken place in response to the growth of the sex industry and to fears of its normalization in American society. Thus in the context of North America, as Weitzer notes, recent years have witnessed a considerable growth in the organized campaign committed to expanding criminalization of all forms of commercial sex. A powerful moral crusade has been successful in reshaping American government policy toward sex work, enhancing penalties for existing offences and creating new crimes. Weitzer explains how crusade organizations have advocated a strict abolitionist orientation toward all forms of commercialized sex, which are increasingly conflated with sex trafficking. Despite the many problems with this conflation, this movement has had significant impact on legal norms and government policies pertaining to sex work, trafficking or movement in persons and pornography as a species of commercial sexual exploitation.

Another theme in this volume is that of how 'demand' for commercial sex has been translated into a one-dimensional dynamics of male power and privilege. The paper by Attwood and Smith and that by Brooks-Gordon critically explore the assumptions that where there has been an increase in the 'demand' for commercial sex or different forms of pornography, this has become synonymous with patriarchy, violence, and the overall degradation of all women. Beyond moral debates regarding buying sex or accessing pornography, these papers identify the changes in post-industrial social spaces and, in particular, technological advances, which have altered how commercial sex is accessed. Technological advances which have facilitated sexual consumption as part of the 'unbridled ethic of consumption' have been targeted by regulators. In their paper, 'Extreme Concern: Regulating "Dangerous Pictures" in the United Kingdom', Attwood and Smith explain how increasing punitive legislation has been created in light of the increased accessibility of pornography. These authors critically assess the way in which the changing definitions of 'extreme' pornography has led to further policing of 'dangerous' sexualities and this additional control has also extended to other forms of sex commerce in the United Kingdom and in other jurisdictions, as outlined by Hubbard and Coulmont. Attwood and Smith argue against the legislation not only because it limits personal freedom but because the reasons for the outlawing are suspect, as it serves to mask a range of fears associated with apparent dangers of sex and

technology and the increased blurring of boundaries between public and private.

The limitation of personal freedom based on strict notions of what is sexually acceptable and in response to a wider campaign for gender equality, is well accounted for in the paper by Brooks-Gordon. Here, the recent attempts in Europe (namely, in Sweden and the United Kingdom) to criminalize the purchase of sex is critiqued. We learn how, through attempts to criminalize the 'punter', not only is the complex etiology of 'purchase' lost in the binary of legal or illegal, but the nuances of the relationship between seller and buyer are skirted over. Attempts to criminalize men who buy sex in the United Kingdom are broad-brush strokes to 'do something' about what is assumed to be 'the demand' for sex by predatory males. Yet the sex industry is diverse, catering for multiple sexualities which require different and nuanced working practices. In this collection, Brooks-Gordon and Whowell identify how gay, trans- or bi-sexual workers sell sex to a diverse range of lesbian, gay, trans-sexual, and straight clients who may be able-bodied or disabled. This raises interesting counter-rights claims, making sex work an interesting site for future human rights struggles.

## BEYOND BINARIES

The framework also allows us to approach regulation while resisting its binaries. We argue there are similarities between the positions of criminalization and legalization as they operate alongside other modes of governance that are complicit with a neo-liberalism agenda that encourages forms of self-regulation as the mode of governance. Thus, for example, calls for increased protection often fail to recognize links between protection and control, so that abolitionism, by centring its campaigns on criminal justice control rather than wider social and economic justice, often become complicit in the wider politics of neo-liberalism. Recent activism to criminalize purchasers, while intended to advance equality, may in fact collude with a strong 'culture of control'. This does little to tackle structural issues, such as the feminization of poverty, that creates some of the precarious positions that are an issue not only in sex work but in many sectors of the economy. As Scoular notes, one of the perverse consequences of intervening in prostitution through the mechanism of criminal justice is that it often increases, rather than decreases, the levels of riskiness, vulnerability, and poverty of women in prostitution, especially those women who tend to get targeted most – street-based sex workers.

The apparent decriminalization of female soliciting that accompanies abolitionism is similarly more complex. The prevalent victim model, whereby inclusion depends on exiting from prostitution, takes place in a social context of punitive welfarism. This has potentially more far-reaching consequences than the previous explicit regime of criminalization, as the

discourses of responsabilization and self-help operate in more insidious ways, seeking to harness the self-governing and self-correcting capacities of individuals and, in so doing, co-opt more radical political objectives to a wider form of neo-liberal control.<sup>11</sup>

Those assuming decriminalization moves outside this labyrinth into some laissez-faire utopia, ignore at their peril the myriad of regulatory apparatuses and personnel accompanying this regulatory model. As Scoular notes, and Sullivan's careful empirical work attests, decriminalization or legalization do not result in or require an absence of law but rather deploy law in different ways. These modes can operate regardless of whether commercial sex is prohibited or permitted. Increasingly individualized forms of control are present, not only in exit strategies, but also in the licensing system of the Netherlands which, as Scoular says:

encourage workers to self-regulate their behaviour in the interests of public health promotion, to conform to certain modes of working in order to meet the conditions of registration. Inclusion is offered to those who 'can perform the rituals of middle class society'<sup>12</sup> with all of the typical exclusions based on age, status, race, health and class that this entails.

In Sullivan's examination of the legalization of some forms of sex work in two Australian states, she notes the connection to wider forms of regulation. Whether this means or amounts to an improvement in conditions for women is a matter of empirical not ideological testing.

Thus, in order properly to evaluate the usefulness of legal approaches, we must be cognisant of contingent conditions and ancillary forms of regulation. This ensures the critical eye looks beyond the rhetoric of law to its regulatory processes and the nuances that impact on (mainly female) sex workers. The symbiotic relationship with street sex work continues to retain a distinction between good and bad sex workers – those who are invisible and 'civil' enjoy apparent freedom at the expense of even greater control of others who are anti-social. As Kotiswaran concludes, 'the prospects for redistributive law reform for all sexual workers are dim unless the arbitrary legal distinctions drawn between markets in sexual labour are overcome'. The rhetoric of rights and resources for some should not be peddled at the expense of marginalizing those who are very vulnerable – yet this seems to be the consistent result whatever the form regulation takes, although Sullivan offers some hope.

Therefore we need to work towards a form of politics that does not feed into modes of governance that have such poor outcomes for so many, especially the most vulnerable female sex workers. Thus, as Maggie O'Neill notes in our final chapter, politics needs to move away from regulatory

11 J. Scoular and M. O'Neill, 'Regulating prostitution. Social inclusion, responsabilization and the politics of prostitution reform' (2007) 47 *Brit. J. of Criminology* 764–78.

12 B. Sullivan, 'Prostitution Law Reform in Australia. A Preliminary Evaluation' (1999) 18 *Social Alternatives* 9–14.



categories of identity towards more radical forms of politics that disrupt simple divisive binaries and allow resistance in the context of dominant structures. She offers an alternative framework for a cultural materialist analysis of sex work. This is centred upon inclusion, facilitated by participatory methods. It seeks to develop a radical democratic imaginary by creating spaces for dialogue and fostering more integrated horizontal and vertical processes of inclusion around the principles of social justice and cultural citizenship<sup>13</sup> that include inclusion, rights, recognition, respect, and redistribution for sex workers. These are principles that can unite and foster collaboration between groups, including sex workers, and that are concerned with an enlarging space for social justice.

Alas, it is only if there is an understanding of the links between regulation and governance that we can move towards a more informed, inclusive, and transformative politics of prostitution reform. It is hoped that this collection of essays is the beginning of a more enlightened and critical approach that inspires more work which looks beyond the binary of illegal/legal to the complexities of commercial sex and its regulation.

13 J. Pakulski, 'Cultural Citizenship' (1997) 1 *Citizenship Studies* 73–86.

## **What's Law Got To Do With it? How and Why Law Matters in the Regulation of Sex Work**

JANE SCOULAR\*

*Drawing on recent empirical work that considers the relationship between different legal approaches to the 'problem' of prostitution, this article argues that the frequently drawn distinction between apparently diametrically opposed positions, such as prohibitionism and legalization, is certainly less significant than is often assumed and may, in fact, be illusory. This lack of distinction raises serious questions as to law's role in regulating sex work. In response to claims that law is 'merely' symbolic in its influence, I argue that these similarities arise precisely because law does matter (albeit in a different way from that assumed by a sovereign-centred understanding of the legal complex), and offer a complex and critical account of the role of modern law in regulating sex work. This approach not only more accurately elucidates the ways in which law supports dominant structures, in this case neo-liberalism, but offers some optimism for its (albeit limited) potential to transform.*

### INTRODUCTION

A discussion of the regulation of sex work typically begins by highlighting the distinctions between different regulatory approaches. Researchers, campaigners, and policy makers frequently review the apparent distinctions between prohibitionist (prohibits prostitution and penalizes prostitutes and pimps, but not necessarily clients), regulationist (seeks to regulate rather than prohibit or abolish prostitution, for example, through legalization), and abolitionist systems (seeks to abolish prostitution by penalizing clients and pimps but not prostitutes), before recommending or adopting an approach which best supports their own particular socio-political and ethical contexts

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and projects.<sup>1</sup> Such neat classifications are, however, problematic, given that these terms describe general political and social aspirations regarding how best to regulate commercial sex and that considerable gaps inevitably exist between these objectives and the modes of intervention utilized to implement them.<sup>2</sup> Even more distant are the effects in the social realm of these various laws, policies, and techniques put in place by governments and other social actors. Thus, a 'top-down' approach relays a false impression of unity in policy settlements that are always provisional, often contradictory, and generally reflective of 'the varied and complex political influence of competing discourses and organized interests'.<sup>3</sup> Moreover 'state-centred' approaches fail to account for local conditions, which often appear incongruous with the terms of the formal law. Indeed, recent empirical research, including my own work with colleagues in three European countries, reveals that apparently contrasting legal approaches can produce similar results,<sup>4</sup> even in the apparently diametrically opposed systems of criminalization and legalization. Strikingly, Sweden and the Netherlands, despite being described as representing a 'two-way ideological mirror',<sup>5</sup> appear to display remarkably similar results on the ground in terms of the increased marginalization of more public forms of sex work (street sex work) and its participants, and a relative inattentiveness to many forms of indoor work.

These continuities between commercial sex markets, across cultural and legal differences has led one author, Laura Agustín, to question law's very relevance in the field of commercial sex.<sup>6</sup> Given the dominance of legal solutions in both state responses to the 'problem' of prostitution and its salience in campaigns by those who seek justice for those involved, such impotence would have important, and potentially damning, consequences. Yet, as I argue below, while this prognosis appears to be a logical conclusion from the findings, it fails to account for the ways in which modern forms of

1 See, for example, J. Kilvington, S. Day, H. Ward, 'Prostitution Policy in Europe: A Time of Change?' (2001) 67 *Feminist Rev.* 78–93; Council of Europe, Resolution 1579 (2007) 'Prostitution – Which stance to take?', at: <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1579.htm>>.

2 J. Phoenix, *Regulating Sex for Sale: Prostitution, Policy Reform and the UK* (2009) 14.

3 J. West, 'Prostitution: Collectives and the Politics of Regulation' (2000) 7 *Gender, Work and Organization* 106–18, at 106.

4 P.J. Hubbard et al., *Regulating the spaces of sex work: assessing the impact of prostitution law: Full Research Report*. ESRC no. RES-000-22-1001 (2007); See, also, E. Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (2007) ch. 6.

5 B. Hobson, *Uneasy Virtue: The Politics of Prostitution in the American Reform Tradition* (1987) 30, cited in Bernstein, id., p. 145.

6 L. Agustín, 'Sex and the Limits of Enlightenment: The Irrationality of Legal Regimes to Control Prostitution' (2008) 5(4) *Sexuality Research & Social Policy* 73–86.