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# Ethics and Vulnerability in Street Prostitution; An Argument in Favour of Managed Zones

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## ETHICS AND VULNERABILITY IN STREET PROSTITUTION: AN ARGUMENT IN FAVOUR OF MANAGED ZONES

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### **Abstract**

This article draws upon the work of Judith Butler, in particular her approach to ethics and the concepts of vulnerability and 'liveable lives,' in order to provide a critical analysis of reform proposals contained in the Criminal Justice and Immigration Bill (now Act 2008) in relation to street prostitution. The article will argue that the proposals presented in the Bill problematically use the vulnerability of street sex workers in order to promote a moralistic agenda. In contrast it will be argued that managed zones, as proposed by Liverpool City Council, provide a potentially more ethical approach to the issue of street prostitution.

**Keywords:** prostitute, sex worker, street prostitution, Criminal Justice and Immigration Bill

### **Introduction**

In 2006 the Government published its co-ordinated prostitution strategy, the main aim of which was to eradicate all forms of 'commercial sexual exploitation,' especially street based prostitution.<sup>2</sup> Many of the proposals contained within the strategy were included in the Criminal Justice and Immigration Bill 2006-2007 (now Act). However, the reforms were eventually abandoned during the Bill's process through Parliament.<sup>3</sup> In contrast to the 'zero tolerance' approach adopted by the Government, Liverpool City Council proposed the establishment of a 'managed zone' for street

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<sup>2</sup> Home Office, *A Coordinated Prostitution Strategy and a Summary of Responses to Paying the Price*, (Home Office, January 2006).

<sup>3</sup> The Criminal Justice and Immigration Act 2008 received Royal Assent on 8<sup>th</sup> May 2008. The article refers to the Bill, as opposed to the Act, as the reader will need to consult the original Bill and House of Commons debates if he/she wishes to view the relevant reform proposals. Whilst the proposals were eventually abandoned and therefore are not contained in the Act, the debates provide valuable information on the issue of law reform and prostitution and provide an indication as to the substance of future proposals. More recent proposals have been published by the Home Office in Home Office, *Tackling Demand for Prostitution: A Review*, (Home Office, November 2008) and included in the Policing and Crime Bill 2009. At the time of going to press the Policing and Crime Bill is being debated in Parliament.

based prostitution.<sup>4</sup> This article will argue that the proposals presented in the Bill, whilst ostensibly concerned with protecting the vulnerable, problematically construct sex workers as ‘unliveable.’<sup>5</sup> Furthermore, it is argued that the vulnerability of the sex worker is used in an unethical manner in order to push a moralistic agenda which effectively silences and renders the sex worker invisible. In contrast, it is argued that the Liverpool managed zones provide a potentially more effective and ethical approach to street based prostitution. The managed zones appropriately recognise the vulnerable and ‘liveable’ lives of those women who engage in street based prostitution.

The first section of the article provides an overview of the legal regulation of prostitution in the UK and examines the differing legal and political responses to sex work. The article proceeds to discuss the theoretical framework which is used to analyse the Parliamentary debates in relation to the Criminal Justice and Immigration Bill and the Liverpool managed zones. This theoretical framework draws upon aspects of Judith Butler’s work, in particular her approach to vulnerability and ethics and her concept of a ‘liveable life.’ Additionally, it is emphasised that Butler’s approach avoids the impasse that has dominated feminist debates in relation to prostitution. The third section of the article critically analyses the Government’s proposals and the debates contained in the Bill. In conclusion, the article discusses the Liverpool managed zone. While it is recognised that managed zones are not without their own difficulties, it is argued that they potentially enable the development of a collaborative approach to street based prostitution which effectively and ethically recognises vulnerability. The underlying argument of the article is that the recognition and respect for the liveable lives of those women who engage in sex work requires an approach to prostitution which effectively recognises their vulnerability as humans.

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<sup>4</sup> See Pete Clark et al, *Consultation on a Managed Zone for Sex Trade Workers in Liverpool: Views From Residents, Businesses and Sex Trade Workers in the City of Liverpool*, (Centre for Public Health, Liverpool John Moores University, 2004).

<sup>5</sup> The author has decided to use the term ‘sex worker’ to refer to women who engage in prostitution, as opposed to the word ‘prostitute.’ It is argued that the latter word problematically constructs the identity of such women in an exclusive manner which only focuses on their engagement in sex work. The phrase ‘sex worker’ enables one to recognise the agency of those who engage in sex work, whilst not necessarily adopting a simplistic notion of consent. It is recognised that consent or freedom to engage in sex work for some women may be very constrained.

## 1 Legal and Political Approaches to Prostitution

### *Prostitution in the UK: Historical and Contemporary Approaches*

Within the UK, engaging in sexual intercourse in return for payment has never been a criminal offence. However, over the years the State has, to varying degrees, regulated sex work related activities. 'Riotous' or 'indecent behaviour' by a 'common prostitute' in public was criminalised by s3 Vagrancy Act 1824. Public solicitation for the purposes of prostitution was criminalised in London by the Metropolitan Police Act 1839 and a similar nationwide offence was introduced by the Town Clauses Act 1847.<sup>6</sup> Hence, in the nineteenth century the main concern for the law was the visibility of sex workers. Significantly this historical concern with the visibility of sex workers has continued to influence law reforms in the twentieth and twenty-first centuries.<sup>7</sup>

In the 1950s the appropriate legal response to prostitution was debated in the Wolfenden Report.<sup>8</sup> The report and subsequent reform proposals drew significantly upon the public/private divide, and thus visibility remained a central issue.<sup>9</sup> Whilst it was considered appropriate to criminalise public and visible sex work related activities, it was also argued that there was a realm of private activity which should remain outside the grasp of the law.<sup>10</sup> Effectively it was considered, from a liberal perspective, that being paid for sex was not, per se, harmful. Thus the criminalisation of such activity would result in the law intruding too far into the private side of life.<sup>11</sup> This concern to control the visible and public aspects of prostitution draws upon a 'public nuisance' discourse<sup>12</sup> and clearly informs the contemporary prostitution related offences, which include loitering/soliciting by a 'common prostitute' in a public place

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<sup>6</sup> Julia Laite, 'Paying the Price Again: Prostitution Policy in Historical Perspective', *History and Policy*, (October 2006), Paper 46, [<http://www.historyandpolicy.org/papers/policy-paper-46.html> last accessed 18/02/2009].

<sup>7</sup> Sophie Day, 'Wolfenden 50: Revisiting State Policy and the Policies of Sex Work in the UK,' in Vanessa Munro & Marina Della Giusta, (eds.) *Demanding Sex: Critical Reflections on the Regulation of Prostitution*, (Ashgate, 2008), pp. 51-66.

<sup>8</sup> Wolfenden, *Report of the Committee on Homosexual Offences and Prostitution*, Committee on Homosexual Offences and Prostitution, (HMSO, 1957).

<sup>9</sup> Day, 'Wolfenden 50,' pp. 51-52.

<sup>10</sup> Wolfenden, *Report of the Committee on Homosexual Offences*, para 61.

<sup>11</sup> Ibid.

<sup>12</sup> Johanna Kantola and Judith Squires, 'Discourses Surrounding Prostitution in the UK, *European Journal of Women's Studies*, 11(1) (2004) 77-101.

for the purpose of prostitution<sup>13</sup> and kerb crawling.<sup>14</sup> Furthermore, Anti-Social Behaviour Orders have recently been utilised to deal with those individuals who engage in street prostitution.<sup>15</sup>

In addition, since the late nineteenth century the law has increasingly criminalised the involvement of third parties. The Criminal Law Amendment Act 1885 rendered it a criminal offence to manage or assist in the management of a brothel, an offence which was recently updated by s55 Sexual Offences Act 2003. Living off the earnings of a prostitute, or what is more commonly known as 'pimping', became an offence by virtue of the Vagrancy Act 1898; the contemporary version of which is now governed by ss52 and 53 Sexual Offences Act 2003. Moreover, whereas the law's intervention in the activities of third parties may not appear to be based upon issues of visibility, historical analysis produces a different picture. Blom-Cooper states: 'the primary aim of the Victorians was to remove from public sight not only those prostitutes but also those who supposedly preyed or battered on these women.'<sup>16</sup>

Despite the fact that the Criminal Law Amendment Act 1885 was introduced in order to protect young women, and consequently increased the age of consent of girls to 16, it was 'mainly enforced to control adult sexual behaviour.'<sup>17</sup> In addition, the 'systematic repression' of brothels significantly altered the structure of prostitution, as women were required to be 'more covert and furtive'<sup>18</sup> and had to rely more on 'pimps.' The importance of this needs to be noted. As Walkowitz explains, prostitution 'shifted from a female to a male dominated trade' and 'there now existed third parties with a strong interest in prolonging women's stay on the streets.'<sup>19</sup> The impact of so called 'protective legislation' has historically served to increase the vulnerability of women, increase their reliance on, sometimes unscrupulous, third parties and potentially create more problems than it solves. As will be discussed below, contemporary reform proposals potentially produce a similar negative outcome.

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<sup>13</sup> s1 Street Offences Act 1959 (as amended); s2(1) Street Offences Act 1985 (as amended) includes the offence of soliciting, in a public place, another person for the purposes of prostitution. This offence relates to the client, as opposed to the sex worker.

<sup>14</sup> s1(1) Street Offences Act 1985 (as amended).

<sup>15</sup> See Helen Jones and Tracey Sagar, 'Crime and Disorder Act 1998: Prostitution and the Anti-social Behaviour Order,' *Criminal Law Review*, Nov, (2001) 873-885.

<sup>16</sup> Louis Blom-Cooper, 'A Socio-Legal Comment on the Case of Dr. Ward,' *The British Journal of Sociology*, 15(1) (1964) 65-71, p. 66.

<sup>17</sup> Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State*, (Cambridge University Press, 1980) p. 251.

<sup>18</sup> Walkowitz, *Prostitution and Victorian Society*, p. 211.

<sup>19</sup> *Ibid.*

In addition to this public nuisance discourse, a 'moral order discourse' has more recently been used in relation to trafficking.<sup>20</sup> Women who are trafficked are frequently constructed as innocent victims who need help and protection. However, this article focuses specifically on street prostitution: sex work which is negotiated in an outdoor location; the sexual activity may take place either outside, indoors or in the client's vehicle. In particular, street sex work can be contrasted with off-street sex work: that which is negotiated and takes place in premises, whether this be a private house or a massage parlour. Hence, prostitution is far from an homogenous activity and thus it is short-sighted to propose a 'one-size fits all' approach; it is vital that this is recognised in any law reform projects.<sup>21</sup> That said, the article will illustrate how the moral order discourse has become prevalent in the policy discussions relating to street prostitution. Indeed, some individuals maintain that the overwhelming majority of women who engage in prostitution do so because of exploitative circumstances which are akin to trafficking. In this victim discourse the women only become a nuisance if they refuse to recognise their victim status and be 'saved'.

### ***Alternative Approaches to Prostitution***

There are various different approaches a state can adopt in relation to prostitution and each approach is premised upon a particular ideological stance. Thompson defines the three main approaches thus:

- 1) Criminalization: which makes all laws and activities associated with prostitution a crime;
- 2) legalization or regulation, which enacts laws and regulations dealing specifically with prostitution; and

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<sup>20</sup> Kantola and Squires, 'Discourses Surrounding Prostitution in the UK,' 77-101. Associations can be drawn with the enactment of the Criminal Amendment Act 1885 as reformers drew attention to the issues of the 'white slave trade' and child prostitution. See Walkowitz, *Prostitution and Victorian Society*, pp. 246-247.

<sup>21</sup> See for example the discussions contained in Nicola Jeal and Chris Salisbury, 'Health Needs and Service Use of Parlour-Based Prostitutes Compared with Street-Based Prostitutes: A Cross-Sectional Survey,' *BJOG An International Journal of Obstetrics and Gynaecology*, 114 (2007) 875-881; Teela Saunders and Rosie Campbell, 'Designing Out Vulnerability, Building in Respect: Violence, Safety and Sex Work Policy,' *The British Journal of Sociology*, 58(1) (2007) 1-19; Keith Soothill and Teela Saunders, 'Calling the Tune? Some Observations on Paying the Price: A Consultation Paper on Prostitution,' *Journal of Forensic Psychiatry & Psychology*, 15(4) (2004) 642-659. Moreover, the temporary and at times part time nature of prostitution needs to be noted. Historically, prostitution is generally not a lifelong career, but a temporary means of survival that is adopted due to difficult circumstances. See Walkowitz, *Prostitution and Victorian Society*, p. 196.

3) decriminalization, which will eliminate laws and regulations associated with prostitution, thereby aligning its status with any other legal occupation or activity.<sup>22</sup>

However, these approaches are somewhat more nuanced than these descriptions imply. Furthermore, one also needs to include 'abolition'. The label 'abolition' may be used to refer to two contrasting approaches. On the one hand, abolition may refer to the adoption of a legal approach which aims to abolish prostitution (which may also be referred to as prohibitionist).<sup>23</sup> Alternatively, the term is used to refer to the abolition of state regulation of prostitution, or more explicitly state regulation of woman who engage in prostitution.<sup>24</sup>

The public/private approach which has so far dominated in this jurisdiction can be labelled abolitionist in the latter sense. The state does not interfere with the act of prostitution per se, it does not aim to regulate in anyway those women who engage in prostitution. Historically, however, there is one significant exception. The Contagious Diseases Acts of the 1860s were passed in order to prevent the spread of sexually transmitted infections. Introduced in the UK and across Europe, these Acts amounted to one of the most invasive forms of state regulation of sex workers. The Acts subjected women suspected of prostitution to mandatory health checks. If a woman refused she could be taken to a hospital and examined against her will or imprisoned for up to one month. If the woman was subsequently found to be suffering from a 'venereal disease' she could be detained in a hospital for up to three months.<sup>25</sup> Josephine Butler, one of the most well known and determined campaigners against the Contagious Diseases Acts, drew upon the notion of 'abolition' in order to abolish the Acts, which were eventually repealed in 1886.<sup>26</sup>

Josephine Butler was not only concerned with developing initiatives to enable women to exit prostitution, a theme which is contained within the Government's strategy, but

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<sup>22</sup> Susan E Thompson, 'Prostitution – A Choice Ignored,' *Women's Rights Law Reporter*, 21 (2000) 217-247.

<sup>23</sup> This is the approach favoured by the government in their strategy. See Home Office, *Coordinated Prostitution Strategy*.

<sup>24</sup> See Judith Kilvington, Sophie Day and Helen Ward, 'Prostitution Policy in Europe: A Time of Change?' *Feminist Review*, 67 Spring (2001) 78-93; Lilian Mathieu, 'The Debate on Prostitution in France: A Conflict Between Abolitionism, Regulation and Prohibition,' *Journal of Contemporary European Studies*, 12(2) (2004) 153-163.

<sup>25</sup> See Jane Jordan, *Josephine Butler*, (Hambledon Continuum, 2007).

<sup>26</sup> *Ibid* p.155.

also with the promotion of sexual equality and social justice.<sup>27</sup> Josephine's influence continues today, indeed David Blunkett, the then Home Secretary in 2003 stated: 'We in this century must do what Josephine Butler attempted over 100 years ago, in a very different era and in a very different way.'<sup>28</sup> Crucially, it is important to note that, as originally characterised by Josephine Butler, abolition was concerned with *decreasing* state control, whereas in contemporary discourses abolition is frequently used to justify *increased* regulation and criminalisation.<sup>29</sup> The Josephine Butler Society, which started life as the Association for Moral and Society Hygiene, continues the work of Josephine Butler today through political campaigns and engagements with policy makers and agencies. Indeed, the society was one of the groups that supported some of the proposals contained in the Criminal Justice and Immigration Bill, as will be discussed below.

The criminalisation approach aims to abolish prostitution and does so by increasing state involvement, so that, in varying degrees, prostitution itself becomes a criminal offence. However, not all parties to the transaction may be deemed criminal. Hence, in 1999 Sweden criminalised the purchase of sexual services;<sup>30</sup> albeit it is not an offence to provide such services. This is because it is considered that women who engage in prostitution are the subjects of male violence and thus should not be penalised.<sup>31</sup> In contrast, decriminalisation offers the most liberal approach to prostitution, which considers such activity to amount to legitimate labour. Hence, prostitution is treated more or less as any other profession, with attendant rights and benefits. One such country which has adopted this approach is New Zealand. Interestingly, it has been argued that these two seemingly antithetical approaches tend to be united by an overwhelming concern to eliminate street prostitution. However, neither is completely successful with street sex workers simply relocating into more discrete, out of sight spaces, which in turn increases their vulnerability.<sup>32</sup>

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<sup>27</sup> Ibid pp. 125-126; Josephine Elizabeth Butler, *The Constitution Violated*, (Edmondson & Douglas, 1871).

<sup>28</sup> Mark Oliver and Alan Travis, 'Victorian Reformer Inspired Blunkett,' *The Guardian* 30 December 2003, p. 2.

<sup>29</sup> This point is developed in further detail below.

<sup>30</sup> See s408 Prohibition of the Purchase of Sexual Services Act 1998.

<sup>31</sup> See Jane Scoular, 'Criminalising "Punters": Evaluating the Swedish Position on Prostitution,' *Journal of Social Welfare and Family Law*, 26(2) (2004) 195-219; Phil Hubbard, Roger Matthews and Jane Scoular, 'Regulating Sex Work in the EU: Prostitute Women and the New Spaces of Exclusion,' *Gender, Place and Culture*, 15(2) (2008) 137-152, pp.142-144.

<sup>32</sup> Hubbard, Matthews and Scoular, 'Regulating Sex Work in the EU'; Kilvington, Day and Ward, 'Prostitution Policy in Europe.' See also Saunders and Campbell, 'Designing Out



The establishment of 'managed zones' could be placed within the regulation/legalisation category.<sup>33</sup> Prostitution is not completely decriminalised, but only permitted within a certain regulated and managed public space. Furthermore, in some jurisdictions, women are also required to register if they wish to work within the zones.

### ***Dealing with Street Prostitution – From Zones to Zero***

The establishment of informal 'tolerance zones' as a means to deal with street prostitution has historically occurred in numerous cities around the UK.<sup>34</sup> Prostitution is informally tolerated by the police and therefore all participants are able to engage in the activity without fear of arrest. Other countries have established formal tolerance zones or managed zones, which also include access to a range of health care and social services. The proposed Liverpool managed zone was based upon the *Tippelzone* which at that time operated formally in Utrecht.<sup>35</sup> A consultation on behalf of the Liverpool City Council was undertaken by the Centre for Public Health at Liverpool John Moores University in 2003/2004. Liverpool City Council voted in favour of the zones and the decision to request approval from the Home Office to run a managed zone on a pilot basis was made.<sup>36</sup> However, following a Home Office funded research project in 2004,<sup>37</sup> the Government in 2006 explicitly rejected the concept of tolerance or managed zones. The proposals ostensibly draw upon a radical feminist rhetoric in order to promote a zero tolerance approach.<sup>38</sup>

Prior to discussing the Government's proposals in detail, the next section of the article discusses the work of Judith Butler. Butler's approach to ethics and vulnerability is drawn upon in order to argue that the proposed 'zero tolerance'

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Vulnerability,' for the argument that legalising off-street prostitution will not effectively deal with the problems which exist in relation to on-street prostitution.

<sup>33</sup> See Thompson, 'Prostitution,' p. 245, who classifies the Tolerance Zones as established in Utrecht as an example of decriminalisation as opposed to legalisation/regulation.

<sup>34</sup> Clark et al, 'Consultation on a Managed Zone,' p. 2. See also Phil Hubbard, 'Red-light Districts and Toleration Zones: geographies of female street prostitution in England and Wales,' *Area*, 29(2) (1997) 129-140, and Walkowitz, *Prostitution and Victorian Society*.

<sup>35</sup> Clark et al, 'Consultation on a Managed Zone,' p. 2.

<sup>36</sup> Mark Bellis et al, 'Comparative views of the public, sex workers, businesses and residents on establishing managed zones for prostitution: Analysis of a consultation in Liverpool,' *Health and Place*, 13 (2007) 603-616 p. 613.

<sup>37</sup> Marianne Hester and Nicole Westmarland, *Tackling Street Prostitution: Towards an Holistic Approach*, Home Office Research Study 279, (Home Office Research, Development and Statistics Directorate, 2004).

<sup>38</sup> Home Office, *Coordinated Prostitution Strategy*. See also Home Office, *Paying the Price: A Consultation Paper on Prostitution*, (Home Office, 2004) chapter 9.

approach problematically constructs sex worker as 'unliveable,' in the sense that her life is not recognised. It will be argued that the Government's proposals unethically use the vulnerability of sex workers to promote a moral agenda, an approach which contradicts some of the basic tenets of radical feminism. Moreover, it will also be suggested that Judith Butler's work deconstructs the pro/anti prostitution stance which has tended to dominate feminist debates.

## 2 Judith Butler: Performativity and Liveable Lives

The work of Judith Butler has had a major impact on feminist legal studies. In particular academics have drawn upon her notion of gender as performativity and her reversal of the sex/gender distinction.<sup>39</sup> More recently, there has been an engagement in Butler's approach to ethics and it is within this area of her work that the notion a 'liveable life' emerges.<sup>40</sup> Subsequent to providing a brief overview of Butler's notion of performativity,<sup>41</sup> the article will move on to analyse the notion of 'liveable lives.' It will be argued that her notions of 'liveable' and 'unliveable lives' provide a more productive and ethical approach to dealing with the issues relating to prostitution. Furthermore, Butler's approach also helps to avoid the binary that has emerged in relation to feminist perspectives on prostitution.

Butler's notion of performativity develops the idea that there is nothing innate about gender identity. Rather, identity is constructed through a compelled performance of gender. Identity is thus constructed by the 'expressions' of gender that are performed.<sup>42</sup> Performance is compelled through the regime of compulsory heterosexuality, which constructs certain 'expressions' as natural and intelligible and others as culturally unintelligible. Hence, Butler argues that those performances which correspond to the ideal path of sex, gender, sexual practice and sexual desire

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<sup>39</sup> See for example: Anna Carline, 'Zoora Shah: An "Unusual Woman,"' *Social & Legal Studies*, 12 (2005) 215-238; Dorothy E Chunn and Dany Lacombe (eds.) *Law as a Gendering Practice*, (Oxford University Press, 2000); Anne Cossins, 'Saints, Sluts and Sexual Assault: Rethinking the Relationship Between Sex, Race and Gender,' *Social & Legal Studies*, 12 (2003) 77-103; Brenda Cossman, 'Gender Performance, Sexual Subjects and International Law,' *Canadian Journal of Law and Jurisprudence*, 15 (2002) 281-296; Joanne Conaghan, 'Reassessing the Feminist Project in Law,' *Journal of Law & Society*, 27 (2000) 251-385; Kathleen Daly, 'Different Ways of Conceptualizing Sex/Gender in Feminist Theory and their implications for Criminology,' *Theoretical Criminology*, 1 (1997) 25-51; Elena Loizidou, 'The Trouble with Rape,' *Feminist Legal Studies*, (1999) 275-297.

<sup>40</sup> Elena Loizidou, *Judith Butler: Ethics, Law, Politics*, (Routledge-Cavendish, 2007).

<sup>41</sup> This overview is provided in order to orientate those readers who are unfamiliar with Butler's work.

<sup>42</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, (Routledge, 1999) p. 33.

(for example: female, femininity, heterosexuality, male) are constructed as culturally intelligible. Performances which contravene this ideal path are constructed as unintelligible. Thus, there are culturally approved scripts that construct certain performances of femininity and masculinity as natural and others are unnatural. Furthermore law can be situated as one of the important discourses that produces ideal gender scripts. Therefore it can be maintained that the law constructs ideal notions of female sexuality. Performances which contravene the ideal scripts, for example engaging in sex work, are considered to be legally unrecognisable and so rendered as unintelligible. Whilst the notion of gender as performativity and intelligible and unintelligible performances of female sexuality will be alluded to throughout the article, the main focus is on Butler's notion of 'liveable life.'

The conception of what amounts to a 'liveable life' draws upon and develops further Butler's notion of intelligible and unintelligible genders. Butler argues that not all lives are constructed as 'liveable lives.' In discussing the aftermath to 9/11 she queries: 'Who counts as human? Whose lives count as lives? ... What makes for a grievable life?'<sup>43</sup> Butler argues that an engagement with what amounts to a 'liveable life' entails a consideration of the 'normative conditions that must be fulfilled for life to become life.'<sup>44</sup> With this in mind she recognises two senses of life: firstly, life in the biological sense, what it means to be alive; and secondly what is required to have a life that is liveable, a life that is recognised as a human life, as a respected life. Not all biological lives are seen to be 'liveable lives', or indeed constructed as human life. The domain of the 'liveable life' constructs a realm of 'unliveable lives': those lives that are not afforded respect nor the right to live according to one's own way of being. Thus Butler emphasises the importance of considering: '...what humans require in order to maintain and reproduce the conditions of their own liveability, and what are our politics such that we are, in whatever way possible, both conceptualizing the possibility of the liveable life and arranging for its institutional support.'<sup>45</sup>

Hence it is important to adopt a critical perspective in relation to those policies that work to produce ideal versions of what a 'liveable life' is. Further, consideration must also be given to how society provides the space and support for different forms of 'liveable lives' to develop and be recognised. Significantly, Butler states that a

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<sup>43</sup> Judith Butler, *Prearious Life: The Power of Mourning and Violence*, (Verso, 2006) p. 20.

<sup>44</sup> *Ibid* p. 48.

<sup>45</sup> Judith Butler, *Undoing Gender* (Routledge, 2004) p. 39.

concern for 'liveable lives' is an ethical issue, as it involves questioning 'what makes, or ought to make, the lives of others bearable?'<sup>46</sup> It can be argued that an ethical political response to the issue of street prostitution requires the government to consider what practices and support mechanisms would make the lives of those who are affected more bearable. Policies should not be developed on the basis of ideological opinions as to the legitimacy or otherwise of sex work. A failure to work from the premise of what is needed in order to make a life bearable is to construct that life as unliveable. It is only when we recognise a life as a 'liveable life' that we become concerned with the issue of what that life needs to survive, to be bearable. This in turn requires the adoption of practical policies which produce effective results. The adoption of this approach is interesting for Butler as it shows a concern for the more material side of life; a concern with what individuals need as opposed to how they are constructed by discourse. Indeed Butler explicitly refers to the issue of distributive justice when considering what is needed for a life to be bearable.<sup>47</sup> However, the issue of discursive construction remains significant as not all lives are constructed as liveable.

In addition to questioning what is needed to make a life bearable, Butler also stresses that recognising that a life is liveable entails acknowledging the vulnerability of that life, the vulnerability of bodies. All bodies are social, vulnerable and exposed to violence: 'the body implies morality, vulnerability, agency: the skin and the flesh expose us to the gaze of others, but also to touch, and to violence.'<sup>48</sup> But 'this vulnerability becomes highly exacerbated under certain and social and political conditions.'<sup>49</sup> Furthermore, because certain communities, such as women, ethnic and sexual minorities, are the targets of violence these groups are 'constituted politically in part by virtue of the social vulnerability of [their] bodies.'<sup>50</sup>

Nevertheless, this vulnerability, which is more readily exposed and fragile for some groups in society, is a vulnerability that is shared by us all. Additionally, it is this primary and fundamental vulnerability that renders us in an ethical relationship with one another. Vulnerability is primary, Butler states, because it 'precedes the

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<sup>46</sup> Ibid p. 17.

<sup>47</sup> Ibid.

<sup>48</sup> Butler, *Precarious Life*, p. 26.

<sup>49</sup> Ibid p. 29.

<sup>50</sup> Butler, *Undoing Gender*, p. 18; Butler, *Precarious Life*, p. 20.

formation of “I”.<sup>51</sup> As infants, we are utterly dependent upon others, hence our bodies are given over, and are vulnerable, to others from the start. Because we are all given over to each other from the start, and all fundamentally vulnerable, we are ethically responsible for each other. Our common vulnerability establishes an ethical duty to protect the other.

The recognition that one is vulnerable is dependent upon the norms of culturally intelligibility. Some bodies are constructed as bodies that do not ‘matter’ and the vulnerability of these bodies is not seen as they are not recognised as being human: ‘if vulnerability is one precondition for humanization, and humanization takes place differently through variable norms of recognition, then it follows that vulnerability is fundamentally dependent upon existing norms of recognition if it is to be attributed to any human subject.’<sup>52</sup>

Drawing upon this theoretical framework, we can read the discourses contained within the Government’s proposals in order to examine the extent to which the vulnerability of those who engage in sex prostitution is adequately acknowledged. The failure to adequately acknowledge vulnerability indicates that those lives are constructed as being unliveable. As Butler states: ‘A vulnerability must be perceived and recognised in order to come into play in an ethical encounter, and there is no guarantee that this will happen.’<sup>53</sup>

### ***From Radical Feminist to Sex-Radical: Feminist Perspectives on Prostitution***

Thus, the article argues for the development of an ethical political response which is based upon acknowledging the vulnerability of the other. This ethical approach advocates the development of policies which are motivated by a concern to make life bearable. The proposed response on sex work differs significantly from the main feminist theoretical approaches to prostitution, which tend to be polarised. For radical feminists sex is linked to male power and is the cause of women’s oppression. Prostitution amounts to violence against women and is considered to be ‘the

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<sup>51</sup> Butler, *Precarious Life*, p. 31. This is due to the fact that, from a queer theory and a psychoanalytic perspective the “I” only comes into being once an infant has passed through the Oedipal complex and the “I” is constructed by the symbolic order.

<sup>52</sup> Butler, *Precarious Life*, p. 43.

<sup>53</sup> *Ibid.*

cornerstone of all sexual exploitation.<sup>54</sup> This perspective stipulates that prostitution commodifies the female body and also maintains and perpetuates gender inequality. Accordingly no woman can ever truly consent to prostitution, and it is considered that those women who engage in prostitution are victims of male violence. This perspective argues that states must work towards abolishing the demand for prostitution, as opposed to developing strategies aimed at decriminalising and legitimising the sex industry. It can be argued that radical feminism is the ideology behind the criminalisation approach as adopted in Sweden and also the Government's co-ordinated strategy.

In stark contrast to the radical feminists are the liberal feminists. A liberal feminist perspective emphasises a woman's autonomy and right to her own body, and thus maintains that consensual sex activity should not be subjected to criminalisation.<sup>55</sup> To some extent this is the rationale behind the present legal situation in the UK, the law does not intervene in what is deemed to be consensual private behaviour. Care has to be taken with the liberal perspective as there is a tendency to adopt a rather uncritical notion of consent. An alternative approach, the 'sex-radical approach,' avoids some of the difficulties inherent in the liberal feminist approach. Sex-radicals trouble the notion of consent whilst emphasising that prostitution, or any other particular sexual practice, is not always already exploitative and victimising. Adopting a postmodern perspective with regards to sex and sexuality, sex-radicals emphasise the existence of multiple and diverse perspectives on and experiences of sexuality, especially non-conformist expressions. On this basis it is argued that prostitution may potentially be subversive and empowering.<sup>56</sup> This perspective tends to be adopted by

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<sup>54</sup> Kathleen L Barry, *The Prostitution of Sexuality: the Global Exploitation of Women*, (New York University Press, 1996) p. 9. See also Susan Brownmiller, *Against Our Will: Men, Women and Rape*, (Penguin, 1986); Andrea Dworkin, *Power in Pornography: Men Possessing Women*, (The Women's Press, 1981); Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, (Harvard University Press, 1987); Catherine A. MacKinnon, *Toward a Feminist Theory of the State*, (Harvard University Press, 1989); Kate Millet, *The Prostitution Papers*, (Paladin, 1975); For a discussion of the different feminist theories regarding prostitution see Kari Kesler, 'Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends,' *Sexualities*, 5(2) (2002) 219-235, pp. 221-231; Jane Scoular, 'The 'Subject' of Prostitution: Interpreting the Discursive, Symbolic and Material Position of Sex/Work in Feminist Theory,' *Feminist Theory*, 5(3) (2004) 343-355.

<sup>55</sup> Alison Jagger 'Prostitution' in Alan Soble (ed.), *The Philosophy of Sex: Contemporary Readings*, (Rowman and Littlefield, 1991) pp. 260-274, p. 262. See Jessica Spector (ed.) *Prostitution and Pornography: Philosophical Debate About the Sex Industry*, (Stanford University Press, 2006) for a detailed and critical analysis of the liberal feminist perspectives on prostitution.

<sup>56</sup> Kate Sutherland, 'Work, Sex and Sex-Work: Competing Feminist Discourses on the International Sex Trade,' *Osgoode Hall Law Journal*, 42 (2004) 139-167, p. 144. See also Pat

those women who call for the decriminalisation and legalisation of sex work and it is argued that their right to choose to engage in prostitution should be respected. However, the sex-radical approach acknowledges that not 'everyone operates from a position of equal bargaining power.'<sup>57</sup> Hence, not all consent is true consent. One needs to remain cognisant that certain circumstances or situations may negate what on face value appears to be an expression of consent. For example, the expressed consent of a woman who has been forcibly trafficked into prostitution should not be considered to be sufficient consent. Problematically, however, this approach at times tends to assume that only certain groups of women, in particular white, western middle class women, can effectively consent to sex work. Other groups of women may be constructed as being 'forced' into prostitution due to their socio-economic conditions.<sup>58</sup>

The polarized nature of the dominant feminist approaches to prostitution may potentially decrease the impact of feminist inspired policies and may also render invisible those who are most at risk. Continually debating the rights and wrongs of prostitution takes away from ethically and productively engaging in a dialogue with those women involved in sex work and the policy makers. In contrast an ethical perspective which is concerned with what the other needs to live a 'liveable life' is not concerned with maintaining a theoretical stance on prostitution. Rather it is concerned with the development of a practical and effective approach which deals with the material factors of street sex work. The question that needs to be asked to the other is: What do you need from me? without requiring that individual to adopt, and remain in, a certain subject position.

### **3 Proposals in the Criminal Justice and Immigration Bill 2006-2007**

With reference to Butler's approach to ethics and vulnerability, and her concept of 'liveable lives', this section of the article will critically analyse the Government's proposals, as originally presented in the Criminal Justice and Immigration Bill 2006-

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Califa, *Public Sex: The Culture of Radical Sex*, (Cleis Press; 2000); Jo Doezema and Kamala Kempadoo (eds.), *Global Sex Workers Rights: Rights, Resistance and Redefinition*, (Routledge, 1998); Jill Nagel, *Whores and Other Feminists*, (Routledge; 1997); Gail Pheterson, *A Vindication of the Rights of Whores*, (Seal Press, 1989); Carole S Vance (ed.) *Pleasure and Danger: Exploring Female Sexuality*, (Routledge, 1984). See also Scoular, 'The 'Subject' of Prostitution.'

<sup>57</sup> Sutherland, 'Work, Sex and Sex-Work,' p. 144.

<sup>58</sup> See Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism*, (Routledge-Cavendish, 2005).

2007. It will be argued that the Government problematically draws upon radical feminist rhetoric in order to construct all sex workers as victims whilst simultaneously promoting the criminalisation of sex workers. Sex workers are consequently constructed as unliveable and their vulnerability is used as a means to promote a moral agenda. A most unethical approach.

The relevant clauses of the Criminal Justice and Immigration Bill emanated from the Government's co-ordinated strategy, the key objectives of which are stated to be:

- Challenge the view that prostitution is inevitable and here to stay.
- Achieve an overall reduction in street prostitution.
- Improve the safety and quality of life of communities affected by prostitution, including those directly involved in street sex markets.
- Reduce all forms of commercial sexual exploitation.<sup>59</sup>

With this in mind, the strategy is concerned with: prevention; tackling demand; developing routes out; ensuring justice; and tackling off street prostitution.<sup>60</sup> Some have argued that this strategy demonstrates that the regulation of prostitution has moved away from a criminalisation/enforcement approach to one which focuses upon welfare based responses and multi-agency involvement.<sup>61</sup> However, others have more critically argued that the strategy increases the exclusion and criminalisation of those sex workers who do not adequately 'reform' their lives.<sup>62</sup> It has also been stressed the strategy fails to sufficiently analyse research into clients; pays insufficient attention to alternative legal approaches, and adopts an homogenous view of prostitution.<sup>63</sup> Additionally, it has been suggested that the 'zero tolerance' approach is 'an essential precursor to middle-class, family-orientated gentrification,'<sup>64</sup> which effectively results in certain groups of individuals being excluded from city centres. This section of the article contributes to the critical analysis of the Government's strategy by providing a close reading of the relevant Parliamentary

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<sup>59</sup> Home Office, *A Coordinated Prostitution Strategy*, p. 1.

<sup>60</sup> *Ibid* p. 2.

<sup>61</sup> Roger Matthews, 'Policing Prostitution Ten Years On', *British Journal of Criminology*, 45 (2005) 877-895.

<sup>62</sup> Linda Cusick and Lee Berney, 'Prioritizing Punitive Responses Over Public Health: Commentary on the Home Office Consultation Document Paying the Price,' *Critical Social Policy*, 25(4) (2005) 596-606; Jane Scoular and Maggie O'Neill, 'Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution Reform,' *British Journal of Criminology*, 47 (2007) 764-778; Soothill and Saunders, 'Calling the Tune?'

<sup>63</sup> Belinda Brooks-Gordon, 'Clients and Commercial Sex: Reflections on Paying the Price: A Consultation Paper on Prostitution,' *Jun Criminal Law Review*, (2005) 425-443. See also Soothill and Saunders, 'Calling the Tune?'

<sup>64</sup> Phil Hubbard, 'Cleansing the Metropolis: Sex Work and the Politics of Zero Tolerance,' *Urban Studies*, 41(9) (2004) 1687-1702.



debates through the lens of Judith Butler. Whilst the prostitution reforms were eventually abandoned, the debates amount to an important official discourse on the issue of prostitution.<sup>65</sup>

The reforms considered by Parliament included: removing the term 'common prostitute' from s1(1) Street Offences Act 1959; the introduction of compulsory rehabilitation orders for those convicted of soliciting in a public place for the purposes of prostitution; orders to rehabilitate men who use the services of trafficked women; and criminalising the purchase of sexual services. Space does not permit a detailed analysis of all of these proposals so the article will focus upon the two which attracted the most debate: criminalising the purchase of sexual services and compulsory rehabilitation orders for street sex workers.

### ***Clause 8: Criminalising Demand or Criminalising Consensual Sex?***

Clause 8 was not included in the original Bill, but was introduced by Conservative MP, Phillip Hollobone. The clause proposed criminalising the purchase of sexual services in a bid to reduce the demand for prostitution, in particular off-street prostitution. The overall aim, therefore, was to reduce the levels of prostitution and trafficking.<sup>66</sup> Ostensibly drawing upon the Swedish model, clause 8 invokes the radical feminist rhetoric. Hence all prostitution is constructed as violence against women and any consent is not considered to be real. Hollobone substantiates his approach by citing the support he has received from a number of groups and individuals. In particular Hollobone quotes Josephine Wakeling, a member of the National Christian Alliance on Prostitution and the Josephine Butler Society. Wakeling states

It is our Government's duty to protect the vulnerable through law, and that at all costs should ensure that those abusing vulnerability from a place of power shall be held to account. I would encourage legislation which criminalised the demand side ...as it is the purchasers of commercial sex who remain hidden and fuel this exploitation of women.<sup>67</sup>

Drawing upon the opinion of the UN special rapporteur on trafficking in persons, especially in women and children, Hollobone argues that overwhelmingly, sex workers are tantamount to trafficked victims. This is because prostitution is

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<sup>65</sup> See the Policing and Crime Bill 2009 for more recent reform proposals which are currently being debated in Parliament.

<sup>66</sup> HC Deb, 27 November 2007, c543.

<sup>67</sup> HC Deb, 27 November 2007, c541.

considered to involve 'in the very least, an abuse of power and/or an abuse of vulnerability.'<sup>68</sup> Furthermore, not only does prostitution lead to gender inequality, due to the commodification of women's bodies, there are also issues of racial inequality. Hollobone emphasises that as many women engaged in prostitution are from racial and ethnic minorities, criminalising demand is necessary in order to 'uphold the principles of racial and gender equality as an essential component of human rights.'<sup>69</sup>

Thus, discourses of vulnerability are strongly relied upon in order to promote the criminalising of clients in a bid to reduce demand and promote equality. Prior to analysing the problematic nature in which vulnerability is taken up within this proposal, the article will outline some of the general problems with adopting a Swedish criminalisation approach. Firstly, it needs to be acknowledged that the nature of and attitudes towards prostitution differ significantly in Sweden in comparison to the UK. Not only are there significantly less people involved in prostitution in Sweden, there appears to be more consensus and homogeneity amongst the populace and feminist groups on issues of morality and prostitution. However, one needs to acknowledge that sex workers in Sweden have tended to be excluded from the official debates.<sup>70</sup>

Secondly, official policies and discourses in the UK tend to focus overwhelmingly on the women who engage in prostitution. Little attention is given to the purchasers of sex, indeed the reasons as to why men purchase sex and why there is a demand for sex is not considered at all in the Parliamentary debates.<sup>71</sup> Surely, an effective legislative framework aimed at tackling demand and criminalising the purchase of sex cannot be developed without an informed understanding as to why men engage in such activity in the first place.

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<sup>68</sup> HC Deb, 27 November 2007, c542.

<sup>69</sup> HC Deb, 27 November 2007, c542.

<sup>70</sup> See Scoular. 'Criminalising "Punters,"' pp. 195-199.

<sup>71</sup> For a recent piece of empirical research into why men purchase sex see: Maddy Coy, Miranda Horvath and Liz Kelly, *'It's just like going to the supermarket' Men Buying Sex in East London* Report for Safe Exit Tower Hamlets, (Child & Women Abuse Studies Unit, 2007). For research in other jurisdictions see Elizabeth Bernstein, 'The Meaning of the Purchase: Desire, Demand and the Commerce of Sex,' 2(3) *Ethnography*, (2001) 389-420; Martin Monto, 'Why Men Seek Out Prostitutes,' in Ronald Weitzer (ed.) *Sex for Sale: Prostitution, Pornography and the Sex Industry*, (Routledge, 2000) pp. 67-85. See also the discussion in Brooks-Gordon 'Clients and Commercial Sex,' pp. 428-431.

Thirdly the radical feminist conception of prostitution as violence against women is problematic in the way in which it 'essentialises women's experiences of prostitution whilst failing to challenge the accepted parameters of heterosexuality.'<sup>72</sup> Constructing prostitution as a fundamental aspect of patriarchal oppression renders invisible the 'contingencies and diversity of the structures under which it materialises.'<sup>73</sup> The complex nature and causes of prostitution and how it is experienced by different women is not recognised by a radical feminist perspective. It is problematic and worrying that the Government and other MPs are happy to quickly draw upon radical feminist rhetoric without effectively engaging in a critical analysis of the feminist debates, as this effectively excludes the voices and opinions of many women.

Fourthly, the Swedish approach has proved to be ineffective as any reductions in street prostitution have tended to be temporary and there has also been a corresponding increase in online soliciting.<sup>74</sup> Finally, criminalising clients problematically increases the vulnerability of those involved. Prostitution is driven underground and women become more reliant on pimps, and thus women 'feel discriminated against, endangered by the very laws that seek to protect them, and they feel under severe emotional stress as a result of the laws.'<sup>75</sup> Nevertheless, the Swedish Government have maintained that 'any negative impact on sex workers is outweighed by 'the message' conveyed by the law.'<sup>76</sup> This attitude demonstrates an unethical disrespect for the vulnerability of those women who engage in street based prostitution. What makes their lives more bearable, what is needed to protect and promote their 'liveable lives' is considered to be dispensable provided that a message is sent out to the rest of society. This lack of recognition constructs the women involved as unintelligible, not human.

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<sup>72</sup> Scoular, 'Criminalising "Punters,"' p. 202.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid pp. 199-200.

<sup>75</sup> Petra Ostergren, Swedish writer and social commentator, cited by Harry Cohen MP, HC Deb, 27 November 2007, c547.

<sup>76</sup> Don Kulick, 'Sex in The New Europe: The Criminalisation of Clients and Swedish Fear of Penetration,' *Anthropological Theory*, 3(2) (2003) 199-218, p. 225 cited in Scoular, 'Criminalising "Punters,"' p. 201. Kulick describes the reforms as '...a culmination of nearly a decade of work by feminist groups and centre/left politicians to convince lawmakers that they should 'send a message' that 'society' does not accept prostitution,' Kulick, 'Sex in The New Europe' p. 199 cited in Scoular, 'Criminalising "Punters,"' p. 197.

### ***Protecting the Vulnerable or Pushing a Moral Agenda?***

Whilst seemingly premised upon a concern to protect those who are constructed as vulnerable, it can be argued that criminalisation only works to institute and perpetuate vulnerability. This increased vulnerability is considered to be justifiable in order to send out a moralistic message that buying sex is wrong. Significantly, the manner in which the vulnerability of sex workers is used to push a conservative moralistic agenda is all the more evident in Hollobone's proposed clause 8. As Hollobone himself notes: 'Clause 8 does not provide a pure Swedish approach, because in Sweden supply is decriminalised and demand criminalised.'<sup>77</sup> In Sweden the soliciting offences were repealed, as to do otherwise would amount to 'victim blaming', however clause 8 would retain the soliciting offences which effectively criminalise those who sell sex in a public place.<sup>78</sup> This contravenes the rationale behind the Swedish model, which is that those involved in providing prostitution should not be subject to criminal liability as they are victims, because the crime is committed against them. If, as Hollobone maintains, clause 8 is about protecting the vulnerable then clearly the soliciting offences should be repealed.

Thus, whilst it can be seen that a discourse of vulnerability is presented as the main motivation behind clause 8, this is not borne out when one examines the debates. In contrast, the vulnerability of street sex workers is used in order to push a moralistic view that 'buying sex is not acceptable,'<sup>79</sup> but without any detailed and reasoned analysis as to why this is so. Therefore, it can be argued that a moral perspective becomes increasingly prevalent in the debates on prostitution. Whilst the debates ostensibly utilise the radical feminist ideology to construct those involved in prostitution as victims, their vulnerability is then used to justify the adoption of a moralistic agenda, which leads to complete criminalisation. The proposals do not concern themselves with recognising, promoting and protecting the 'liveable lives' of street sex workers. Their vulnerability to violence and abuse is not acknowledged in a manner which invokes an ethical response. Rather, their vulnerability is used as a means to an end, which implies that they are constructed as unliveable, non-human. There is no real engagement into what would make the lives of street sex workers more bearable.

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<sup>77</sup> HC Deb, 27 November 2007, c544.

<sup>78</sup> s1(1) Street Offences Act 1959: It shall be an offence for a common prostitute to loiter or solicit in a street or a public place for the purposes of prostitution.

<sup>79</sup> Hollobone, HC Deb, 27 November 2007, c543.

### **Clause 72: Compulsory Rehabilitation Orders**

Clause 72 proposed a new 'punishment' for those convicted of s1(1) Street Offences Act 1959 (as amended): soliciting or loitering for the purposes of prostitution in a public place. Currently the offence is punished by a fine but under the new proposal a court could alternatively impose a rehabilitation order. The aim of the order is to 'promote the rehabilitation' of an individual. An offender would be required to attend three supervised meetings in order to 'address the causes of the conduct constituting the offence'; and 'find ways to cease to engage in such conduct in the future'.<sup>80</sup> Thus the motivation behind the rehabilitation orders is to enable women to exit prostitution by providing access to a range of health and social services.

Vernon Coaker MP, Minister at the Home Office, argues that the orders enable due regard to be given to all of the circumstances that are relevant when considering street prostitution.<sup>81</sup> Whereas he acknowledges that diversion into services should preferably be voluntary, he states that 'persistent involvement makes some coercion necessary'.<sup>82</sup> Thus it is presumed that help can be forced upon those who would otherwise refuse. Arguably this approach is based on a 'false consciousness' idea that the women involved are simply not cognisant of the fact that they are victims who need to be saved. This is a patronising approach which is also echoed in Government strategy, which states: 'while some women may argue that they have made a choice to be involved, the vast majority require support and protection to enable them to maintain their safety and to reach a point of stability from which they can find a way out'.<sup>83</sup> Such an approach constructs those women who state that they have chosen to enter into prostitution as unliveable. Their agency is denied and they are forced to undergo treatment and accept their victim status.

The efficacy of the orders was seriously doubted by other MPs and experts. As argued by John Furniss of Multiple Choice Rehabilitation, imposing a requirement that the individual attends three supervised meetings 'is window dressing and meaningless. People will miss meetings due to their drug use'.<sup>84</sup> Research clearly indicates that many of the women engaged in street based prostitution are habitual

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<sup>80</sup> Clause 72 S2A-2D Criminal Justice and Immigration Bill 2006-2007.

<sup>81</sup> HC Deb, 16 October 2007, c34.

<sup>82</sup> HC Deb, 27 November 2007, c566.

<sup>83</sup> Home Office, *Coordinated Prostitution Strategy*, p. 41.

<sup>84</sup> HC Deb, 8 October 2007, c119.

class A drug users who lead chaotic life styles.<sup>85</sup> Thus it is difficult to envisage how three meetings will effectively enable routes out of prostitution to emerge. Research also emphasises the importance of outreach work, appropriate health care, dedicated support teams and access to accommodation.<sup>86</sup> A successful exit requires crisis intervention, stabilisation and aftercare. Furthermore, exiting is far from a linear process.<sup>87</sup> Indeed this latter point is acknowledged by Coaker. However little, if any, thought is given to what would happen if no progress had been made during the three meetings. Coaker merely indicates that either another order would be made or a fine imposed.<sup>88</sup> As commented by Ann Lucas, from the Local Government Association, this would just start another 'vicious circle.'<sup>89</sup> Considering the wealth of research that highlights the difficulties of exiting prostitution, a much more effective and inventive approach needs to be adopted.

David Burrowes, Conservative MP, also expresses concern that the rehabilitation meetings may focus too much on drug rehabilitation. This may not only problematically lead to many people becoming addicted to methadone but may also fail to deal adequately with the other causes of prostitution, such as 'child abuse, family breakdown, domestic violence and debt.'<sup>90</sup> While the evidence time and time again indicates that the vast majority of those who engage in street sex work are habitual users, it is a mistake to jump to the conclusion that drug use is the main causal factor.<sup>91</sup> Whilst the Government's strategy comments on the need to 'challenge the popular image of prostitution,'<sup>92</sup> it can be seen that Governmental

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<sup>85</sup> See Hester and Westmarland, *Tackling Street Prostitution*, and Bellis et al 'Comparative views.'

<sup>86</sup> Hester and Westmarland, *Tackling Street Prostitution*. The government's strategy is based upon the research findings of this Home Office study, Home Office, *A Co-ordinated Prostitution Strategy*, p. 9. However it is difficult to comprehend how a study which emphasised the difficult and non-linear routes out of prostitution supports the Government's rehabilitation orders. See also John McDonnell MP in his argument against the zones, HC Deb, 8 October 2007, c119.

<sup>87</sup> See also Scoular and O'Neill, 'Regulating Prostitution,' p. 768 and S-A Masson and U-C Hedin, 'Breaking the Matthew Effect: On Women Leaving Prostitution,' *International Journal of Social Welfare*, 8 (1999) 67-77.

<sup>88</sup> HC Deb, 16 October 2007, c51.

<sup>89</sup> HC Deb, 18 October 2007, c146. Lucas was, nevertheless, in favour of a rehabilitation approach, due to the ideological stance of the Local Government Association which considers that all women involved in prostitution are victims.

<sup>90</sup> HC Deb, 27 November 2007, c559.

<sup>91</sup> Tiggey May and Gillian Hunter, 'Sex Work and Problem Drug Use in the UK: The Links, Problems and Possible Solutions' in Rosie Campbell & Maggie O'Neill (eds.) *Sex Work Now*, (Willan Publishing, 2006) pp. 169-189, p. 172.

<sup>92</sup> Home Office, *Coordinated Prostitution Strategy*, p. 19. This 'popular image' is said to be based upon 'outdated stereotypes and glamorised media representations.'

discourse problematically promotes and perpetuates another (un)popular image of prostitution: The drug addicted woman who is unaware that she needs help. An ethical approach to dealing with street prostitution requires a thorough and effective recognition of all the relevant factors. Constructing an homogenous response fails to adopt an ethical enquiry into what the other needs in order to make her life more bearable.

### ***Criminalisation Masquerading as Rehabilitation?***

Significantly, whilst the Government on the one hand seems to acknowledge the chaotic and complex lives of those involved in street prostitution,<sup>93</sup> their proposal involves detaining an individual for up to 72 hours if they fail to attend one of their meetings in the absence of a reasonable justification. Coaker explains: 'it is important to make available a sanction should somebody knowingly, deliberately and wilfully choose to ignore the fact that they are subject to an order.'<sup>94</sup> Thus, as with the criminalisation of demand, we once again see the Government constructing sex workers as vulnerable in order to promote criminalisation. If the aim is to effectively encourage and support women to exit street sex work a voluntary approach needs to be developed which truly acknowledges the chaotic and non-linear routes out of prostitution. An approach which forces a person to attend three sessions or face criminalisation falls very short of this ideal.

The perception that clause 72 will simply lead to the criminalisation of those engaged in street prostitution forms the main argument of those who opposed the rehabilitative orders. Leading the argument on this issue is MP John McDonnell, who represents the views of the coalition 'Safety First' which was formed following the murder of the five women in Ipswich. The coalition comprises a range of different organisations, including, Women Against Rape, the English Collective of Prostitutes, the Royal College of Nursing and also the National Association of Probation Offices. Indeed NAPO stressed that the proposed approach would be 'unworkable' and 'turn the law back 25 years, to when imprisonment was the norm for prostitution' and estimates

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<sup>93</sup> 'A number of factors need to be taken into account in terms of ensuring accessibility for this group. Those with chaotic lives find it difficult to cope with appointment systems, or to make appropriate arrangements for childcare. These are the kind of issues that dedicated support projects can broker with mainstream services and for which they offer much-valued advocacy services.' Home Office, *Coordinated Prostitution Strategy*, p. 44.

<sup>94</sup> HC Deb, 27 November 2007, c570.

that 11,000 women could be detained.<sup>95</sup> Safety First argue that focusing on criminal law remedies avoids ‘the underlying issues and causes of women entering prostitution and the need to provide real support to allow them to exit it.’<sup>96</sup>

Although Coaker maintains that the detention penalty would not be used very often, it is difficult to feel assured that the proposals will not simply criminalise those women who refuse or are unable to adopt what is considered by certain officials to be socially acceptable lifestyles.<sup>97</sup> Moreover, Christine Lawrie, the Chief Executive of the Probation Boards Association surmises that they would not expect to have to deal with many rehabilitation orders. Lawrie states: ‘...you will pick up a lot of women who choose to be prostitutes and do not want to be helped. That is their lifestyle choice.’<sup>98</sup> This suggests that many women would not attend the meetings, and thus would be detained. Increased criminalisation maintains and perpetuates the notion of those who work in prostitution as having an ‘unliveable life’ and fails to respond ethically to their vulnerability. As stated by Siobhan Kilkenny, from the Sex Worker Project: ‘criminalising these people in whatever way it is dressed up will make the most vulnerable and invisible more vulnerable and more invisible and allow tragedies like the Ipswich murders to happen again.’<sup>99</sup>

This close reading of the relevant Parliamentary debates demonstrates how those who engage in street prostitution are constructed as unliveable, as non-human. This construction occurs due to the failure to respond ethically to the vulnerability of the other. It is only when we construct an individual as liveable, as human, that we begin to construct an ethical response which emerges due to our common vulnerability. Whilst the Government invoke radical feminist rhetoric in order to construct the sex worker as vulnerable this construction is used in order to promote a moralistic approach to prostitution. Such an approach fails to respond effectively to the needs of those engaged in street based prostitution. It does not lead to an ethical engagement into what the other needs in order to make their life more bearable, but rather is used to justify criminalising all aspects of sex work.

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<sup>95</sup> HC Deb, 8 October 2007, c119.

<sup>96</sup> HC Deb, 8 October 2007, c118.

<sup>97</sup> As noted by Mr Burrowes, whilst the breach of an order would not be a criminal offence per se, the sanctions that apply are criminal in nature. HC Deb, 27 November 2007, c569.

<sup>98</sup> HC Deb, 16 October 2007, c49. A similar sentiment is also expressed by Cindy Barnett, Chairman of the Magistrates Association, HC Deb, 16 October 2007, c 51.

<sup>99</sup> HC Deb, 8 October 2007, c 119.



#### 4 A Managed Zone for Sex Workers in Liverpool

This final section examines how the creation of managed zones, as proposed by Liverpool City Council, may potentially lead to the creation of a proactive, ethical and effective, approach to street prostitution. It will be argued that the managed zones recognise the vulnerable and liveable lives of those involved, and asks the other what she needs in order to make her life more bearable. It is, perhaps, not at all surprising that the first formal proposal in the UK for a legally recognised managed zone emanated from Liverpool. Liverpool was considered to be ‘the capital of prostitution in Victorian England’ with far more brothels and known sex workers than any other city.<sup>100</sup> Additionally, of course, Liverpool was the city in which Josephine Butler commenced her campaign work to improve the lives of women involved in prostitution and to abolish the Contagious Diseases Acts. Liverpool has a long historical tradition with prostitution.

The consultation for the creation of a managed zone was undertaken by the Centre of Public Health at Liverpool John Moores University and drew upon the *Tippelzone* as existed at that time in Utrecht.<sup>101</sup> On a basic level, the *Tippelzone* was an official and formal space in which clients and sex workers could meet and engage in business in a safe manner, in what is known as a ‘finishing off zone.’ The finishing off zone provided spaces for cars, but also ensured that the women could safely exit from the cars if a dangerous situation arose. The zones also contained a ‘living room’: a space in which the women could sit in the warmth, obtain refreshment and a range of medical and social services.<sup>102</sup> Hence the zones provided much more than a space to engage in sex work.

The consultation process was conducted in two stages. The first stage involved obtaining general opinions from the public, residents, sex workers and businesses as regards to the establishment of a zone. Drawing upon the information gathered, the second stage identified two potential locations and consulted with local businesses.

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<sup>100</sup> Philip Howell, David Beckingham and Francesca Moore, ‘Managed Zones for Sex Workers in Liverpool: Contemporary Proposals, Victorian Parallels,’ *Transactions of the Institute of British Geographers*, 3(2) (2008) 233-250, p. 235.

<sup>101</sup> Clark et al, Consultation for a Managed Zone, p. 2.

<sup>102</sup> See Paul Van Soomeren, *Design Against Kerb-Crawling: Tippelzones (Vice Zones) – European Experiences in Displacement*, (Proceedings of the 9<sup>th</sup> Annual International Conference, 13-16 September 2004). Note, however, that Howell et al argue that the term ‘managed zone’ ‘is something of a misnomer, given that the proposals called for a regulative microgeography of small-scale sites designated for sex workers and their clients at specific times.’ Howell, Beckingham and Moore, ‘Managed Zones for Sex Workers’, p. 233.

Stage one of the consultation indicated that there was overwhelming support for the adoption of a zone. 85% of respondents stated that they agreed in principle to the idea of a managed zone and 83% were in favour of the establishment of a zone in Liverpool. Only 10% were in favour of increased policing and criminalisation of sex workers.<sup>103</sup>

***Constructing Safe Spaces; Protecting the Vulnerable: The Advantages of a Managed Zone***

Safety was identified by all of the respondents to be one of the main advantages of a managed zone.<sup>104</sup> Whilst the safety of sex workers was considered to be important by all of the respondents, it is perhaps not too surprising that residents and businesses were slightly more concerned with the reduction of prostitution outside the zone and the improved policing of prostitution. Sex workers, however, clearly identified their safety to be the most important benefit of establishing a zone.<sup>105</sup>

The initial consultation established that the zone should be located in a non-residential, light industrial area, that was away from night time business and accessible by public transport.<sup>106</sup> In addition, all of the groups agreed that there should be appropriate security measures, including good lighting and CCTV.<sup>107</sup> Although some of the sex workers commented that any surveillance cameras should be 'hidden and discrete'.<sup>108</sup> Over half of all respondents were in favour of some form of official presence in the zone and generally security wardens were favoured over and above 'constant police presence'.<sup>109</sup> In particular 84% of the sex workers were in favour of a security warden, with only 40% in favour of police.<sup>110</sup> Some sex workers commented that police presence may have a detrimental impact, due to existing poor relations.<sup>111</sup> Despite these concerns one sex worker commented that the zone may provide a space in which relationships with the police could be improved.<sup>112</sup> Moreover, Bellis et al note that the experience from elsewhere suggests that

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<sup>103</sup> Clark et al, Consultation on a Managed Zone, p. 5. Support for the adoption of zones, albeit tolerance zones, is also established by empirical research that has been conducted in Scotland. See Neil McKeganey, 'Street Prostitution in Scotland: The Views of Working Women', *Drugs: Education, Prevention and Policy* 13(2) (2006) 151-166, pp. 159-160.

<sup>104</sup> Clark et al, 'Consultation on a Managed Zone,' p. 5.

<sup>105</sup> Bellis et al, 'Comparative views,' p. 612.

<sup>106</sup> Ibid p. 609.

<sup>107</sup> Ibid pp. 607-609.

<sup>108</sup> Ibid p. 612.

<sup>109</sup> Ibid pp. 607-609.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid p. 612. See also McKeganey, 'Street Prostitution in Scotland', pp. 160-162.

<sup>112</sup> Bellis et al, 'Comparative views', p. 612.

relationships do improve, with sex workers more likely to report incidents of violence, suspicious clients, and underage girls to the police.<sup>113</sup> In conclusion, it was decided that the zones would be 'patrolled by security wardens who would then request police support if required.'<sup>114</sup>

### ***Making lives more bearable: Health, Welfare and Housing Services***

As with the *Tippelzone* in Utrecht, the managed zone would also encompass a range of health and social services. In accordance with other studies conducted into the issue of street prostitution, the majority of the sex workers interviewed were involved in drug use with 84% taking heroin and 74% using crack cocaine.<sup>115</sup> Attention is also drawn to the fact that a number of sex workers tend to be homeless. Hence, 'in order to make a genuine and lasting impact upon their safety and health a zone should improve access to housing and social support choices.'<sup>116</sup> 48 of the 50 women interviewed stated that they would be willing to register with a health clinic prior to working within the zone.<sup>117</sup> A similarly high percentage of women stated that they would also use services which provided general and sexual health care, drug health care, services to exit prostitution and services which provided employment opportunities.<sup>118</sup>

What this analysis demonstrates is that discourses of vulnerability and safety were at the heart of the proposal for the development of a managed zone. The zone would endeavour to provide a space which offered protection to all of those affected by street prostitution: sex workers, residents and businesses. Whilst it is understandable that residents and workers rated the protection of their communities above the protection of the sex workers, there is still an acknowledgement that those who engage in sex work are also vulnerable members of society. Additionally, providing a space which allows access to necessary health and other services is concerned with making the life of the other bearable.

### ***Managing Sex Work: Constructing ways of Living?***

Notably the executive summary places significant emphasis on the fact that the zones would be 'managed zones' and not tolerance zones. The zones would involve

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid p. 608.

<sup>116</sup> Ibid p. 612.

<sup>117</sup> Ibid pp. 607-698. The other two women did not answer the question.

<sup>118</sup> Ibid.

the proactive management of sex work, as opposed to merely allowing sex work to take place. Moreover, they would 'ultimately...help address the causes of prostitution and assist those involved with returning to legitimate forms of income generation.'<sup>119</sup> It is interesting that whilst potentially falling into the legalisation/regulation approach to prostitution the proposals still maintain an abolitionist stance, in that the stated aim is to facilitate the exiting of prostitution. The use of the word 'legitimate' clearly presupposes an ideological perspective that sex work is not legitimate labour, and should not be constructed as such. Arguably, this could have been a strategic attempt in order to gain official support. Whilst the Utrecht *Tippelzone* is taken as inspiration, it is important to acknowledge the differences between the Netherlands and the UK in respect to prostitution. The Netherlands has been notoriously tolerant of sex work,<sup>120</sup> and indeed has now legalised prostitution, thus sex work may now take place in licensed brothels. The UK, on the other hand, has not witnessed such tolerance, especially in relation to street prostitution. Street prostitution is frequently constructed as a public nuisance, as evinced by the use of Anti Social Behaviour Orders.

The adoption of an ethical approach which recognises the vulnerability of the other requires one to remain open to different life styles and alternate performances of gender. Care would have to be taken not to construct certain scripts of appropriate ways of living which are then presented to those involved. To do so would be to state: 'this is what I can do for you.' The zones should rather be concerned with creating a space for a conversation between the sex workers and support workers, a space for an ethical encounter and a querying of what the other needs in order to construct her own liveable life.

## 5 Arguments Against the Zone

The establishment of tolerance or managed zones are by no means a panacea for dealing with street prostitution.<sup>121</sup> Research from Utrecht clearly demonstrates that the zones are quite difficult to manage and have their own problems.<sup>122</sup> Nevertheless, this author contends that the difficulties which may arise do not justify the rejection of

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<sup>119</sup> Clark et al, 'Consultation on a Managed Zone,' p. 2.

<sup>120</sup> See Chrisje Brants, 'The Fine Art of Regulated Tolerance: Prostitution in Amsterdam,' *Journal of Law and Society*, 25(4) (1998) 621-635.

<sup>121</sup> See also Marieke van Doornick and Rosie Campbell, 'Doing Street Sex Work: The Way Forward?' in Campbell & O'Neill (eds.) *Sex Work Now*, (Willan Publishing, 2006) pp. 62-91, p. 62.

<sup>122</sup> Van Soomeren, 'Design Against Kerb-Crawling.'

zones in favour of either retaining the status quo or adopting abolitionist policies, as favoured by the Government. Nor would the complete decriminalisation of prostitution provide an adequate solution for those engaged in street sex work.<sup>123</sup> What is needed is the creation of a space in which an ethical response to vulnerability can emerge.

### **Location, Location, Location**

The second stage of the consultation identified two possible locations (one which was already affected by street prostitution and one which was not) and the relevant parties were consulted. However, at this point strong concerns were voiced by the local businesses, despite their initial support. Significantly, those businesses that were based in the area currently affected by prostitution voiced stronger views against the establishment of a zone, than those who were not affected.<sup>124</sup> Despite the perceived benefits of a managed zone even those who were already affected by street prostitution changed their stance when their area was located as a potential site. It could be argued that this is because the businesses hoped that the adoption of managed zones would move prostitution away from their area, and thus any perceived benefits quickly disappear. Indeed, in the second stage of the consultation some businesses argued that the introduction of a zone would only increase the existing problems they had. Particular concerns were expressed with regards to debris on the street and staff safety, including the issue of staff being propositioned. Fears were also expressed with regards to inadequate policing and the inability to strictly implement the time limits of the zone.<sup>125</sup>

Perhaps it is not surprising that there was significant contention and disagreement as to the location of the zone. As noted by Bellis et al 'this selective dismissal of some aspects of the intervention is likely to reflect an inability to tackle prostitution in the past and a Not In My Backyard syndrome associated with the stigmatisation of prostitution.'<sup>126</sup> The politics surrounding the location of the zone will always be problematic and difficult. However, evidence from Utrecht indicates that such difficulties may be overcome.<sup>127</sup> It is important to develop and maintain a continual

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<sup>123</sup> See Catherine Benson and Roger Matthews, *The National Vice Squad Survey*, (Centre for Criminology, Middlesex University, 1995) referenced in Hubbard, 'Red-light districts,' p. 138, and Saunders and Campbell, 'Designing out Vulnerability.'

<sup>124</sup> 78.3% as compared with 54.8%, Bellis et al, 'Comparative views', p. 611.

<sup>125</sup> Bellis et al, 'Comparative views,' p. 613.

<sup>126</sup> Ibid.

<sup>127</sup> Van Soomeren, 'Design Against Kerb-Crawling.'

dialogue between the businesses and those who manage and work within the zone, in order for all the relevant parties to be aware of each other's needs and concerns, and to adopt the necessary policies in order to maintain an harmonious and safe environment. Research indicates that understanding, tolerance and consensus is achievable via the adoption of inclusive and collaborative policies. O'Neill et al discuss the benefits of adopting a 'participatory action research' methodology which involves the engagement of all members of the community.<sup>128</sup> This approach involves residents and sex workers becoming actively involved in the research process, as opposed to being mere objects of the study. This inclusive participatory approach was considered to be an effective means by which conflict between residents and sex workers could not only be managed but also lead to increased tolerance and understanding.<sup>129</sup> A politics which pays due heed to 'liveable lives' requires the development of an ethical commitment to safeguarding the well being of all of the diverse groups that reside within the city. One should not simply hope that the problems will be moved on to another area. Continual engagement, communication, dialogue, and negotiation with and amongst all the relevant parties is fundamental.

### ***Creating boundaries: Inside/Outside the Zone***

One major argument against the development of zones is that they do not effectively eradicate prostitution from other areas of the city. There will always remain a number of women and men who engage in commercial sex in non-zone areas. Whilst this argument is probably true, and evidence from Utrecht does substantiate this opinion,<sup>130</sup> it is argued that this problem in and of itself is not sufficient to abandon the adoption of zones. Firstly, adopting a zero tolerance approach to prostitution will not prevent commercial sexual activity from taking place.<sup>131</sup> An enforcement approach will not contain prostitution, but rather just displaces it into other areas, as the

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<sup>128</sup> Maggie O'Neill et al, 'Living with the Other: Street Sex Work, Contingent Communities and Degrees of Tolerance,' *Crime Media Culture*, 4(1) (2008) 73-93.

<sup>129</sup> Maggie O'Neill et al, 'Living with the Other.' Similar positive responses to community involvement and communication between residents and sex workers are evident in the report published by Hester and Westmarland, *Tackling Street Prostitution*. See also Jane Scoular and Maggie O'Neill, 'Legal Incursions into Supply/Demand: Criminalising and Responsibilizing the Buyers and Sellers of Sex in the UK,' in Munro and Della Giusta (eds.) *Demanding Sex*, (Ashgate, 2008) pp. 13-33.

<sup>130</sup> Van Soomeren, 'Design Against Kerb-Crawling.' See also McKeganey, 'Street Prostitution in Scotland,' p. 160. Some of the women interviewed in Scotland indicated that they would still work outside of the zone.

<sup>131</sup> Hubbard, Matthews and Scoular, 'Regulating Sex Work in the EU.'

research clearly shows.<sup>132</sup> This in turn increases the vulnerability of the women. Secondly, one has to look at the motivation behind the zones. If we adopt a theoretical stance that is concerned with safety and vulnerability, it can be argued that the zones provide a safer space for street sex workers: a space in which their liveable lives are recognised and a space which provides them with the services they need without fear of criminalisation and further stigmatisation. There will always be an outside to an inside, there will always remain underground prostitution, whether a zero tolerance approach is adopted, or a zoning approach. In such a situation what should prevail is a concern for the vulnerability of the women who work on the street.

Significantly, under the Liverpool proposals, there would be a zero tolerance approach to prostitution outside the zone. However, 96% of the street sex workers involved in the consultation stated that not only did they agree with the idea of a managed zone, but that they would work within the zone. Moreover, more than 80% stated that they would cease to work in residential areas. Furthermore only 16.6% stated that a registration scheme, which requires women to register in order to work within the zone, would discourage them from using the zone.<sup>133</sup>

### ***Regulating Female Sexuality: Promoting Heteronormativity***

From a slightly different perspective, the establishment of zones has been criticised as problematically reinforcing patriarchal power and heteronormativity. This is because it involves state regulation and policing of female sexuality and female prostitution.<sup>134</sup> The zones are not value neutral but informed with certain ideals of appropriate female sexuality. They operate to ensure that non-conformist expressions of female sexuality are controlled and maintained within a discrete and bounded area.<sup>135</sup> The establishment of zones problematically maintains and perpetuates the 'other' status of the female sex worker. She is both at once located away from more intelligible or 'normal' women and rendered visible as a spectacle of immorality. In addition, her performance is constantly subjected to monitoring and

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<sup>132</sup> Phil Hubbard, 'Community action and the displacement of street prostitution: evidence from British cities,' *Geoforum*, 29(3) (1998) pp. 269-286; see also Hester and Westmarland, 'Tackling Street Prostitution,' pp. 21-24.

<sup>133</sup> Bellis et al, 'Comparative views,' pp. 607-608.

<sup>134</sup> Howell et al, 'Managed Zones for Sex Workers,' p. 234.

<sup>135</sup> Hubbard, 'Red-Light Districts,' pp. 55-72. See also the discussion in Phil Hubbard and Teela Sanders, 'Making Space for Sex Work: Female Street Prostitution and the Production of Urban Space', *International Journal of Urban and Regional Research*, 27(1) (2003) 75-89 with regards to the city and the construction of red light districts as 'immoral' and marginal spaces.

control. At the most she is 'tolerated' but more likely she will be 'managed' and this is especially the case in relation to formal managed zones. The sex worker, her needs and her rights, are both at once recognised and rendered invisible.

Once again, we can see the influence of a politics of visibility. In this sense, the zones can be compared to the Victorian approach to prostitution. As Howell et al states: 'what is striking about the [proposals for managed zones] is their replication of an earlier policy of 'containment' and 'localisation.'<sup>136</sup> The aim in the nineteenth century was to 'restrict sex work to brothel houses, rather than the streets themselves.'<sup>137</sup> This approach remained popular in Liverpool, despite the enactment of the Criminal Law Amendment Act 1885, under which running a brothel became an offence. In 1886 Frederick Lowndes opined:

It appears to me to be unwise to set the law in motion against brothels which have existed in the same locality for many years, except for very grave reasons, or with the certainty that will be respectably tenanted in future.<sup>138</sup>

This continual concern to render sex workers invisible and away from the public gaze needs to be contrasted with the decriminalisation/legalisation approach in which 'sex workers can operate visibly and become part of public life.'<sup>139</sup> Nevertheless, decriminalisation/legalisation in itself does not eradicate street-based prostitution as many women are unable to work in brothels/parlours, due to their drug use and chaotic life styles.<sup>140</sup>

### **Condoning Prostitution**

Michelle Madden Dempsey has argued that the Liverpool City Council's proposals to create 'a red-light district' in effect amounts to the Council facilitating the infliction of the harm of rape upon prostitutes working 'against their will.'<sup>141</sup> By using the term 'red light district' it can be argued that Dempsey constructs an image of the zone which does not conform to that put forward in the consultation. The aim of the zone is to

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<sup>136</sup> Howell et al, 'Managed Zones for Sex Workers', p. 235

<sup>137</sup> Ibid.

<sup>138</sup> Frederick Lowndes, *Prostitution and Venereal Diseases in Liverpool* (J & A Churchill, 1886) p. 40 cited in Howell et al, 'Managed Zones for Sex Workers' p. 240. See also Walkowitz, *Prostitution and Victorian Society*, p. 243 who comments that an informal policy of segregation was operated by the police with regards to brothels and prostitutes in Plymouth until 1904.

<sup>139</sup> Kilvington, Day and Ward, 'Prostitution Policy in Europe,' p. 84.

<sup>140</sup> Catherine Benson and Roger Matthews, 'Street Prostitution: Ten Facts in search of a Policy,' *International Journal of Sociology of Law*, 23 (2002) 395-415.

<sup>141</sup> Michelle Madden Dempsey, 'Rethinking Wolfenden: Prostitute-Use, Criminal Law, and Remote Harm', *Criminal Law Review*, Jun (2005) 444-425, p. 454.



manage sex work and to help those who engage in sex work. Hence it could be argued that those women who are forced into prostitution by another person may be able to start constructing a way out of that scenario with the help of the services which will be available within the zone. It is not clear why criminalising the prostitute user, as proposed by Dempsey, will do anything to protect the woman who is forced into prostitution, especially as there are relevant offences to deal with those who incite or control prostitution.<sup>142</sup>

The perception that the adoption of a zoning approach signals the condonation of sex work, or in the very least the acceptance of street sex work, is also expressed in the Government's coordinated strategy: 'while managed areas may offer some opportunity to improve the physical safety of those involved, there is no amount of protection that can keep women from harm in this inherently dangerous business.'<sup>143</sup> This fails to deal with the fact that an enforcement approach only increases the level of harm that the women face.<sup>144</sup> What is clear is that in the view of the Government the 'inherent danger' in the business is the perceived inherent exploitation that comes from selling sex. When women sell sex they are exploited, regardless of the circumstances and this harm is constructed in a hierarchical position to the physical danger that women face while selling sex on the streets. It is more important to protect women from the perceived harm of selling sex as opposed to the harm which they may face when working on the streets. Those women who sell sex on the streets but do not consider themselves harmed by the perceived exploitation of the commercial sexual relationship are not offered the protection and safety necessary. This failure to respond ethically to the vulnerability of the street sex worker implies that such women are considered to have unliveable lives.

It is submitted that there is a confusion between creating safe areas, realising the vulnerability of women and protecting their safety, and the condonation of sex work. A similar conclusion is reached by McKeganey who states: 'providing tolerance zones may be one way of reducing some of the risks faced by prostitute women without at the same time actively promoting prostitution as an area of activity.'<sup>145</sup> What needs to be emphasised is that recognising someone as having a 'liveable life'

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<sup>142</sup> ss52 and 53 Street Offences Act 2003.

<sup>143</sup> Home Office, *A Coordinated Prostitution Strategy*, p. 8.

<sup>144</sup> Hubbard, 'Community Action'; Hester and Westmarland, 'Tackling Street Prostitution,' pp. 21-24.

<sup>145</sup> McKeganey, 'Street Prostitution in Scotland,' p. 165.

is not to necessarily agree with the way in which they conduct their life. Recognising that street workers are vulnerable and in need of protection is not the same as stating that one is pro-sex work, or condones street sex work. Rather it acknowledges that the women are humans who deserve recognition and protection just as any other person.

## Conclusion

The Liverpool consultation acknowledged that several issues still needed to be addressed, specifically in relation to the use of drugs and the presence of drug dealers within the zones.<sup>146</sup> Research on the *Tippelzone* in Utrecht does indicate that the exclusion of the drug dealers and also pimps, may lead to many women working outside the zone<sup>147</sup> and this is a factor which would need to be given considerable thought if a zone was to be developed. Any reforms could perhaps construct different phases in the zones in which only certain individuals would be allowed. For example any 'living room' area should be restricted solely to those who sell their services, and pimps and drug dealers should not be allowed to infiltrate and effectively run the zone. Not only is the use of security guards important in this respect, but also the opinions of those women who would work within the zone. Moving towards the adoption of an ethical response to street prostitution which duly recognises the vulnerability and liveable lives of sex workers involves the creation of a space in which conversations about what is needed and what is practical can emerge. Sex workers must be actively engaged in the organisation and management of the zone.

An ethical response requires the Government to listen to the other, to recognise the vulnerability of the other as a socially and publicly situated human being. The notion of vulnerability as considered in this article is very different to that as constructed by the Government in their abolitionist/criminalisation approach. Whilst ostensibly drawing upon the vulnerability of the street sex worker in order to promote an abolitionist reform package, the Government's approach simultaneously constructs the women as unliveable and the proposals show little concern with making her life more bearable. A critical reading of the Parliamentary debates clearly demonstrates that behind the Government's vulnerability rhetoric lies a morality ideology which is only maintained by constructing sex workers as unliveable, not human. This is a

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<sup>146</sup> Bellis et al, 'Comparative views,' p. 613.

<sup>147</sup> Van Soomeren, 'Design Against Kerb-Crawling,' pp. 1, 15.

pernicious use of vulnerability, a most unethical and uncaring approach which shows no regard for the reality of the day to day struggles faced by street sex workers.

Whilst it is acknowledged that managed zones are in no way problem free and could also potentially be used in order to push a morality agenda, (especially if they include mandatory testing for sexual transmitted infections or an undue emphasis is placed on gaining legitimate employment) they have the potential to create a safe space. A safe space in which ethical relationships which recognise the vulnerability of human life can emerge. A space for asking the other what is needed to make her life more bearable, as opposed to presupposing what the other needs.