**Governing sex work through crime: creating the context for violence and exploitation**

**Abstract:**

This article uses Jonathan Simon’s concept of ‘governing through crime’ as a framework to argue that the state has framed sex work, and its surrounding problems, as issues of crime. There has been a privileging and proliferation of criminal justice responses to sex work in England and Wales, at the expense of more social or welfare based responses, and at the expense of creating safer environments for sex workers to work. Criminal law is used to manage and control sex work, to reinforce other policies, such as immigration and border control, and to appear to be doing something about the ‘problem’ of sex work without providing rights to sex workers. By framing sex work as an issue of crime, with sex workers being both the perpetrators of crime and the potential victims of exploitative crime, the state is able to legitimise its actions against sex workers, while ignoring the harm done to sex workers by the state.

**Key Words:** Governing through Crime; Sex Work; Crime; Violence; Exploitation

**Introduction**

Early in 2016, the Government launched an inquiry to assess whether the ‘burden of criminality’ in sex work[[1]](#footnote-1) ‘should be shifted to those who pay for sex rather than those who sell it’, in order to ‘discourage demand which drives commercial sexual exploitation’.[[2]](#footnote-2) The inquiry was the latest step in a decade-long public re-examination of sex work in England and Wales.[[3]](#footnote-3) Deviating from the more punitive approaches taken previously, the Home Affairs Select Committee, which is undertaking the inquiry, recommended in June 2016 that elements of the law relating to sex work – namely brothel keeping and soliciting – be decriminalised to remove the criminal burden from sex workers and promote their safety.[[4]](#footnote-4) The inquiry, however, has yet to be completed and no action has yet been taken by the Government in response to the report. It is, therefore, timely and important to explore whether a continued reliance on any ‘burden of criminality’ is advisable in the regulation of sex work. This article will argue that the continued overreliance on criminal law to respond to sex work is misjudged and that, rather than protecting sex workers from exploitation, governing sex work through crime creates a context within which violence and exploitation is able to flourish in the sex industry.

Currently, sex work is regulated through a range of (primarily criminal) laws whereby the selling and buying of sexual services is legal, but a range of activities related to it is criminalised. This leaves it possible to sell sex legally only if the sex worker is ‘working alone, in a property she owns, without explicitly advertising or financially supporting another person’.[[5]](#footnote-5) Sex workers’ power to negotiate the industry is, as such, weakened by potential prosecution and a lack of labour rights and protections. Moreover, state reticence to legitimise commercial sex through more active regulation of the industry has permitted the growth of unregulated sex markets that are open to coercion,[[6]](#footnote-6) and wherein workers are at heightened risk of exploitation.[[7]](#footnote-7)

This article uses Jonathan Simon’s concept of ‘governing through crime’[[8]](#footnote-8) as a framework to argue that the state has framed sex work, and its surrounding problems as issues of crime. There has been a privileging and proliferation of criminal justice responses to sex work, at the expense of more social or welfare based responses, and at the expense of creating safer environments for sex workers to work.[[9]](#footnote-9) The ‘governing through crime’ framework is used to argue that the law is not simply governing crime - that is, the state responding in a way that is ‘proximate and proportionate to the crime threat experienced’.[[10]](#footnote-10) Rather, criminal law is used to manage and control sex work, to reinforce other policies, such as immigration and border control,[[11]](#footnote-11) and to appear to be doing something about the ‘problem’ of sex work without providing rights to sex workers. By framing sex work as an issue of crime, with sex workers being both the perpetrators of crime and the potential victims of exploitative crime, the state is able to legitimise its actions against sex workers, while ignoring the harm done to sex workers by the state.

To begin, Jonathan Simon’s argument in *Governing Through Crime* is outlined to provide a clearer distinction between governing crime and governing through crime. The framework of governing through crime is then used to explore the way that sex work has been constructed as a crime, and sex workers as criminal, since the Wolfenden Report in the 1950s.[[12]](#footnote-12) The relatively recent shift to framing sex work as sexual exploitation and linking it to trafficking is then examined. It is argued that governing through crime reinforces a culture of fear about crime linked to sex work and exacerbates the risk of violence and exploitation by third parties.

**Governing through crime**

In his 2007 book, *Governing Through Crime,* Jonathan Simon maps the way that the American political and civil order has been structured around the problem of crime.[[13]](#footnote-13) He differentiates between ‘governing crime’ and ‘governing *through* crime’, noting that responding to crime in a way that is ‘proximate and proportionate to the crime threat experienced’[[14]](#footnote-14) is not necessarily governing through crime. Simon acknowledges that there, of course, should be a state response when subjects’ persons or property are threatened.[[15]](#footnote-15) He notes, however, that it is not always easy to discern when institutions are genuinely threatened by crime and when they are using crime to promote governance by legitimising the exercise of power.[[16]](#footnote-16) His contention is that, increasingly, recourse to a crime model has become the first response to social issues.[[17]](#footnote-17) This is problematic because ‘the importance the state has assigned to crime nudges out other kinds of opportunities that a different hierarchy of public problems might produce’,[[18]](#footnote-18) meaning that by focusing on crime, we lose the opportunity to prioritise social issues such as poverty or education.

Governing through crime, then, is not simply responding proportionately to crime threats. Rather, it is the structuring of society around the fear of crime, meaning that ‘new forms of power [are] institutionalised and embraced’[[19]](#footnote-19) in the name of responding to risks of crime. Simon looks beyond the criminal law to argue that metaphors for crime and criminal justice are apparent in other institutions. An example used by Simon is the move towards ‘safe schools’ in the US; he argues that concerns around juvenile crime have led to the implementation of measures – such as mandatory drug testing, metal detectors and searches – that construct students as potential victims or perpetrators of crime.[[20]](#footnote-20) Resources and attention are focused on criminal punishment rather than education as a matter of key importance in schools, allowing the state to say that they are responding to concerns in schools, while not necessarily offering the tools to improve education. That is, crime rather than education becomes ‘the most important problem [schools] have to deal with’.[[21]](#footnote-21)

Drawing on Foucault’s (1978) theory of governmentality,[[22]](#footnote-22) Simon argues that by imagining the needs of citizens as ‘framed by the problem of crime’, the state has privileged crime and fear of crime so that its relationship to its citizens has been shaped around protection from this perceived risk.[[23]](#footnote-23) The actual result, however, is using crime to further stigmatise some communities and make other communities so fearful of crime that they tolerate more and more state control, as well as regulating their own behaviour to avoid crime.[[24]](#footnote-24) In his words, ‘by writing laws that implicitly and increasingly explicitly say that we are the victims and potential victims, lawmakers have defined the crime victim as an idealized political subject, the model subject, whose circumstances and experiences have come to stand for the general good’.[[25]](#footnote-25) Perhaps more dangerously, people ‘deploy the category of crime to legitimate interventions that have other motivations’, because they are seen to be acting legitimately when the purported aim is to prevent crimes or ‘other troubling behaviours that can be closely analogized to crimes’.[[26]](#footnote-26) Simon uses the example of legislation ‘making an assault on a pregnant woman that causes death or harm to the foetus a distinct federal crime, [that] has more to do with the politics of abortion rights than crime’, but that because it is ‘directed at criminals, it can achieve majority support despite polarization on the choice issue’.[[27]](#footnote-27) That is, often more political and controversial, motivations are masked by deploying the category of crime.

The following sections demonstrate how the concept of governing through crime can be used as a lens through which to understand the ways sex work has been constructed and regulated in England and Wales, and how alternative methods of regulating the sex industry that might promote sex worker safety have been side-lined in favour of a criminal justice approach.

**Governing street sex work through crime: sex work as crime**

*Framing sex workers as non-citizens*

While sex work was already the subject of legislation prior to the 1950s, the Wolfenden Report formed the basis upon which much of the legislation relating to sex work now stands. The Report made a distinction between private morality and public nuisance and, while not supporting the criminalisation of ‘private morals’, recommended using the criminal law to manage the more visible elements of the industry in order to ‘to preserve public order and decency, to protect the citizen from what is offensive and injurious’.[[28]](#footnote-28) As Simon notes, in constructing citizens around crime and fear of crime, certain identities are invested with stigma and others are valorised.[[29]](#footnote-29) This is reflected in the Wolfenden Report’s formulation, which bases the law around the protection of the ‘ordinary citizen’, the constructed victim of crime and nuisance, while refusing the same protection to the sex worker. In doing so, the criminal law is used to symbolically and physically separate the ‘common prostitute’ from the citizenry. The state, therefore, helps to constitute the interests of the citizen and reinforce the fear that they will be victimised by crime.[[30]](#footnote-30)

The following Street Offences Act 1959[[31]](#footnote-31) added to this by allowing arrest where the police have a reasonable suspicion that a ‘common prostitute’[[32]](#footnote-32) is soliciting or loitering, meaning that, after the first arrest, all that is needed to prosecute a street sex worker is the evidence of one police officer. The need to prove ‘annoyance’ was considered by the Wolfenden Committee to be unnecessary to demonstrate a punishable offence - it was often inferred in the absence of a witness statement; and did not need to be attributed to an individual sex worker, but rather to the presence of sex work/ers in general.[[33]](#footnote-33) On this basis, arrests have been made of sex workers not just for working but simply for being in public space.[[34]](#footnote-34) The existence of sex workers on a street is, therefore, constructed as nuisance and criminal *in itself*, even though selling sex is not in itself a crime.

The focus on punishing transgressions in public space fails to deal with the structural economic and social reasons why sex workers might be selling sex on the streets, and thus is unsuccessful as a tactic to eliminate the street sex industry. In fact, sex workers return to the streets to pay off their fines creating a ‘revolving door’ situation, and, if anything, enforcing loitering and soliciting offences simply displaces street sex work to alternative locations.[[35]](#footnote-35) This, and the fact thatprosecutions for prostitution-related offences remain on criminal records as sex offences, create significant barriers for sex workers to finding alternative employment.[[36]](#footnote-36) Taken together then, it can be seen that, at the expense of creating a context where sex workers have more control over their decisions to sell sex and to whom, crime is used to spatially manage sex workers, pushing them out of areas which are seen to cause most nuisance and offence to communities.

As the fear of crime is cultivated in its citizenry, Simon argues, part of the imperative of governing through crime is that legislators show that they are on the side of victims and law enforcement.[[37]](#footnote-37) This makes the focus on protecting communities from the ills of sex work continually significant. This can be seen in the last decade’s government policies and consultations - *Paying the Price: A Consultation Paper on Prostitution[[38]](#footnote-38)* is dedicated to ‘Protecting Communities’, the Government’s *Coordinated Prostitution Strategy*,[[39]](#footnote-39) and *Tackling the Demand*[[40]](#footnote-40) - where protecting the public from prostitution remained a primary focus.

The three government publications lay out three particular issues from which communities require protection. First, nuisance is identified through the physical remnants of sex work in a community - that it leaves a litter of ‘used condoms, dirty needles and other drug paraphernalia’ in the public places where it takes place.[[41]](#footnote-41) Second, there is a fear of links to serious and violent crime, particularly those relating to drug dealing and gangs - the Government notes in *Paying the Price* that ‘[s]treet prostitution is often associated with local drug markets, bringing Class A drugs and gun culture to local communities’.[[42]](#footnote-42) According to the Home Office, ‘dealing effectively with prostitution could have a dramatic effect on reducing more serious crime and help to stifle drug supply’.[[43]](#footnote-43) Third, these recent documents again identify a need for community protection from the mere presence of sex work in communities – the *Coordinated Prostitution Strategy* refers to the ‘general degradation of areas used for street prostitution’,[[44]](#footnote-44) while *Paying the Price* states that, due to the presence of sex work, ‘an area becomes undesirable, unpleasant and unsafe, deterring families and businesses from moving in, contributing to a spiral of decline’.[[45]](#footnote-45) By framing its approach as a means of preventing and challenging violent crime in communities, and protecting communities from the pollution of prostitution, the Home Office legitimised its approach to the sex worker as someone to be ‘controlled, regulated and kept under continual surveillance’,[[46]](#footnote-46) while preserving moral undertones against the deviant behaviour of sex work. This reflects Simon’s argument that institutions frame issues as matters of crime to legitimise control of the issue and infringements into the lives of those constructed as ‘criminal’.

While genuine concerns for community safety should, of course, be one priority in the regulation of street sex work, this construction of victimised communities leaves little room to understand the complex relationships between sex workers and the neighbourhoods in which they work. Maggie O’Neill *et al* have noted that the Home Office documents have used the term ‘community’ in a ‘homogenous fashion that erases difference and complexity’.[[47]](#footnote-47) Communities are constructed as a solid entity, brought together through their shared experiences of victimisation – in this way, as Simon puts it, ‘the threat of crime simultaneously de-emphasizes their differences and authorizes them to take dramatic political steps’.[[48]](#footnote-48) Sex workers are rarely constructed as part of this community, even when they work and live in those very neighbourhoods.[[49]](#footnote-49)

Moreover, little attention is given to the ways that some street sex workers may attempt to mitigate the nuisance created, by working less visibly and keeping their transactions as unobtrusive as possible.[[50]](#footnote-50) Nor is much attention paid to those voices in the community who are more tolerant of street sex work. For instance, Jane Pitcher *et al*’s research in five neighbourhoods found that, for many residents, ‘sex work was not considered a high priority in terms of their overall quality of life’.[[51]](#footnote-51) That is, while street sex work tends to be found in relatively deprived neighbourhoods, not all residents blame sex workers for local deprivation and disorder.[[52]](#footnote-52) By excluding sex workers from the construction of the community, there is also a marginalisation of the corollary ways that the neighbourhood may, in fact, be dangerous for sex workers, for the reasons expressed by other residents, such as fear of violent or serious crime,[[53]](#footnote-53) and because of residents’ vigilante attacks on sex workers.[[54]](#footnote-54)

*The enforcement and proliferation of sex work laws*

Despite the legislative focus on removing nuisance from the victimised community, and the framing of the community as victims of crime, the enforcement of these laws has not been uniform. As Hillary Kinnell has noted, ‘if the location of street work has not offended senior police officers or local residents, sex workers have avoided arrest by working in informally designated areas and at certain times of the day’.[[55]](#footnote-55) In a number of cities, there are unofficial tolerance zones where police are happy to allow street sex work to remain as it is contained in a few streets that can be more easily monitored and controlled.[[56]](#footnote-56) Policing policy tends to revolve around responding to neighbourhood complaints and managing street sex work. This has the effect of keeping sex work from ‘spilling over’[[57]](#footnote-57) into better-off neighbourhoods, as those ‘wielding the most political and social power [are] generally most effective in prompting police surveillance and repression’.[[58]](#footnote-58)  Notably, these neighbourhoods are nearly always ‘wealthier, whiter and more politically articulate’.[[59]](#footnote-59) Given that it often keeps sex work in more socially deprived areas, this selective enforcement supports Simon’s argument that in governing through crime, crime ‘actively reshapes how power is exercised throughout hierarchies of class, race, ethnicity and gender’.[[60]](#footnote-60) To put it another way, using the enforcement of criminal sanctions to keep street sex work in certain areas reinforces hegemonic structures where the more affluent and powerful citizens are given the most protection from deviant behaviour and nuisance, while those with less power, including street sex workers, are ignored or further stigmatised through their association with ‘crime’. In a sense, then, the policing of sex work acts as a ‘gate’ to particular communities, securitising specific geographical locations, speaking to the regulative presence of fear of crime.[[61]](#footnote-61)

Enforcement policies also vary across different cities and change over time. For instance, the West End of London has seen a shift from unofficial police tolerance to ‘zero tolerance’ policies, ‘bolstered by a rhetoric of spatial cleansing and purification’, in an attempt to deal with both street and off-street sex work.[[62]](#footnote-62) In some areas, such as Balsall Heath in Birmingham, periodic ‘crackdowns’ have taken place, which have the effect of shifting sex work out of the area temporarily until the police presence has died down and the sex workers return to their beats.[[63]](#footnote-63) This reflects the self-regulatory ways that sex workers respond to legislative and enforcement patterns, supporting Simon’s claims that governing through crime controls and produces responses in the citizenry.

The Home Office has promoted zero tolerance to street sex work as the preferred enforcement strategy, stating that ‘[s]treet prostitution is not an activity that we can tolerate in our towns and cities’.[[64]](#footnote-64) As Simon notes, ‘discretion… is viewed as something being used to favor criminals. Reform has taken the form of “zero-tolerance rules” that make favourable discretion impossible’.[[65]](#footnote-65) A shift to ‘zero tolerance’ of sex work therefore reflects the political need to demonstrate that authorities are on the side of the ‘victim’ citizens rather than the ‘criminal’ sex workers. An alternative approach can be seen in Liverpool, where police have worked with sex work NGOs to create a progressive policy focused on reducing violent crimes against sex workers, in 2006 appointing a sex work liaison officer and agreeing a policy that all crimes against sex workers should be treated as hate crimes.[[66]](#footnote-66) Liverpool’s approach demonstrates that repressive policies are not necessary to respond to crimes associated with sex work, and that by understanding sex workers as part of the community rather than outside it, there is potential to respond to actual incidences of crime rather than to the fear of it.

The Liverpool approach is, unfortunately, very localised. Renewed national interest in ‘tackling’ street sex work has led to a number of new approaches to managing street sex work. One method of control is through Criminal Behaviour Orders[[67]](#footnote-67) and, previously, Anti-Social Behaviour Orders.[[68]](#footnote-68) These have been used against ‘persistent offenders’ to exclude them from designated areas where they work.[[69]](#footnote-69) As sex workers often live in the same areas as they work, ASBOs and CBOs have the effect of banning them from public space in their own neighbourhoods. This is worsened by the decision in *Chief Constable of Manchester v Potter*, where the court held that the appellant ‘by her mere presence there for that purpose, caused, in the sense of contributed, to the problem, albeit that there were other contributors and her contribution was relatively small’.[[70]](#footnote-70) That is, other sex workers’ activity could be used in conjunction with the individual’s behaviour to support the provision of an ASBO, meaning that the sex worker need not create harassment, alarm or distress but only be in the area of sex work to be at risk of an order.

Although these are civil orders, breaching one can result in a criminal sanction of up to five years imprisonment,[[71]](#footnote-71) and sex workers have received custodial sentences for doing so.[[72]](#footnote-72) Therefore, while the use of civil orders might suggest a decentring of criminal justice responses, it is instead a more insidious way of using criminal justice, without the safeguards of due process usually afforded before the imposition of criminal sanctions. In fact, research suggests that police in some areas have demonstrated a preference for using civil orders because the standard of proof needed to give one is lower than the criminal trial,[[73]](#footnote-73) meaning that they are seen as more efficient than a fine in removing sex workers from certain areas.[[74]](#footnote-74) Their use where the sex worker is doing no more than entering public space demonstrates that these are not being used as a proportionate response to fear of crime or other anti-social behaviour, but as a method of controlling sex work/ers out of particular areas.

The Policing and Crime Act 2009 also creates Engagement and Support Orders (ESO) for sex workers as an alternative disposal for sex workers convicted for soliciting and loitering.[[75]](#footnote-75) These orders, given instead of a fine, require the sex worker to attend three meetings with a designated supervisor to ‘help them address the underlying causes of their engagement in prostitution’ and ‘find ways to cease engaging in such conduct in the future’.[[76]](#footnote-76) Sanders argues that these orders are a form of ‘forced welfarism’ – that is, a criminal sanction that orders women to make changes to their lives for their own good and to be rehabilitated back into the community.[[77]](#footnote-77) This is based on the idea that sex work is the result of individual failings, and so, allow the state to appear to be doing something to ‘help’ sex workers out of sex work, while not addressing the underlying structural and social reasons that sex workers choose to sell sex.[[78]](#footnote-78) As Maggie O’Neill and Jane Scoular put it, ‘the realities of violence and vulnerability are not the focus of policy but instead removing uncivil individuals from the streets and communities is the priority’.[[79]](#footnote-79)

The Home Office (2010: 39) recognises that ‘exit’ is unlikely to happen after three meetings and so repeat orders may be made. In Anna Carline and Jane Scoular’s study of the use of ESOs, it was noted by one police officer respondent that if someone does not engage with the first order, they are unlikely to engage with a second, and yet, it is becoming practice in many police forces to give two ESOs, and, if they are not followed, to give an ASBO (or now a CBO).[[80]](#footnote-80) Breach of an order leads to either another order or a fine.[[81]](#footnote-81) The use of fines and ASBOs/CBOs as punishments for not ‘being helped’ reflects ‘the conditionality of welfare’, where ‘support is only offered with deterrence, containment and discipline’[[82]](#footnote-82) Moreover, under the Policing and Crime Act, Schedule 1, 2(1), the order’s ‘supervisor’ is under a duty to inform the court if the sex worker fails to comply with an order. Often the ‘supervisor’ is someone who works with a sex work outreach project already, meaning that by obliging them to report a breach they are forced into becoming agents of the state.[[83]](#footnote-83) Many supervisors who are also support workers are concerned about informing about a breach as this then affects their ‘street cred’, the trust placed in them by sex workers,[[84]](#footnote-84) making it more difficult for the projects to support sex workers in a long-term capacity. As such, by making engagement with these agencies and projects mandatory, the ESOs may in fact be reducing the effectiveness of engagement.

The use of projects in supervising ESOs is an example of what Simon calls ‘multiple centers of power’, whereby rather than simply growing the state’s role in criminal justice, governing through crime requires an increase of governance by those in ‘positions of “responsibility” for others’, casting multiple agents as actors in the system of governing.[[85]](#footnote-85) These partnerships ‘devolve power’[[86]](#footnote-86) and increase surveillance,[[87]](#footnote-87) meaning that a greater range of agencies have a hand in criminal enforcement. The wider range of approaches beyond the traditional enforcement of criminal laws does not, therefore, suggest that street sex work is being governed by non-crime mechanisms, but rather that criminal justice is being used in novel ways to remove sex workers from the street.

*The effects of governing through crime: creating the context for crime against sex workers*

So what is so problematic about the proliferation of criminal justice responses aimed at protecting ‘victim’ communities from street sex work? First, zero tolerance responses rarely offer effective solutions to neighbourhoods and communities, but they do serve to heighten the vulnerability of sex workers. Crackdowns often simply provide reassurance to neighbourhoods that something is being done to deal with the perceived problem, while ‘sending out a message to new sex workers and clients that the area is off limits’.[[88]](#footnote-88) Taking a zero tolerance approach to sex work alleviates fears that the authorities might be on the side of the sex workers as opposed to the residents. The alternative, Simon argues, ‘means siding against victims and law enforcement in a zero-sum game in which any gain for prisoners or criminals is experienced as a loss for law enforcement and victims’.[[89]](#footnote-89) Yet, crackdowns rarely last and are rarely successful. Many sex workers prefer to work on the streets due to the high levels of flexibility, with only some working regular hours and many more with little pattern to their work.[[90]](#footnote-90) Others simply cannot access a private space for sex work, either because of the cost of rent or fees, or because of reluctance from indoor sex work establishments to employ people with substance dependencies.[[91]](#footnote-91) Therefore, when crackdowns occur, street sex workers do not leave the streets but are often simply displaced to other, more marginal, and less well surveyed areas. This happens both when the sex workers are the focus of the crackdowns and also when their clients are, something perhaps overlooked by the latest Government inquiry.

‘Cracking down’ leads both sex workers and their clients to act in a self-disciplining way. Doing so relies on internal, ‘‘self-regulatory’ mechanisms of ordering the individual’,[[92]](#footnote-92) whereby, in the knowledge that some areas are ‘out-of-bounds’, sex workers will move to avoid arrest or police surveillance. This is also true of clients – while currently less likely to face arrest than sex workers, even during periods of ‘crackdowns’,[[93]](#footnote-93) risk-averse clients will simply re-adjust their activities in terms of time and space.[[94]](#footnote-94) Evidence suggests, however, that punitive policing and crackdowns on kerb crawling may cause the prostitution to disappear from the area targeted, but only to resurface in another area.[[95]](#footnote-95) Sex workers will follow the clients and work in ‘different beats’.[[96]](#footnote-96) This reflects what Simon calls ‘technologies of exile’, whereby the fear of crime and criminal justice responses to it control residential settings shutting some people in and shutting other people out.[[97]](#footnote-97) Residents are kept in sex work-free areas through fear of crime, and sex workers, as the perceived creators of risk, are shut out of their usual neighbourhoods through fear of arrest.

Displacement of sex work into more marginal areas disrupts contact between sex workers and their regular clients, who they know are safe, and increases the likelihood of encountering dangerous clients.[[98]](#footnote-98) The safeguards used by sex workers to lessen risks of violence, abuse, and harassment are also threatened by overly punitive responses to sex work. For instance, the process of screening clients, which allows the sex worker to use their intuition and past experience to assess whether a client is likely to be violent or refuse to pay,[[99]](#footnote-99) might be disrupted if the client or the sex worker is afraid of being arrested. Under circumstances where there is less time for the sex worker to screen potential customers, they are at greater risk of picking a ‘dodgy’ customer.[[100]](#footnote-100)

Working in unfamiliar and less populated environments also breaks up peer networks which are used by sex workers as safeguards, and breaks contact between sex workers and sex worker support services, increasing health risks.[[101]](#footnote-101) This disruption also means that sex workers might have to work for longer hours to make their money.[[102]](#footnote-102) Apart from the potential for economic exploitation by pimps, on whom some sex workers rely for protection, displacing sex workers and their clients from usual beats may create a shortage of custom and money that could increase the likelihood of pimp violence.[[103]](#footnote-103) Protecting the rest of the ‘community’ from perceived risk of crime can, therefore, increase the likelihood of actual crime against an already marginalised group.

Moreover, constructing and regulating sex work as a form of crime, and linking it to other serious crimes, feeds fear in the communities, leading to an increased likelihood of vigilantism. Simon contends that ‘government programs not only serve citizen interests, they help constitute them’.[[104]](#footnote-104) This is reflected in the reasons given for community campaigns and vigilante activity, which echo the representations of sex work and the community given in official documents and policy. For instance, in Balsall Heath, where community picketing and street watch campaigns were used to contest sex work, organisers and media reports stated that their actions were taken ‘for the sake of decent residents’, to protect from ‘human scavengers plaguing our streets’, and to challenge the ‘strong and volatile link between vice and drugs’.[[105]](#footnote-105)

When sex workers are conceptualised as outside of the community, or the causes of crime, they are arguably more susceptible to attack. Violence from members of the public is frequent, with verbal abuse, spitting and having objects thrown at them regular occurrences.[[106]](#footnote-106) Evidence from the Balsall Heath campaign demonstrates not only that sex workers faced high levels of violence, abuse and harassment, but that some other residents felt more at risk when the picketers were there than before they began their campaign.[[107]](#footnote-107) The incidence of other crimes also failed to fall.[[108]](#footnote-108) Research from other cities where community campaigns have taken place suggests the same thing, supporting the notion that the presence of sex work might actually at times reduce the incidence of other crimes due to the sex workers watching the streets, and the police surveying the sex workers when they are not ‘cracking down’.[[109]](#footnote-109) Therefore, not only does this expansion of coercive and punitive action increase the risk of actual crime against sex workers, it does little to increase feelings of, and actual, safety amongst the rest of the community.

Official tolerance and even support for these campaigns, even when violent tactics or harassment are used against sex workers and other residents, means that vigilantes are rarely, held accountable for their criminal activities. Sex workers are unlikely to report violence from either the public or dodgy customers to the police because they do not expect sympathetic treatment and do not wish to identify themselves as sex workers at the risk of potential criminal consequences or increased surveillance.[[110]](#footnote-110) Violent customers, fake customers, and the public may be encouraged to commit violence in the knowledge that they probably will not be reported and because they consider that sex workers deserve it more than other people.[[111]](#footnote-111) When sex workers are conceptualised as ‘immoral’ or ‘fallen’ women, they are arguably more susceptible to attack. Hillary Kinnell reports that one of the most cited justifications by attackers in trial reports is that ‘they deserve to be raped’.[[112]](#footnote-112)

Taking these consequences and impacts of over-criminalisation of street sex work together then, we can see the ways that street sex work becomes situated in a context of violence, marginalisation, and abuse. As long as regulation of street sex work revolves around criminalisation of sex work activities and criminal justice responses, instead of attempts to make street sex work safer, this is unlikely to change.

**Governing off-street sex work through crime: the rise of exploitation**

Although the Wolfenden Report focused on street sex work, governing through crime has significantly shaped the organisation of off-street sex work, increasing the likelihood of exploitation and violence. Criminal justice responses and powers have been augmented and legitimised due to the spectre of trafficking,[[113]](#footnote-113) ‘exploitation’,[[114]](#footnote-114) and the rising concern about sex workers’ ‘vulnerability’.[[115]](#footnote-115) This allows the Government to appear to be tackling issues related to extreme exploitation of sex workers without giving sex workers any rights or protections in the face of ‘everyday’ exploitation. As notes, ‘virtually any increase in security for the public, no matter how small or speculative, suffices to justify virtually any risk for criminal offenders, no matter how substantial or certain’.[[116]](#footnote-116) This is reflected in responses to the fear of trafficking and sexual exploitation – any interference into the lives of sex workers is seen as legitimate to respond to the possibility of a trafficking or sexually exploited victim being found.

*The criminality of off-street sex work*

The focus since the Wolfenden Report on nuisance has encouraged more sex workers to work indoors where they are less visible and less likely to have to deal with the police on a regular basis.[[117]](#footnote-117) Yet, despite the focus on publically offensive behaviour, indoor sex work has far from escaped the remit of crime and governing through crime. In fact, even at the time of the Wolfenden Report, indoor sex work was subject to a range of criminal offences under the Sexual Offences Act 1956, relating largely to brothel keeping (ss33-34), causing prostitution (s 22) and living off the earnings of prostitution (s 22). While it could be argued that these offences, which were modernised by the Sexual Offences Act 2003 ss52-55, are not focused on sex workers or sex work *per se*, they do in fact have wide-reaching effects that allow the criminal law to regulate and organise sex work and sex workers. For instance, it is not only pimps and exploiters who could fall foul of these offences, but a whole range of working and family relationships that might be caught and prosecuted, including children, dependent parents, and managers.[[118]](#footnote-118) Without differentiating between dependence and exploitation, these offences potentially allow for almost unlimited state intervention into sex workers’ living arrangements, family lives, and relationships.

The role of state intervention is reinforced by these offences since the decision of *R v Massey*, in which the Court of Appeal held that the word ‘control’ - which forms part of the offence of controlling prostitution for gain under the Sexual Offences Act 2003 s 53 - does not require any force or coercion, and can be fulfilled where a ‘defendant instructs or directs the other person to carry out the relevant activity or do it in a particular way’.[[119]](#footnote-119) This broadens out the offence beyond controlling the sex worker’s ‘prostitution’ to controlling any activities related to that prostitution.[[120]](#footnote-120) Moreover, the lack of clear definition set out by either the offence or the Court of Appeal means that any person who directs a sex worker in any way (this could be keeping their diary, for example), in order to make a gain (wages from the sex worker employing them, for example), could be covered by this offence. As such, far from private immorality ‘not being the law’s business’, the criminal law now ‘rules the lives’[[121]](#footnote-121) of those in indoor sex work. In fact, the supposed private lives of indoor sex workers are ‘now a zone in which potential responsibility for criminal action is even greater than in other contexts’.[[122]](#footnote-122)

While attempting to criminalise ‘exploitation’ of sex workers, these offences do not construct sex workers as part of the ‘victim’ citizenry. Many of these offences are simply the consolidated revisions of offences found in the Criminal Amendment Act 1885, which was passed in the context of a moral panic around the ‘White Slave Trade’ and the fear that white women were being abducted in large numbers.[[123]](#footnote-123) Yet, notably, under the 1885 Act (ss 2-3), the protective laws excluded any woman or girl who was a ‘common prostitute’ or a girl of ‘known immoral character’. This meant that if a woman was already a ‘prostitute’, she could not be protected from trafficking, deception, or controlling under these offences. Sex workers’ exclusion from this protection suggests that rather than an interest in reducing victimisation and exploitation of sex workers, these offences were concerned with protecting the morality and purity of women and girls who had not already been tainted by prostitution. Moreover, the passage of these Acts and the repression of off-street prostitution were pushed by powerful ‘social purity’ organisations whose aim was to remove vice from society.[[124]](#footnote-124) In this way, sex workers were again clearly constructed as outside the citizenry that needed protection and the sex industry was portrayed as inherently linked to external forces of organised crime – part of what Simon calls the ‘catalog of “monsters”… [that] forms a constantly renewed rationale for legislative action’.[[125]](#footnote-125)

*The shift to ‘exploitation’: sex workers and victimhood*

Reflecting the 19th century panic around the White Slave Trade, fear of trafficking and macro levels of exploitation has been renewed in the past two decades. The significance of this debate can be seen in the Government focus on ‘victims of trafficking’ and exploitation,[[126]](#footnote-126) which tends to assume that migrant sex workers have been ‘duped’ or ‘deceived’ and are unaware that the jobs that they will be doing are in the sex industry.[[127]](#footnote-127) As Ronald Weitzer and Melissa Ditmore state, ‘we know that there are victims of coercive or deceptive enticement into the sex trade: people are transported, without their consent or fully informed consent, to locations where they are forced to engage in prostitution’.[[128]](#footnote-128) Yet, there is very limited knowledge on how many sex workers have, in fact, been trafficked into prostitution, with reported figures ranging between 142 and 1, 420 women and children;[[129]](#footnote-129) 4,000 people;[[130]](#footnote-130) and 25,000 victims of trafficking in the UK.[[131]](#footnote-131) These figures have been presented often without a source, and at other times with very questionable methodology.[[132]](#footnote-132) Although finding and helping genuine victims of trafficking and exploitation should be a priority for the Government – that is, governing crime - by exaggerating or guessing the numbers to be found, and conflating all migrant sex workers with trafficking victims, it will arguably become harder to find the most vulnerable individuals (Brooks-Gordon, 2009).[[133]](#footnote-133) Yet, this rhetoric of the growing problem of trafficking and sexual exploitation has clearly influenced sex work policy to a great degree, and forms the basis of the 2016 inquiry.

Discourses about trafficking focus on the consent of the individuals involved, separating ‘innocent’ trafficking victims from deviant sex workers, and disregarding poor working conditions of those who have, in fact, chosen to work as sex workers in much the same way as the 1885 Act.[[134]](#footnote-134) Because the ‘trafficking victims’ have been duped or deceived, their plight is universalised – they have done nothing to deserve what has happened to them – so the fear that this could happen to any other citizens is increased. To use Simon’s language, this leads to the public’s embrace of the ‘promise to protect the victims, and potential victims’, especially because the security effect is generalised to the whole state.[[135]](#footnote-135) Framing the discussion in terms of protection from crime disguises any other bases for strict crackdowns on trafficking such as concerns about borders and immigration,[[136]](#footnote-136) and creates almost universal support of a policy where framing it in terms of immigration might have a more mixed reaction.

In light of this growing rhetoric, indoor offences were consolidated and expanded in the Sexual Offences Act 2003, which included the offences of causing and inciting prostitution for gain (s 52); controlling prostitution for gain (s 53); and created an offence of keeping a brothel for the purposes of prostitution (s 55). The combination of these laws and criminalisation of other prostitution-related activities has the effect of creating a loophole whereby the only way to legally sell sex is if by working alone with no security or support staff.[[137]](#footnote-137) Sanders’ research with indoor sex workers reflects the heightened risk and vulnerability associated with working alone, with respondents stating that they favoured collective working environments because of the risk that clients might become violent.[[138]](#footnote-138) In this way, governing through crime has a significant impact on how off-street sex work is organised, and creates a context wherein the sex worker is working in an illegitimate industry, and the only way to work legally is to increase their likelihood of facing violence and exploitation.

In the face of this choice between working safely and working legally, many sex workers choose to work together or with management in illegal settings. Because of this illegitimacy, they have no legal rights and protections and therefore are at greater risk of exploitation by third parties. Where sex workers work with a third party, whether they are working for a ‘pimp’ or they are working under the ‘house rules’ of brothels,[[139]](#footnote-139) they are vulnerable to economic exploitation and poor working conditions. As well as working conditions and limited control over choice of customer,[[140]](#footnote-140) working in an indoor establishment can cost sex workers economically. Sex workers tend to pay a shift fee to the sauna or massage parlour to cover the expenses of running the parlour.[[141]](#footnote-141) There are also often set prices and high ‘massage fees’ paid directly to the owner of the building from the client.[[142]](#footnote-142) This means that sex workers who do not receive much business in a day might well pay more to work a shift than they earn.[[143]](#footnote-143) Exploitation is not inherent in this market, and clearly materialistic forms of power and control from the sauna or brothel owner vary widely across the market.[[144]](#footnote-144) What can be seen, however, is that the tight criminal controls over the indoor sex market do not in fact remove exploitation from the lives of indoor sex workers. Rather, sex workers are forced to rely on third parties whose actions are not regulated by the law. Governing through crime here has the effect of making sex workers more vulnerable while failing to provide them with protection, a point which has been noted by the 2016 Home Affairs report.

The Policing and Crime Act 2009 s 21 also uses the rhetoric of trafficking and sexual exploitation to support increased police powers against indoor sex establishments, giving them the power to close sex work establishments. If it suspected that an indoor establishment houses or employs a victim of trafficking, the police can raid and close it. This has led to raids on sex work establishments in the guise of cracking down on trafficking, even when the suspected ‘trafficking victims’ have stated that they are migrant sex workers not victims.[[145]](#footnote-145) Many of the ‘trafficking victims’ taken in these raids are then sent to detention centres and deported,[[146]](#footnote-146) suggesting that the protection of these individuals is far from a paramount concern to the government during these crackdowns. The increased fear of crime which accompanies trafficking discourses does not, therefore, translate to increased protection, but can rather be seen as a disguise for immigration policies and attacks on sex workers as deviant and illegitimate.

The focus of much recent legislation accepts the conceptualisation of sex work as inherently exploitative and aims to cut off demand for sex work.[[147]](#footnote-147) This can be seen in the Policing and Crime Act’s s 14 strict liability offence of paying for sexual services of a prostitute subject to force, threats, coercion or deception. The strict liability element of the offence was included to increase the likelihood of convictions but means that purchasers can be punished even when there is no way of knowing that the sex worker is subject to force.[[148]](#footnote-148) This is particularly problematic given that the police themselves are rarely able to determine whether a sex worker is subject to force, so, in effect, every person who purchases sex may be open to prosecution under s 14.[[149]](#footnote-149) As such, it becomes apparent that one of the key aims of this provision is to alter the behaviour of sex workers’ clients by deterring them from purchasing sex at all through fear of this risk. In this way, s 14 reflects Simon’s argument that governing through crime is about managing citizens’ behaviour through systems of governance.[[150]](#footnote-150)

Notably, in Sarah Kingston and Terry Thomas’ study, s 14 had not been used by 81% of police forces across England and Wales, ‘which in itself questions the need for the new strict liability offence’.[[151]](#footnote-151) As such, the ‘protection’ afforded to the potential victims of forced prostitution by s14 appears to be minimal, supporting Carline’s assertion that the provision is more about morality than protection.[[152]](#footnote-152) Moreover, as Sanders and Campbell suggest, increased criminalisation supports an environment of criminal activity and exploitation.[[153]](#footnote-153) For instance, clients may be deterred from reporting suspected exploitation because of the fear of being arrested. This puts sex workers at increased risk of harm due to their increasing invisibility. As Simon states, when governing through crime, even when the benefit to the ‘crime victim’, in this case the ‘forced prostitute’ is minimal, any incursion into the lives of the ‘offender’, in this case both the sex purchaser and the ‘voluntary’ sex worker, can be justified to the public.[[154]](#footnote-154)

**Conclusion**

In this article, I have used Jonathan Simon’s framework to argue that sex work is governed through crime. Governing through crime uses the fear of crime to create a culture of regulation and control, without regard to the actual consequences of increased focus on crime and criminal justice. Governing through crime distinguishes between the idealised victim of crime and the criminal, and policies and laws which focus on protecting the victim are supported no matter the infringement on the lives of the criminals. In sex work policy, sex workers are framed as the creators of crime, particularly on the street, and therefore increased surveillance and criminal measures taken against sex workers are legitimised. Policies aimed at protecting innocent victims of sexual exploitation gain popularity because the innocence of the victims means that their plight is universalisable.. However, if sex workers do not fit the model of idealised victim in these circumstances, one that is innocent and duped, then they are not afforded the protections associated with being a victim of crime. Rather, they face crackdowns, criminalisation, and potential deportation.

Governing sex work through crime increases the vulnerability of sex workers. On the streets, criminalisation of sex work activities and clients pushes sex workers into marginalised areas, away from regular clients and shortens the time available to assess clients. In off-street sex work, sex workers often choose to work alone and increase their vulnerability to violence, or work within potentially economically exploitative conditions to gain protection from a third party. Therefore, while governing for the fear of crime, criminal law actually might increase the reality of crime for sex workers. The Government should therefore think twice about ‘shifting the burden of criminality’ in sex work and seriously consider the possibility of following a decriminalisation model; no matter who is criminalised, governing through crime creates and perpetuates the conditions of violence, exploitation and exclusion for sex workers.

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14. Ibid. at 5. [↑](#footnote-ref-14)
15. Ibid. at 14. [↑](#footnote-ref-15)
16. Ibid. at 5. [↑](#footnote-ref-16)
17. Ibid. at 14. [↑](#footnote-ref-17)
18. Ibid. at 21. [↑](#footnote-ref-18)
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25. Ibid. at 110. [↑](#footnote-ref-25)
26. Ibid.at 4. [↑](#footnote-ref-26)
27. Ibid. at 4. [↑](#footnote-ref-27)
28. Above n.12 at 9. [↑](#footnote-ref-28)
29. Above n.8 at 79. [↑](#footnote-ref-29)
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31. S 1(1). [↑](#footnote-ref-31)
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41. Home Office (2004) above n.3 at 63. [↑](#footnote-ref-41)
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