# 27. The legal–conceptual blurring of male sex work and male homosexuality and the gendered, (hetero)sexist approach to sex work

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## 1. INTRODUCTION

There is a long history of a gendered and (hetero)sexist approach to sex work in legal, academic and policy discussion.[1] Male sex work and homosexuality have traditionally not been regulated as distinct issues in the same way as female sex work and sexuality. Despite wide differences in ideological positions on how the law should respond to sex work, sex work is mainly seen as something done by women for male clients. The fact that sex work may be performed by men largely does not feature in discussion about how the law has regulated sex work,[2] nor does it feature in discussion of models for regulating sex work. When men do appear in discourse about sex work it is generally as clients of female workers or as 'pimps', controllers or traffickers of female workers – not as workers themselves. This chapter explores the historical reasons for this differential treatment of male sex work and the gendered and (hetero)sexist stance on sex work.

In contrast to female sex work, where traditionally female workers were seen as deviant and subject to criminal laws but their male clients were not,[3] with male sex work both the worker and the client were seen as deviant,[4] and as subject to criminal laws. This is because historically, male sex work and male homosexuality were conceptually and legally not seen as distinct issues; men who sought sex with other men were seen as deviant and criminalised whether or not this amounted to sex work. This means that the criminal regulation of male sex

[1] This term is adopted as a portmanteau of heteronormativity and sexism. This means that sex work was seen through a heterosexual lens. It should not be taken to imply that female heterosexual sex work was promoted as a normal or preferred expression of heterosexual sexuality.

[2] While it is acknowledged that sex work by trans*, gender diverse and nonbinary sex workers has also been largely ignored, this chapter does not address such work given the particular issues that apply, which may not fully align with the issues raised in this chapter in relation to male sex work. For further discussion of the 'erasure of non-normative identities, performances and embodiments in debates about the sex industry' and the need to 'queer' debates about sex work see N Smith, M Laing and K Pilcher, 'Being and Doing "Queer" in Debates about Commercial Sex' in N Smith, M Laing and K Pilcher (eds) *Queering Sex Work* (Routledge 2014).

[3] Although the recent rise of the Swedish model reverses this paradigm, with the female workers seen as victims and male clients as deviant and subject to criminalisation: see A Gould, 'The Criminalisation of Buying Sex: The Politics of Prostitution in Sweden' (2001) 30 Journal of Social Policy 437.

[4] This is a broad generalisation: it should be noted that throughout history there have been shifts in the paradigmatic constructions of male sex workers and their clients. See, for instance, J Scott, 'A Prostitute's Progress: Male Prostitution in Scientific Discourse' (2003) 13(2) Social Semiotics 179; D Bimbi, 'Male Prostitution: Pathology, Paradigms and Progress in Research' (2007) 53 Journal of Homosexuality 7.

work has been fundamentally intertwined with the regulation of male homosexuality, rather than regulated distinctly as sex work.

This chapter exposes this legal–conceptual blurring of male homosexuality and male sex work and argues that the primary historic concern of the law has been combating male homosexuality rather than male sex work in itself. It does this primarily by examining the laws created and applied to male homosexuality and male sex work in the United Kingdom (UK) and New South Wales, Australia, from the late nineteenth century onwards. In doing so, it is acknowledged that this multijurisdictional historical exploration of 'multiple marginalities'[5] means that the literature is to a degree patchy, and legal approaches were not totally linear. Nonetheless, the legislation, cases and literature exposed do afford important insights into how male homosexuality and male sex work have been legally conceptualised and treated.

The chapter begins by finding that in the UK and NSW in the late nineteenth century and in the first half of the twentieth century, the same laws were applied to male homosexuality and male sex work. During this period provisions in the Vagrancy Acts, similar to those applying to female workers soliciting for immoral purposes, were primarily applied to male sex workers and homosexual men without distinction, as were laws criminalising male homosexual acts (such as sodomy laws and later laws prohibiting indecency between males). The chapter then explores the more punitive shift that occurred with regard to male homosexuality around the middle of the twentieth century. With a growing understanding of homosexuality during this time came a move to only apply the more severe laws criminalising homosexuality, rather than the laws prohibiting solicitation. This punitive shift confirms that the primary concern of legislators and law enforcers appears to have been combating male homosexuality in general, rather than men selling sex per se. This harsher period had the – somewhat paradoxical – result of spurring the commissioning of the Wolfenden Committee, which published a report recommending the decriminalisation of homosexuality.

The ensuing decriminalisation of male homosexuality towards the latter part of the twentieth century did not lead to sex work laws taking over where laws criminalising male homosexuality had left off. While many jurisdictions, although not all, continued – and continue – to criminalise female sex work following the Wolfenden Report, there was no push to include male sex work under sex work laws. This might have been expected if the primary concern was to combat male sex work.

This chapter examines the practical and conceptual reasons for the ongoing hetero(sexist) approach to sex work following the decriminalisation of male homosexuality. Practically, law enforcers saw less need to apply sex work laws to male sex workers because male sex work has been fundamentally shaped by the history of criminalisation of male homosexuality. It is often embedded in gay spaces and thus presents as less of a visible 'nuisance' to the general public. Furthermore, decriminalisation did not mean an end to discriminatory practice and police continued to use indecency laws to control male homosexuality and male sex work in public spaces, leaving little need to use sex work laws. Conceptually, male sex work does not readily fit within the dominant narratives around sex work which frame the legal responses that are thought necessary (whether decriminalisation, regulation or criminalisation/abolition). Finally, the chapter notes that despite the changes that new technologies have brought about, and are bringing about, to the sex work industry, these ideological positions on sex work reg-

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[5] P Davies and R Feldman, 'Prostitute Men Now' in G Scambler and A Scambler (eds) *Rethinking Prostitution: Purchasing Sex in the 1990s* (Routledge 1997).

ulation mean it is unlikely that there will be a shift in the gendered, hetero(sexist) approach to the legal regulation of sex work.

## 2. CRIMINALISATION DURING THE NINETEENTH AND EARLY TWENTIETH CENTURIES

There is a long history of criminalisation of sodomy between men, but not a long history of recognition of homosexuality as a characteristic of a person.[6] Sodomy was an offence under the Buggery Act 1533, the Criminal Law Amendment Act 1885 and the Offences Against the Person Act 1861.[7] However, other sexual acts between men that did not involve anal penetration were not subject to specific criminal laws until the late nineteenth century. Indeed, there was little concept of homosexuality or male prostitution, and no comprehensive law relating to male homosexuality, until the late nineteenth century in the UK.[8] As Weeks notes, it was not until this time that the concept of the homosexual (or invert) arose, and with it the drive to combat homosexuality.[9]

This changed with the passage of the Criminal Law Amendment Act 1885, which was originally designed to protect women and girls.[10] At the last stage of its passage through Parliament, the Bill was amended to include an offence of indecency between males.[11] This amendment was proposed by the Liberal MP Henry Labouchere to address his, and apparently the public's, concern about an apparent increase in homosexual activity.[12] This Act criminalised outrages on decency with a term of imprisonment for up to two years, defining this as '[a]ny male person who, in public or in private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person'.[13] These laws applied to men seeking and engaging in sex with other men regardless of whether this was sex work or not.

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[6] As Weeks notes, there was little distinction between whether buggery was with a woman, a man or an animal, but most prosecutions were for sex between men: J Weeks (1991) *Against Nature: Essays on History, Sexuality and Identity* (Rivers Oram Press 1991), 16–17.

[7] Upon colonisation in 1788 the Buggery Act of 1533 was received in Australia and then reenacted in the criminal statutes and codes adopted by the Australian colonies around the time of Federation in 1901 (see M Kirby, 'The Sodomy Offence: England's Least Lovely Criminal Export' (2011) 1 Journal of Commonwealth Criminal Law 22). The Crimes Act 1900 (NSW), for instance, contained division relating to 'Unnatural Offences', including buggery and bestiality (s 79), attempts to commit buggery and bestiality (s 80) and indecent assault (s 81).

[8] Weeks (n 6) 50.

[9] Ibid.

[10] Weeks considers it noteworthy 'that all major enactments concerning male homosexuality were drawn from Acts designed to control female prostitution': Weeks (n 6) 52.

[11] There is some debate about why Labouchere proposed this amendment, with some suggesting he did so to frustrate the passage of the bill rather than a perceived need to address homosexuality: for discussion see F Smith, 'Labouchere's Amendment to the Criminal Law Amendment Bill' (1976) 17 Australian Historical Studies 165.

[12] Ibid.

[13] Criminal Law Amendment Act 1885, s 11.

In relation to prostitution, the first statute using the term 'common prostitutes' in England was the Vagrancy Act 1824.[14] This Act provided that '[e]very common prostitute wandering in the public streets or public highway, or in any place of public resort, and behaving in a riotous or indecent manner' was liable to a fine of £5 or imprisonment for one month (section 3). This provision was almost identically replicated in the Vagrancy Act 1902 (NSW), which states that a person who, 'being a common prostitute, wanders in any street or public highway, or is in any place of public resort, and in either case behaves in a riotous or indecent manner' was liable to imprisonment with hard labour for a term not exceeding six months.[15] Despite not detailing the gender of the 'common prostitute', these provisions were only applied to female workers in both England and New South Wales. In the English case of *R v De Munck* it was found that:

> [T]he term "common prostitute" is not limited so as to mean only one who permits acts of lewdness with all and sundry or with such as hire her when such acts are in the nature of ordinary sexual connection. We are of opinion that prostitution is proved if it be shewn that a *woman* offered her body commonly for lewdness for payment in return. (emphasis added)[16]

This approach was also taken in New South Wales, where, in the case of *Skinner v The King*, 'the class of woman ordinarily known as a common prostitute' was described as 'one who, whether in a street or in a house, carries on the trade or business of prostitution, and submits herself to men for the purpose of gain'.[17]

While criminal laws relating to 'common prostitute' were reserved for female sex workers, different provisions applied to men who solicited for sex, based on the provision applying to female sex workers. The Vagrancy Act 1898 s 1, as amended by the Criminal Law Amendment Act 1912, criminalised with a term of imprisonment of up to six months any male person who solicited or importuned for immoral purposes in any public place. A similar provision was found in the Vagrancy Act 1908 (NSW) as amended by the Police Offences (Amendment) Act 1908 (NSW). This established an offence of being a male person knowingly living on the earnings of prostitution,[18] or soliciting or importuning for immoral purposes in a public place.[19] While this provision appears to have been created to address men soliciting clients for female workers, it provided police with a new option for dealing with homosexual men and male sex workers. During the first half of the twentieth century this separate, but sex work-specific, offence was applied to men who solicited for sex with other men, regardless of whether this amounted to sex work or not, alongside the harsher prohibitions against male homosexuality. This suggests, as Weeks notes, that 'all homosexual males as a class were equated with female prostitutes'.[20] Yet, the fact that female sex workers were to an extent tolerated, but such tolerance was not shown towards male homosexuals and male sex workers, suggests that the

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[14] There were other controls on sex work preceding this Act regulating sex work, but it was only in the nineteenth century that sex work was seen as a sociopolitical problem needing management, see J Scott, 'Governing Prostitution: Differentiating the Bad from the Bad' (2011) 23 Current Issues in Criminal Justice 53.

[15] s 4(1)(c).

[16] (1918) 1 KB 635 (KB) 637.

[17] (1913) 16 CLR 336.

[18] s 4(2)(o)(i).

[19] s 4(2)(o)(ii).

[20] Weeks (n 6), 52.

primary concern was to combat male homosexuality more generally, rather than men selling sex specifically.[21]

In the UK context, Hamilton, a Detective Constable with Glasgow Police, gave some illuminating detail on how police had been approaching the offence of men soliciting in an article published in 1949. He noted that for this offence to be made out there needed to be 'persistent' soliciting for any immoral purposes'.[22] It did not need to be shown that the person solicited knew that they were being solicited or were annoyed by it. Indeed, the soliciting need not be verbal: it could be done through smiling 'in the faces of gentlemen', pursing lips and wiggling the body.[23] In *Horton* there was no evidence that any person had noticed the soliciting other than the police officers who had seen the appellant behave in the same way on several previous occasions. Apparently, also of importance was the fact that the lips and face of the accused were artificially reddened and that he possessed pink powder and a powder puff.[24] Another example of persistent importuning was repeated visits to a men's lavatory within a short space of time and appearing to talk to men.[25] Hamilton went into some detail about how police officers could spot men soliciting or importuning, noting that the inference of an immoral purpose could generally be drawn from the nature of the acts and the systemic nature of the behaviour of the accused.[26]

These cases show that during the early part of the twentieth century, vagrancy laws were used to prosecute men soliciting for sex with other men, alongside other provisions criminalising indecency in public. Such laws were applied regardless of whether there was any evidence that the men involved were submitting themselves to other men or engaging in lewdness for payment or gain.[27] None of the cases discussed whether the motivation for the behaviour was actually for gain or payment. The fact that such offences appear to have been applied interchangeably, at least in the UK, is confirmed by the commentary by Hamilton. In discussing 'male persons soliciting or importuning' Hamilton moves between detailing elements of cases of soliciting and cases of gross indecency without noting any difference in their application.[28]

These cases also show how broadly the concept of soliciting or importuning and indecency were understood. This indicates that the concern was not just to address male sex work, or men engaging in homosexual sexual acts, but to combat male homosexuality more broadly. Such a view is supported by the wide ways in which these laws were interpreted and the lengths to which police officers would go to apply these laws. There was clearly a fervour to prosecute men who behaved outside accepted gendered behavioural norms by: acting 'inappropriately' (swinging the hips or arms, smiling at men in the face, visiting a public lavatory frequently); talking effeminately, dressing effeminately, looking effeminate (wearing feminine underclothes or makeup); possessing effeminate objects (powder puffs) or objects associated with

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[21] Ibid.

[22] D Hamilton, 'Male Persons Soliciting or Importuning for Immoral Purposes' 57–64 & 137–46, 52 within 'Traces of Footwear, Tyres and Tools etc., in Criminal Investigation' (1949) The Police Journal 22, 42–66 & 128–46.

[23] *Horton v Mead* [1913] 1 KB 154, 157 (Lord Alverston CJ).

[24] Ibid.

[25] *Police v Cleary* (1948) 12 JCL 122.

[26] Hamilton (n 22).

[27] Adopting the terms used in *R v De Munck* (1918) 1 KB 635 and *Skinner v The King* (1913) 16 CLR 336.

[28] Hamilton (n 22).

homosexual acts (Vaseline); and expressing homosexuality more broadly (photographs of nude men, letters expressing love for other men). In *R v Thompson* [No 4] the accused was prosecuted for gross indecency because he was carrying two powder puffs and a search of his room revealed indecent photographs. In convicting, Viscount Reading CJ commented that '[o]rdinary men do not walk about carrying powder puffs in their pocket'.[29]

The longstanding blurring of male sex work with male homosexuality meant that the form of regulatory discourse surrounding male sex work was related to discourse surrounding the criminality of homosexuality itself. As Scott notes: 'No distinction emerged during this period to distinguish same-sex desire from commercial sexual activity involving males, both being conflated and assumed indistinguishable.'[30] This conflation of male sex work and male homosexuality may to a degree be understood by the social context of homosexuality during this time. As Smaal notes, a subculture of homosexuality based on public interaction developed in the early 1900s:

> For most young men at the turn of the century, access to private space was a luxury and single men lived either with their family or in cheap, shared accommodation. Living conditions gave little privacy for sexually active men, and privacy was especially luxurious for homosexually inclined men. Single, wage-earning, working-class men pursued their relaxation in public places such as pubs, boarding houses and within city streets, rather than in the private sphere of the home.[31]

The development of a necessarily public homosexual subculture led to male sex workers using public cruising spaces to engage in sex work – the same spaces that male homosexuals would use to seek sexual encounters. This public nature of sexual encounters explains the vulnerability to prosecution of men soliciting for, and engaging in, sex in public spaces, regardless of whether this amounted to sex work or not.

The conflation of male sex work and male homosexuality is further understandable given the difficulty of leading an openly gay life during this time. As Weeks notes:

> Given the legal situation since the end of the nineteenth century and the simultaneous refinement of hostile social norms, homosexual activity was potentially very dangerous for both partners and carried with it not only public disgrace but the possibility of a prison sentence. This also fed into the market for prostitution and dictated much of the furtiveness, guilt, and anxiety that was a characteristic of the homosexual way of life.[32]

Class also played a role, with men from the middle and upper classes having 'greater opportunity through money and mobility' to arrange sexual contact.[33] As such, where there were such 'great disparities of wealth and social position . . . the cash nexus inevitably dominated'.[34] Thus, similarly to their legal and conceptual conflation, the social context of this era saw a close practical relationship between male homosexuality and male sex work.

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[29] [1917] 2 KB 630, 633.
[30] Scott (n 4), 181.
[31] Y Smaal, 'Coding Desire: The Emergence of a Homosexual Subculture in Queensland, 1890–1914' (2007) 14 Queensland Review 13, 15.
[32] Weeks (n 6), 53.
[33] ibid, 57.
[34] ibid, 55.

## 3. CRIMINALISATION MID-TWENTIETH CENTURY

During the first half of the twentieth century in both the UK and New South Wales, the Vagrancy Act provisions were applied to men found to be soliciting for sex with other men (whether as sex work or not). However, this changed around the middle of the twentieth century, when there was a more punitive turn towards male homosexuality and male sex work. In *Ex parte Langley; Re Humphris* (1953) 53 SR (NSW) 324 it was found to be inappropriate to use the provisions of the Vagrancy Act for men found soliciting or importuning for immoral activities with other men. In this case the appellant invited another man to become 'an accomplice in the commission of an unnatural sexual offence'. The appellant had approached the other man in Hyde Park, Sydney, near the Archibald Monument.[35] He was convicted under the Vagrancy Act of being a male person soliciting for an immoral purpose, which, it was noted in this case, had been longstanding practice for men who behaved as the appellant had done. On appeal the court was asked in this case to determine whether the behaviour of the appellant was of a kind that had been contemplated by that section of the Vagrancy Act. That is, the court was being asked whether the appellant should have been convicted under this section for propositioning another man.

Owen CJ held that s 4(2)(o)(ii) of the Vagrancy Act (NSW) was designed to deal with 'minor pests, not inaptly described as rogues and vagabonds', that is, 'men who live of the earnings of prostitutes, such as souteneurs and runners'.[36] It was not designed, in His Honour's view, to deal with behaviour such as that engaged in by the appellant. In confirming this view Owen CJ referred to the fact that the equivalent provision in England was found in legal commentaries, such as Archbold, under the heading 'Trading in Prostitution' and was found in the same place as offences relating to women and girls.[37]

Clancy J also agreed this was not the correct offence to pursue in such circumstances. His Honour noted that the appellant could have been charged with indecent or offensive behaviour in a public place under s 8A of the Vagrancy Act.[38] He also found that it could have been an offence of inciting another to commit an 'abominable crime of buggery' under s 79 of the Crimes Act 1900 (NSW) or indecent assault on a male person under s 81 of the Crimes Act 1900 (NSW). Clancy J found that, taking the words of the Vagrancy Act alone, there was no doubt that they could be interpreted to fit the behaviour of the appellant. His Honour noted that the soliciting provision in the Vagrancy Act and its equivalent in the UK had been applied to such behaviour in NSW and in the UK (noting the similarity with the case of *Horton v Mead* (1931) 1 KB 154). Clancy J opined, however, that the question of whether the Vagrancy Act should apply could not be dealt with merely by stating what had been assumed to be the correct approach in the past, nor could it be answered without having regard to the words in their setting and in the whole Act.

The approach of Clancy J was to argue that homosexual men deserved harsher treatment. This was because the 'crime of sexual relations between males' stood 'out in sharp contrast

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[35] A well-known gay beat/cruising place: see G Wotherspoon, 'A "Glimpse through an Interstice Caught": Fictional Portrayals of Male Homosexual Life in Twentieth-Century Sydney' (2007) 122 PMLA 344, 345.

[36] *Ex parte Langley; Re Humphris* (1953) 53 SR (NSW) 324, 325.

[37] ibid, 325.

[38] Ibid.

in its nature and gravity' to the sorts of behaviours regarding prostitution addressed in the Vagrancy Act. Clancy J held that prior to the introduction of the offence of solicitation by male persons found in the Vagrancy Act, men engaging in behaviour detailed in this case could be charged with incitement to commit an 'abominable crime' in s 79 of the Crimes Act 1900 (NSW), which carried a sentence of 14 years' penal servitude. His Honour concluded that the significant difference in penalty between s 79 of the Crimes Act 1900 (NSW) and the penalty for solicitation of six months indicated that the provision in the Vagrancy Act was not designed to displace the approach before the introduction of the solicitation provisions in the Vagrancy Act. If it were otherwise it would expose the acts of the homosexual to the same penalty 'as those who engage in practices such as fortune telling, playing or betting at an unlawful game'.[39] In His Honour's view, the prohibition on soliciting by male persons in the Vagrancy Act were 'more apt in describing the actions of a male who solicits another male to have intercourse with a female than where the result sought to be achieved by him is one which in the Crimes Act is grouped among "unnatural offences"'.[40] It was therefore held that the solicitation provision of the Vagrancy Act should not be used to charge men soliciting for sex with other men.

This case made clear that those enforcing and applying the laws, at least in New South Wales, viewed female sex work and men involved in female sex work differently to men engaging in sex with other men, whether as sex work or not, and felt they were deserving of more severe punishment. Following *Ex parte Langley*, the Crimes Act 1900 (NSW) was amended through the Crimes (Amendment) Act 1955 (NSW) to introduce new offences directed at male homosexuals in order to ensure that sex work laws could be applied to them. In debating the new provisions Sheahan, the Attorney-General, noted that '[i]t is curious to recollect that for fifty-one years under that section [of the Vagrancy Act] there were many convictions of male persons for soliciting male persons'.[41] He noted that since the case of *Ex parte Langley* in 1953, concerns had been expressed by the Commissioner of Police, the law officers of the Crown and himself that there was no suitable legislation to combat homosexuals, who 'have been described by magistrates and judges as pests in the community'.[42] As such, new offences were thought necessary to eradicate 'the homosexual wave that unfortunately has struck this country-though not to the extent of continental countries'.[43] Under s 81A it became an offence punishable by two years' imprisonment for a male person to commit, or be a party to the commission of, or procure or attempt to procure, an indecent act with another male in public or in private. A male person soliciting, inciting or attempting to solicit or incite a male to commit an indecent act or indecent assault or to commit buggery was liable to imprisonment for twelve months under s 81B.

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39 ibid, 327 (Clancy J).
40 ibid, 327 (Clancy J).
41 NSW LA Crimes (Amendment) Act Deb 23 March 1955, 3228.
42 ibid, 3228.
43 ibid, 3230.

## 4. DECRIMINALISATION: LATE TWENTIETH CENTURY

This punitive attitude towards homosexuality in the middle of the century may have been the result of increasing scientific research into sexuality and the understanding of homosexuality as a characteristic of a person. During the 1930s and 1950s, male homosexuality began to be seen as a threat to a nation's 'health and economic and military'.[44] It has been noted that there was an increase in prosecutions of homosexual men following the Second World War.[45] The punitive attitude may also have played a part in spurring change in the law's approach to male homosexuality and male sex work. The increase in prosecutions, as well as the publication of details of prosecutions of a number of high-profile homosexual men, led the UK government to establish a committee chaired by Sir John Wolfenden to investigate the law relating to homosexuality and female sex work.[46] The terms of reference of the committee specified that the committee was to examine: '(a) the law and practice relating to homosexual offences . . . and (b) the law and practice relating to offences against the criminal law in connection with prostitution and solicitation for immoral purposes'.[47] The committee clearly understood (b) only to refer to female sex work.[48]

The committee's starting point in determining the appropriate role of criminal law was that '[i]t is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes we have outlined'.[49] The purposes outlined were 'to preserve public order and decency, to protect the citizen from what is offensive or injurious and to provide sufficient safeguards against exploitation and corruption of others'.[50] In relation to homosexuality, the committee recommended that private adult consensual acts should not be subject to criminalisation. It was clear that the committee had been influenced by changing understandings of homosexuality, particularly Kinsey's study which found that sexuality existed on a continuum.[51] This led the committee to conclude that 'homosexuals cannot reasonably be regarded as quite separate from the rest of mankind'.[52] In relation to female sex work, the committee's views on the purposes of criminal law meant that it did not recommend measures directed at abolition of sex work but rather recommended laws to address the 'offensive and injurious' visible aspects of street-based work.[53] As Ashford notes, this approach suggested 'that street based work, and the high visibility of those women was far more "offensive" than a woman working out of the public's gaze and consciousness'.[54]

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[44] V Minichiello, J Scott and D Callander, 'New Pleasures and Old Dangers: Reinventing Male Sex Work' (2013) 50 Journal of Sex Research 263, 266.

[45] P Higgins, *Heterosexual Dictatorship: Male Homosexuality in Postwar Britain* (Fourth Estate 1996).

[46] Kirby (n 7), 22.

[47] Home Office, *Report of the Committee on Homosexual Offences and Prostitution* (Cmnd 247, 1957) ('Wolfenden Report') [1].

[48] ibid, [13].

[49] ibid, [14].

[50] ibid, [13].

[51] Cited in Kirby (n 7).

[52] 'Wolfenden Report' (n 47), [22].

[53] ibid, [285].

[54] C Ashford, 'Male Sex Work and the Internet Effect: Time to Re-Evaluate the Criminal Law?' (2009) 73 The Journal of Criminal Law 258, 260.

The Wolfenden Report paved the way for the gradual decriminalisation of homosexual sexual acts in the UK and Australia and set the tone for prostitution policy in the decades that followed. In the UK, the Sexual Offences Act 1967 decriminalised homosexual acts in private provided that both parties were aged 21 or over and engaged in sex in private. The law's equal treatment of homosexuals and heterosexuals was only seen when the age of consent was equalised by the Sexual Offences (Amendment) Act 2000. Similarly, in Australian jurisdictions, steps to decriminalise homosexual sexual acts were undertaken between 1972 and 1997.[55] For example, in New South Wales the Crimes Amendment Act 1984 (NSW) decriminalised homosexual acts in private between consenting adults. As in the UK, these initial reforms did not end discriminatory treatment of homosexuality. It was noted during debate on the abolition of the Crimes Act 1900 (NSW) s 81 that this could 'have the effect of legalizing soliciting in public by homosexuals'.[56] However, Greiner, the Leader of the Opposition, reassured members of Parliament that this concern could still be addressed by stating that 'the very flexible provisions of the Offences in Public Places Act still apply, and I have little doubt that the police retain adequate powers under that Act to control offensive conduct in public'.[57] It was only with the passage of the Crimes Amendment (Sexual Offences) Act 2003 (NSW) that the age of consent was equalised and remaining criminal laws directed specifically at homosexual men were removed.

Decriminalisation of male homosexuality did not lead to male sex work coming under the reach of sex work laws that had applied to female workers. Nor was male sex work included in discourse on the models to address sex work. This adds to the conclusion that the concern had primarily been to combat male homosexuality. The lack of consideration of whether sex work laws could and should apply to male sex workers may be explained by both practical and conceptual considerations.

## 5. WHY WERE SEX WORK LAWS NOT APPLIED TO MALE SEX WORKERS FOLLOWING DECRIMINALISATION OF HOMOSEXUALITY?

### 5.1 Practical Considerations

Following the partial decriminalisation of homosexuality in the latter part of the nineteenth century, there was practically speaking little need to use sex work laws (where they continued to exist) to regulate male sex work, because other criminal laws still could be, and were, used. The first instances of decriminalisation of male homosexuality did not totally equalise the law and remove laws specific to male homosexuality. There were still residual laws which could apply to men engaging in sexual acts in public, whether as sex work or not (such as offences of indecency between males in public).[58] Even when these homosexual-specific laws were abol-

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[55] See C Carbery, *Towards Homosexual Equality in Australian Law: A Brief History* (2nd ed Australian Lesbian and Gay Archives Inc 2010); Kirby (n 7).

[56] NSW LA Crimes (Amendment) Act Deb 15 May 1984, 699.

[57] ibid, 699.

[58] Furthermore, laws enacted or amended in the wake of the HIV/AIDS crisis in the 1990s, such as the criminalisation of transmitting HIV or working as a sex worker while infected with a sexually trans-

ished with full decriminalisation, the criminal law continued to be used to control homosexual activities occurring in public spaces; heterosexual sexual activities were not subjected to such control.[59] Research by Johnson suggests that police are still more likely to pursue prosecution of homosexual men engaging in public sex than heterosexuals.[60] Where offences require a judgment of offensiveness, homosexual acts have always been more likely to be viewed as offensive or obscene 'because such standards of reasonableness and respectability have often been conceived in diametric opposition to homosexuality'.[61]

The historic criminalisation of male homosexual activity pushed male sex work and male homosexuality into marginal spaces and clandestine communities.[62] As certain urban spaces became known among homosexual men as places to meet, whether as public sex environments or commercial areas with bars and other services, male sex workers could blend into this 'scene', which was less visible to mainstream society.[63] Male sex workers were more likely to live and work in concentrated areas where homosexual men generally sought sexual partners ('beats').[64] The clandestine concentration of male sex workers meant that they were less likely to be visible and present as a 'nuisance' needing regulation through sex work laws. Where indecency laws were used by police, as noted above, these were directed at public expressions of male homosexuality rather than being directly concerned with male sex work.

Research also shows that male workers were less likely to have sex work laws applied to them because they largely work privately, without the control of other individuals.[65] They

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mitted disease, have been used to control sex workers: J Browne and V Minichiello, 'Research Directions in Male Sex Work' (1996) 31 Journal of Homosexuality 29; Minichiello, Scott and Callander (n 44), 263. In 2008, for example, a man was prosecuted under the Prostitution Act 1992 (ACT), s 25, for working as a sex worker while HIV positive (see M Jenkins, 'Sex Worker Purposely Spread STD' *The Australian* (18 January 2008)) even though there was no evidence that he had practised unsafe sex or transmitted HIV.

[59] See P Johnson, '"Offences against Morality" Law and Male Homosexual Public Sex in Australia' (2008) 33 Alternative Law Journal 155; C Ashford, 'Heterosexuality, Public Places and Policing' in P Johnson and D Dalton (eds) *Policing Sex* (Routledge 2012).

[60] P Johnson, 'The Enforcers of Morality?' in P Johnson and D Dalton (eds) *Policing Sex* (Routledge 2012)

[61] ibid, 25–6.

[62] J Weeks, 'Inverts, Perverts and Mary-Annes: Male Prostitution and the Regulation of Homosexuality in the Nineteenth and Early Twentieth Century' (1981) 6(2) Journal of Homosexuality 113–34; P Hubbard, 'Sex Zone: Intimacy, Citizenship and Public Space' (2001) 4(1) Sexualities 51–71.

[63] M Whowell, 'Male Sex Work: Exploring Regulation in England and Wales' (2010) 37(1) *Journal of Law and Society* 125.

[64] Select Committee on Prostitution, NSW LA, *Report of Select Committee on Prostitution* (1986). Also, Ellison and Weitzer's study examines male sex work operating out of bars in Berlin and Prague. Interestingly, it finds that there is a long history of male sex work operating out of bars in Berlin and the four 'boy bars' are located together in an established gay area. In contrast, the bar scene in Prague has developed much more recently and such bars in Prague are more dispersed. This difference may be explained by the fact that the history of communist rule meant that a gay scene with a concentration of bars and other commercial facilities did not develop in the same way as in other European cities: G Ellison and R Weitzer, 'Young Men Doing Business: Male Bar Prostitution in Berlin and Prague' (2017) 21 Sexualities 1389, 1399.

[65] M Whowell and J Gaffney, 'Male Sex Work in the UK: Forms, Practice and Policy Implications' in J Phoenix (ed) *Regulating Sex For Sale* (Policy Press, 2009).

generally do not work from brothels and low numbers engage in street-based work.[66] Instead male sex workers tend to find clients through private advertisement,[67] and increasingly by advertising online or through online discussion forums for gay men and social media, such as Twitter.[68] Newly developing apps, such as 'Peppr', 'Rendevu' and 'Oh La La', which operate in a similar way to Uber, allow people to causally enter sex work without seeking clients through traditional methods (such as street work, bars, brothels and so on).[69]

Online social networking sites represent what Cooper has called 'the Triple A Engine': a triad of 'access, affordability and anonymity'.[70] Male and female sex work has begun to shift 'into Internet-mediated private spaces'.[71] This is particularly the case with male sex work.[72] Research conducted by McClean finds that male sex workers are turning to the internet rather than traditional forms of solicitation due to improvements in ease, convenience, accessibility, anonymity, autonomy, security and profitability.[73] The internet also provides a safe space for workers to find or share information about safe sex practices, client reviews or warnings, crime reports and general information to assist in staying safe when working alone.[74]

It has therefore become less imperative practically, and at the same time more difficult realistically, to apply criminal laws to male (and also to female) sex workers. The internet is transforming what legislators may deem an unwanted public nuisance (that is, public solicitation) into an 'invisible' activity,[75] by hiding solicitation within websites that are not likely to be found by the vast majority of internet users. It also means that the sex workers' activities

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[66] V Minichiello, R Mariño, J Browne, M Jamieson, K Peterson, B Reuter and K Robinson, 'A Profile of the Clients of Male Sex Workers in Three Australian Cities' (1999) 23 Australian and New Zealand Journal of Public Health 511; M Dorais, *Rent Boys: The World of Male Sex Workers* (McGill Queen's University Press 2005).

[67] Minchiello et al (n 66).

[68] Ashford (n 54).

[69] Workers may still seek clients through 'real time' methods alone or in combination with the internet, such as in public places, escort agencies, bars or other venues such as strip clubs, saunas or bookshops. For a recent study of bar work see Ellison and Weitzer (n 64).

[70] A Cooper (1998) 'Sexuality and the Internet: Surfing into the New Millennium' (1998) 1(2) CyberPsychology & Behaviour 187.

[71] T Sanders, J Scoular, R Campbell, J Pitcher and S Cunningham, *Internet Sex Work: Beyond the Gaze* (Palgrave 2018), 122; E Bernstein, 'Sex Work for the Middle Classes' (2007) 10 Sexualities 473; S Cunningham and T Kendall, 'Prostitution 2.0: The Changing Face of Sex Work' (2011) 69 Journal of Urban Economics 273; Minichiello, Scott and Callander (n 44); S Peppet, 'Prostitution 3.0?' (2013) 98 Iowa Law Review 1989; C MacPhail, J Scott and V Minichiello, 'Technology, Normalisation and Male Sex Work' (2014) 17 Culture, Health & Society 1.

[72] E Argento, M Taylor, J Jollimore, C Taylor, J Jennex, A Krusi and K Shannon, 'The Loss of Boystown and Transition to Online Sex Work: Strategies and Barriers to Increase Safety Among Men Sex Workers and Clients of Men' (2018) 12 American Journal of Men's Health 199.

[73] A McClean, 'An Evolving Trade; Male Sex Work and the Internet' (PhD Thesis, RMIT University 2013).

[74] K Davies and L Evans, 'Skirting Danger and Sharing Connections: Internet Postings by British Escorts' (2004), paper presented to American Psychological Association annual meeting, http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/0/9/4/9/pages109495/p109495-1.php; S Cunningham, T Sanders, J Scoular, R Campbell, J Pitcher, K Hill, M Valentine-Chase, C Melissa, Y Aydin and R Hamer, 'Behind the Screen: Commercial Sex, Digital Spaces and Working Online' (2017) 53 Technology in Society 47; Sanders et al (n 71).

[75] D Walker, D Brock and T Stuart 'Faceless-Orientated Policing: Traditional Policing Theories Are Not Adequate in a Cyber World' (2006) 79(2) Police Journal 169.

are more difficult for law enforcement to trace.[76] As Sanders et al. note, policy relating to the policing sex work (at least in the UK) has focused on street-based work.[77] Law and policy have failed to acknowledge gender diversity or new forms of sexual exchange.[78] It thus appears that at present there is limited policing of internet-based sex work.[79] However, this may change because the 'increased focus on anti-trafficking, which is high on the policy agenda in the USA and many European countries, frequently conceptualised in terms of sexual exploitation and targeted mainly by criminal justice responses, means the Internet has become a new site for police surveillance of sex work'.[80] The Fighting Online Sex Trafficking Act (FOSTA) and Stop Enabling Sex Trafficking Act (SESTA) recently passed in the United States are already said to be having effects on internet-based sex work outside the USA.[81] Whether such moves will mean that male sex work will be targeted is questionable. There is an example of 'Rentboy.com', a website for male escorts, being closed down by Homeland Security.[82] However, it remains to be seen whether this is an exception. The lack of acknowledgement of gender diversity and the fact that trafficking is often conceptually linked to female sex work may mean that the focus would be primarily on female rather than male sex work.[83]

This view is further confirmed by economic, social and cultural changes which may reduce the imperative for a rigorous enforcement of remaining laws criminalising sex work, particularly male sex work. As Brent and Sanders argue, social and economic change has led to a mainstreaming of the sex industry in the West, as economic business strategies are mirrored by sex businesses, lending legitimacy and increased respectability.[84] In relation to male sex work, Argento et al. note there is evidence that new technologies are also impacting on perceptions of sex work.[85] They find that the 'Internet has facilitated a shift away from a paradigm of stigma, discrimination, and marginalization, typically associated with street-based sex work, to one that acknowledges sex work as work'.[86] It also seems that male sex work is also becom-

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[76] J Lee-Gonyea, T Castle and N Gonyea 'Laid to Order: Male Escorts Advertising on the Internet' (2009) 30(4) Deviant Behavior 321, 326.

[77] Sanders et al (n 71); J Scoular and M O'Neill, 'Regulating Prostitution: Social Inclusion, Responsibilisation and the Politics of Prostitution Reform' (2007) 47 British Journal of Criminology 764.

[78] Sanders et al (n 71); C Ashford, 'Sex Work in Cyberspace: Who Pays the Price?' (2008) 17 Information & Communications Technology Law 37.

[79] Sanders et al (n 71).

[80] ibid, 123 (references omitted).

[81] See for example, M Young, 'Sex Workers in Australia Say American Law Is Creating Devastating Losses Back Home' *news.com.au* (23 April 2018) www.news.com.au/lifestyle/relationships/sex/sex-workers-in-australia-say-american-law-is-creating-devastating-losses-back-home/news-story/09139a2f0d631cd7284090d2336ca517 accessed 3 December 2018.

[82] C Friedersdorf, 'A Website for Gay Escorts Gets Busted by Homeland Security' *The Atlantic* (26 August 2015) www.theatlantic.com/politics/archive/2015/08/a-web-site-for-gay-escorts-gets-busted-by-homeland-security/402343/ accessed 3 December 2018.

[83] J Phoenix, 'Frameworks of Understanding' in J Phoenix (ed), *Regulating Sex for Sale: Prostitution Policy Reform in the UK* (Policy Press 2009).

[84] Although Brent and Sanders do note that the social and cultural mainstreaming has not totally mirrored the economic mainstreaming: B Brent and T Sanders, 'The Mainstreaming of the Sex Industry: Economic Inclusion and Social Ambivalence' (2010) 37 Journal of Law & Society 40, 60.

[85] Argento et al (n 72), 1–2.

[86] ibid.

ing more visible in popular culture and discourse.[87] Additionally, a recent UK study has found that more male students than female students were likely to be involved in the sex industry.[88]

## 6. CONCEPTUAL CONSIDERATIONS

These practical factors may go some way to explaining why the gendered (hetero)sexist approach to sex work has continued and will continue. However, a greater explanation lies in the ideological perspectives which underlie law and policy relating to sex work. As already noted, male sex work was intertwined with understandings of male homosexuality. Growing research into sexuality, and particularly homosexuality, towards the mid-twentieth century – and the ensuing decriminalisation of male homosexuality – broke down this linkage. However, this separation did not see male sex work begin to be conceptualised in the same way as female sex work. This may be because male sex work has been 'understood within traditional perspectives of male sexuality, which may contrast sharply with ways in which female sex work contradicts traditional perspectives of femininity'.[89]

This viewing of male sex work within the context of male sexuality has also meant that male sex work has not been seen to fit neatly within any of the increasingly divergent ideological perspectives on female sex work. Vanwesenbeeck finds that, especially from around the 1990s, research into more diverse sex worker populations began to challenge earlier stereotypes about why women enter sex work (mental health issues, history of childhood abuse, running away, homelessness, drug use, coercion by pimps, and so on) and their experiences of sex work.[90] It suggested that sex work 'cannot be simplistically understood as men having power and women being powerless and that a large variety of interactions exists with respect to the power issue'.[91] This diversity in research increasingly fractured ideological positions on how law and policy should frame sex work.

A sex-positive, pro-sex work feminist frame of reference emerged mainly from the 1990s onwards. This perspective sees sex work as 'an empowering profession, because it provides an opportunity for women to subvert patriarchal domination and capitalise on their sexuality, and/or, because sex work fulfils an important social need'.[92] According to such a view, 'the illegal status of sex work and its consequences do violate the civil and workers' rights and

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[87] For example Robert Sepulveda, a star on the reality TV series *Prince Charming*, recently revealed that he had been a male escort: K Brekke, '"The Gay Bachelor" Robert Sepulveda Jr. Opens Up about His Past' Huffington Post, 31 August 2018, www.huffingtonpost.com.au/entry/the-gay-bachelor-robert-sepulveda-jr-opens-up-about-his-past-as-an-escort_us_57c5a4f4e4b09cd22d92aa55; and Ryan James recently released *A Memoir of a Male Escort* (New Holland 2018).

[88] T Sagar, D Jones, K Symons and J Bowring, *The Student Sex Work Project* (Swansea University 2015) www.swansea.ac.uk/media/Student%20Sex%20Work%20Report%202015.pdf accessed 3 December 2018.

[89] I Vanwesenbeeck, 'Another Decade of Social Scientific Work on Sex Work: A Review of Research 1990–2000' (2001) 12 Annual Review of Sex Research 242; see also Browne and Minichiello (n 58).

[90] Vanwesenbeeck (n 89).

[91] ibid, 275.

[92] A Orchiston, 'Brothels as Workplaces: Exploring Labour Regulation and Compliance in Australia's Legal Sex Industry' (PhD Thesis, The University of Sydney 2017), 54–5.

integrity of sex workers'.[93] Furthermore, criminal laws directed at sex work are regarded to be 'discriminatory, criminogenic, and an overreach of the criminal law'[94] and to lead to poorer health and safety levels.[95]

In New South Wales, decriminalisation arguments gained traction towards the end of the twentieth century, particularly due to concerns about police corruption.[96] This led to the gradual repealing of most sex work-specific criminal laws in NSW.[97] Even so, the gendered perception of sex work can be seen in the Disorderly Houses Amendment Act 1995, s 20, which states: 'The enactment of the Disorderly Houses Amendment Act 1995 should not be taken to indicate that Parliament endorses or encourages the practice of prostitution, which often involves the exploitation and sexual abuse of vulnerable women in our society.'

A different feminist perspective (associated with radical feminism) is that sex work is inherently exploitative and oppressive of women. Radical feminists see sex work as 'both a manifestation and a cause of gender inequality'.[98] Dworkin has argued that is not a matter of choice for women but a negation of choice and self-determination.[99] Sex work has even been described as 'an institution of male supremacy' akin to slavery.[100] This narrative, which has increasingly gained traction in recent years, posits female workers inexorably as victims and men as exploiters and users of women.[101] Proponents of this model also tend to see sex work and trafficking of women as inexorably linked.[102] As Phoenix notes in a policy context, 'sexual exploitation serves as a metonym for prostitution, with the result that human trafficking and prostitution become treated as though they are proxies for one another'.[103]

According to a radical feminist perspective,[104] acceptance and decriminalisation or legalisation of sex work not only leads to direct harm to women involved in sex work but also breaks

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[93] ibid, 243.

[94] S Egger and C Harcourt, 'Prostitution in NSW: The Impact of Deregulation' in P Easteal and S McKillop (eds), *Women and the Law: Proceedings of a Conference* (Australian Institute of Criminology 1991), 116 https://aic.gov.au/sites/default/files/publications/proceedings/downloads/16-egger.pdf accessed on 3 December 2018.

[95] C Harcourt, J O'Connor, S Egger, C Fairley, H Wand, M Chen, L Marshall, J Kaldor and B Donovan, 'The Decriminalisation of Prostitution Is Associated with Better Coverage of Health Promotion Programs for Sex Workers' (2010) 34 Australian and New Zealand Journal of Public Health 482.

[96] S Smith, *The Regulation of Prostitution: A Review of Recent Developments*, Briefing Paper No 21/99 (NSW Parliamentary Library Research Service 1999).

[97] It should be noted that not all criminal laws have been repealed in NSW: for instance, the Summary Offences Act still criminalises street-based soliciting within view of dwelling, church, school, and so on. Other Australian jurisdictions have not followed this path and have either introduced regulation/licensing schemes (for example, Queensland and Victoria) or continue to use a criminalisation framework (for example, South Australia and Western Australia) for addressing sex work: ibid; C Harcourt, S Egger and B Donovan, 'Sex Work and the Law' (2005) 2 Sexual Health 121.

[98] Orchiston (n 92), 56.

[99] A Dworkin, *Sexual Intercourse* (Free Press 1987), 143.

[100] Cole cited in C Overall 'What's Wrong with Prostitution? Evaluating Sex Work' (1992) 17 Signs 705, 707.

[101] M Whowell and J Gaffney, 'Male Sex Work in the UK: Forms, Practice and Policy Implications' in Phoenix J (ed), *Regulating Sex For Sale* (The Policy Press 2009); Ashford (n 54).

[102] Orchiston (n 92); Sanders et al (n 71).

[103] Phoenix (n 83), 10.

[104] The focus here on opposing feminist ideologies about sex work should not be taken to indicate that these are the only perspectives on the regulation of sex work; there are of course a wide range of ideologies.

down 'social and ethical barriers to treating women as sexual merchandise'.[105] Recent models for regulating sex work (such as the Swedish model) following a radical feminist perspective aim to abolish sex work by criminalising the client rather than the sex worker.[106] The Swedish model (sometimes referred to as the Nordic model[107]) is becoming an increasingly popular model for the regulation of sex work internationally.[108]

While it would be wrong to flatten out all male sex worker experience and simply assume that male workers are never vulnerable, do not fall victim to abuse and do not need support,[109] abolitionist positions based on radical feminist concerns have largely bypassed male sex work. This may be because of the assumption that power relations are more equal where sex work occurs between men. Furthermore, '[t]he great majority of it takes place between men within a world and a context that resist feminist analysis of patriarchal domination, the theoretical structure most often used to explain the imposition of sexuality, or even sexual slavery, upon women and children'.[110] This view of sex work as inherently exploitative of women and conceptually linked to trafficking suggests that an abolitionist stance on sex work will also bypass male sex work.

## 7. CONCLUSION

This chapter has shown that, historically, male sex work and male homosexuality were conceptually and legally treated as indistinguishable and that the primary concern of legislators and law enforcers was the control of male homosexuality. In the late part of the nineteenth and the early part of the twentieth century, laws similar to those applying to female sex workers were applied to men soliciting other men or having sex with other men, alongside criminal laws prohibiting male homosexuality, regardless of whether the soliciting or sexual act was performed as sex work. From the middle of the twentieth century, laws prohibiting male homosexuality were used primarily to prosecute men (at least in New South Wales), rather than the laws prohibiting men soliciting, because soliciting laws were seen to be inappropriately lenient.

The fact that sex work laws were generally not applied to male sex workers following the decriminalisation of male sex work in the latter part of the twentieth century adds further weight to the view that male sex work and male homosexuality were conceptually intertwined and that the primary concern of legislators and law enforcers was the control of male homosexuality per se rather than men selling sex. It can also be explained by practical and

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[105] R Raymond, 'Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution' (2003) 2 Journal of Trauma Practice 315, 323.

[106] J Scoular, 'Criminalising "Punters": Evaluating the Swedish Position on Prostitution' (2004) 26(2) Journal of Social Welfare and Family Law 195.

[107] S May-Lin and C Holmstrom, *Prostitution Policy in the Nordic Region: Ambiguous Sympathies* (Ashgate 2013).

[108] The European Parliament passed a resolution supporting the Swedish model: Council Resolution (ER) of 26 February 2014 supporting the Swedish model European Parliament, Resolution on Sexual Exploitation and Position and its Impact on Gender Equality, , Eur. Parl. Doc., A7- 0071 (26 Feb. 2014).

[109] T Sanders, 'Researching the Online Sex Work Community' in C Hine (ed) *Virtual Methods in Social Research on the Internet* (Berg 2005), 66.

[110] Dorais (n 66), vii.

conceptual considerations. Practically, there was less need to control male sex work through sex work laws because the history of criminalisation of male homosexuality has led to male sex work blending into spaces where homosexual men socialised and lived. This made it less visible and distinct as a 'nuisance' needing addressing. Despite this, police could, and did, still use indecency laws to address male homosexual activity occurring in public, whether as sex work or not. Furthermore, ideological developments around the legal and policy framing of female sex work largely bypass male sex workers. A pro-sex work feminist stance sees no need to conceptualise sex work as something in need of criminal regulation, while a radical feminist view sees sex work as inherently exploitative of women. Whatever the ideology, there is a perpetuation of the gendered (hetero)sexist view that sees sex work as something done by women for men. Thus, sex work laws were and are only mainly concerned with controlling work done by female workers.

This chapter also finds that the impact of new technologies on sex work seems unlikely to change the gendered and (hetero)sexist approach to male sex work. The shift to internet-based work has made it practically less imperative, and at the same time realistically more difficult, to apply criminal laws to sex workers. Technology has added to the 'invisibility' of male (and female) workers, and economic and social mainstreaming of sex work has reduced its stigmatisation and increased legitimacy. This may explain to a degree why there appears to be limited policing of internet-based sex work. However, the conceptual linkage that is often made between trafficking and sex work may mean that internet-based sex work will increasingly be subject to policing. The recent passage in the US of FOSTA and SESTA may change the legal landscape significantly. Even if this is the case, the current abolitionist drive based in radical feminism, and the conflation of trafficking and sex work, mean that it is unlikely that any push to police the internet will extend significantly to male sex work. As such, it is likely that the gendered and hetero(sexist) approach to sex work will continue.