This paper presents an analysis of the Domestic Security Bill, tabled last October by the Minister for the Interior in the new rightwing government and brought into force in March of this year after successful readings in both houses of Parliament. It situates the bill in the context of prostitution debates which were already high on the agenda during the previous leftwing Jospin government (1997-2002). It examines the competing definitions of prostitution as a political issue in France and asks how gender, class and ethnicity are constructed in the surrounding debates.

Prostitution debates 1997-2002
Prostitution rose up the political agenda in the late 1990s as the result of a number of factors, including international and European measures focused in particular on trafficking, child prostitution and pornography and transnational organised crime; a growing awareness of the presence of East European and African prostitutes, some of whom appeared very young; and the initiatives of women’s policy agencies, which combined with powerful abolitionist lobbies to influence the policy agenda and stimulate public debate. In 1999, the newly created Delegation for women’s rights in the Senate decided to focus on prostitution as its first subject of enquiry. It produced a detailed and critical report on prostitution and public policy, arguing that France’s official policy of abolitionism was inadequately implemented (Derycke 2000). French policy on prostitution firstly condemns all forms of exploitation of prostitution (living off immoral earnings, pimping, brothel owning, renting rooms to prostitutes) - but not prostitution itself, which is a civil liberty. Secondly, it supports what it defines as the ‘victims’ of prostitution, the prostitutes themselves, by helping them to escape from it. And it is this second pillar, the social provisions for prostitutes who want to leave prostitution, that was particularly harshly criticised by the Senate’s Delegation for women’s rights, which argued that it has been largely left up to associations to step in and provide these services, whereas in fact it is the responsibility of the state.

The official state policy of abolitionism, adopted in 1960 with the ratification by France of the 1949 UN Convention on the suppression of the traffic in persons, but implemented only partially and not paid much attention for most of the intervening period, was firmly reasserted in the late 1990s: Foreign Minister, Hubert Védrine, reaffirmed this position in various international negotiations on trafficking and child prostitution and pornography; Minister for Women’s Rights, Nicole Péry, included prostitution in her department’s top-priority campaign against violence towards women, naming it as a form of violence at the UN Beijing+5 Conference in New York in 2000 (http://www.social.gouv.fr/femmes/actu/doss consulted 21 October 2001). These international assertions of France’s stance on prostitution were made in the context of pressure by some countries and international organisations (notably the Netherlands and the
International Labour Organisation (Lim 1998)) to recognise prostitution as a legitimate occupation and prostitutes as sex workers. France re-affirmed its commitment to the 1949 Convention which states that ‘prostitution and the accompanying evil of the traffic in persons’ are ‘incompatible with the dignity and worth of the human person’ and condemns any person who exploits the prostitution of another with or without their consent. It therefore rejects the distinction between forced and voluntary prostitution that some vocal participants in international policy making were trying to legitimise.5

In March 2001, Christine Lazerge, Vice President of the National Assembly, launched an Enquiry into the various forms of modern slavery, much of which focused on prostitution. The ensuing bill was passed unanimously by the National Assembly in January 2002 but not read in the Senate before the end of the parliamentary session. It confirmed the view of prostitution as a form of violence and exploitation and of prostitutes as unconditional victims, who should be saved by the state. The author of the report, Alain Vidalies (PS) (2002) argued that it is a mistake to confuse trafficking and prostitution: ‘The most urgent matter is the fight against the mafia that exploit human beings for sexual, domestic and economic ends.’ He argues that it is hypocritical to focus only on prostitution, not on other forms of commercial sex. The only justification for this is to respond to concerns about public nuisance.

Within France, vigorous debate took place, artificially and unproductively polarised around victims or sex workers; abolition or prostitutes’ rights; violence or work.6 Feminists and the left were split. But despite the irreconcilable dichotomies around which the debate was organised, the central concern was what was best for prostitutes themselves. This is illustrated by the claims made by all parties that they spoke on behalf of/in the interests of/with prostitutes themselves, and that their opponents refused to give prostitutes voice and agency (UNESCO 2000, Coquart and Huet 2000, Cabiria 2000, Mathieu 2001 and Louis 2001). Whether the ideal outcome was seen as their escape from prostitution or their better living and working conditions, and access to full citizenship rights as prostitutes, this was the heart of the issue. There was never any question of penalising prostitutes, who were positioned either as victims or as workers. Nicolas Sarkozy’s domestic security bill, however, radically changes this, launching a war not on prostitution, but on prostitutes.

Even before Sarkozy had drafted his bill, mayors were beginning to respond to complaints by local residents about the presence of prostitutes in their neighbourhoods. In the summer of 2002, Françoise de Panafieu, UMP deputy for the 17th arrondissement in Paris, led a high-profile campaign against the way in which prostitution lowers the tone of her neighbourhood and upsets its upstanding citizens. There was particular concern about keeping prostitution out of the sight of children (and in particular, away from school entrances), always phrased to suggest that it is the sight of prostitutes which is a threat to children’s moral development, not the sight of the local male clients.

Mayors (on the right and the left) passed bye-laws preventing prostitution in particular residential and business areas (initially in Strasbourg, Orléans, Aix-en-Provence and Metz). As the state’s commitment to abolitionism prevents it from passing legislation aimed specifically at prostitutes, these mayors initially took pains to circumvent the restrictions by introducing traffic and parking bye-laws to drive prostitution out of certain areas. This meant that prostitutes were forced to leave well-lit busy streets and move into car parks, lay-bys and wasteland, where they work in far less safe conditions. However, with the rise of law and order discourse, in particular since the run-up to the 2002 presidential elections, an increasing number of local authorities have introduced more explicit bye-laws aimed at preventing prostitution in designated areas.
The Domestic Security Bill

The bill was presented by the government as a welcome response to a widespread feeling of insecurity which dominates public concerns. It aimed to combat types of behaviour which are causing increasing concern and ‘legitimate exasperation’ amongst French citizens (Sarkozy 2002). These types of behaviour are soliciting, exploitation of begging, aggressive begging, occupying someone else’s land and assembling in the entrance or the stairwell of blocks of flats. According to the government, clamping down on these activities will improve the quality of life and especially the feeling of security of the poorest members of society who are most likely to become the victims of crime. According to their critics, these proposals constitute an attack on the poor (Ligue des droits de l’homme 2002).

The bill provoked petitions, demonstrations and calls for action by parties of the left, trade unions and associations concerned with human rights, poverty and social justice. They accused Sarkozy of exploiting the climate of insecurity and rejected the plans to criminalise beggars, prostitutes, travellers and young people, arguing that ‘no-one chooses to be a beggar or a prostitute, to live in neighbourhoods with no facilities and no public services’ (Ligue des droits de l’Homme 2002). Claude Boucher from the Bus des femmes, a support service in Paris run by prostitutes and former prostitutes insists that many women she meets work as prostitutes in order to preserve their dignity, since neither social security benefits nor the minimum wage are enough to live on. Treating them as criminals will make their lives more dangerous, she argues: ‘This is a law against those who are excluded, against the most vulnerable’ (Délégation de l’Assemblée nationale aux droits des femmes et à l’égalité des chances entre les hommes et les femmes 2002)

Sarkozy, however, claims that the poor support a tougher stance on crime, that law and order is the main concern of the general public, and that 80% of people on the minimum wage approve of his bill. An Ipsos poll, cited by Le Figaro, demonstrated that the lower the income and education, the greater the support for the bill. Sarkozy claims that ‘it is precisely for this forgotten France that the government has tabled this bill’ (Le Monde 23.10.02) and while his opponents argue that it is in place of a social policy, Sarkozy states that ‘Creating public security is the first step in an effective social policy’ (Le Monde 23.10.02).

This paper focuses on the parts of the bill concerned with prostitution: Article 18 which, firstly, criminalises soliciting and, secondly, makes it an offence for clients to pay for sex with a particularly vulnerable person; Article 28 which permits the removal of a visitor’s permit from foreigners caught soliciting; and Article 29 which allows a foreign prostitute who brings charges against or who testifies against her pimp to remain in the country until the case has been heard, and, as a result of a government amendment during the debate in the Senate, to remain in the country permanently if the pimp or trafficker is convicted.

Criminalisation of soliciting

Soliciting becomes a major offence (un délit as opposed to une contravention). This reclassification of soliciting means that it can now incur a prison sentence (6 months in the original, 2 months as the result of a successful amendment during the Parliamentary debates) as well as a more substantial fine than previously. It also means that suspected offenders can be held in custody for up to forty-eight hours (twenty-four hours renewable once). And this is one of the main justifications for the reclassification, because it allows the police to obtain information from them during their time in custody (Fabre and Le Coeur 2002) - in other words, it will contribute to the fight against the exploitation of prostitution.

Secondly, the bill reintroduces the notion of ‘passive soliciting’, which was removed from the New Penal Code in 1994 (interestingly by a rightwing majority). Before 1994, there was a
distinction between active and passive soliciting. Active soliciting is fairly self-explanatory. Passive soliciting meant hanging around in the street in a way which was likely to encourage vice. The new Penal Code retained only the notion of active soliciting. But Sarkozy argued that it was inconvenient for the police to have to obtain evidence of active soliciting (it would be far more practical if they didn’t need any proof at all). Article 18 of his bill proposed the insertion of a new article in the Penal Code (Article 225-10-1) creating a serious offence of soliciting by any means including ‘dress or posture.’ It was the reference to ‘dress’, which caused an outcry, and it was removed by a government amendment during the Senate debate. The version that was passed by the Senate then refers to ‘a posture, even passive’ (Compte rendu analytique officiel de la séance du 14 novembre 2002).

Some newspapers argued that the introduction of passive soliciting as a major offence effectively makes street prostitution illegal (Libération, 23.10.02, Le Monde 23.10.02). It opens up opportunities for police harassment, discrimination and arbitrary decision-making. For immigrant women, there are additional implications: if found guilty of soliciting, they can have their visitor’s permit withdrawn and be expelled from the country.

Sarkozy justifies the criminalisation of passive soliciting on the grounds that it protects prostitutes, and helps the poor things to escape from the mafia networks which exploit them (Le Monde 23.10.02). Apart from being a ridiculous justification for arresting somebody, this is disingenuous, since Sarkozy knows that not all street prostitutes are mafia controlled. And it demonstrated that it is not simply prostitution which is the real issue here. It is intimately connected with the control of immigration. Much of his discourse suggests, often explicitly, that the real targets of this bill are foreign prostitutes. They are portrayed as a homogeneous group: they are all controlled by trafficking rings, are all victims of slavery, must therefore all be charged with passive soliciting, held in custody while the police obtain information about the trafficking rings and then deported, in order to rescue them from their exploiters. There is no relative autonomy or lack of autonomy here and no concern with the conditions under which foreign women enter the country and begin to work as prostitutes.

There have been many calls for measures aimed directly at trafficking rings, rather than pretending that arresting prostitutes will have any real impact on their activities. These calls have come from the Senate’s Law Commission, the Delegations for women’s rights in the Senate and the National Assembly, and opposition members of both houses. And changes have been made in response: trafficking has now been defined as an offence and penalties set (this was going to have to be done anyway, because of international and European requirements); and when Sarkozy addressed the National Assembly on the first day of the debate on his bill, he announced that the means for combating trafficking rings were to be doubled.

Article 29 states that temporary permission to remain in the country can be given to a foreigner who brings charges or gives evidence against a pimp. A government amendment passed by the Senate extends this to permanent permission when it leads to a conviction. But critics ask why it should be conditional on testimony, when the person concerned is recognised as a victim of trafficking. There are still contradictions here, which derive from the different objectives of the people concerned. Sarkozy wants to get foreign prostitutes out of the country. From his preliminary statements in July 2002 (LOPSI), Sarkozy made it clear that the targets of his prostitution policy were migrant women. But he has been forced to add some less punitive measures and to increase the possibilities for reintegration into French society for some victims of trafficking under certain conditions.
The construction of prostitutes

The public framing of prostitution as a form of violence towards women was the result of action by women’s policy agencies who, under pressure from feminist activists and in conjunction with a powerful abolitionist lobby, were able to influence the policy agenda and policy debates. This framing constructs prostitutes as women, and in the majority of cases they are. The more striking gendered aspect of prostitution, however, is the fact that pimps, traffickers and clients are overwhelmingly men. Sarkozy, however, has reconstructed prostitutes not as women victims of violence, but as one of a number of groups that threaten public safety.

In much of the current debate, prostitutes are divided into ‘good’ French prostitutes, who do not disturb the peace and ‘bad’ foreign prostitutes who undercut prices, offer unprotected sex, and work indiscreetly upsetting local residents. Sarkozy tries to combine a construction of the prostitute as victim, which is currently popular and emotive, with the prostitute as criminal, who must be charged and expelled from the country (he focuses almost exclusively on foreign prostitutes).

He talks about deportation as though he were doing them a favour – sending them home where they can resume their lives without degrading themselves: ‘It’s no big deal to send home someone who is the victim of violence inflicted by pimps in Paris or Deauville! Don’t tell me that this is not doing them a good turn! Who would wish the situation in which these girls find themselves to persist? […] It seems wise to escort girls who do not speak our language and who have just arrived in our country back to their country of origin in order to release them from the grasp of their pimps. It is a humanitarian duty!’ (Sarkozy, Compte rendu analytique officiel de la séance du 14 novembre 2002, http://www.senat.fr/).

It is true that prostitutes have gained subjecthood and agency in Sarkozy’s bill (something which was denied to them by much of the abolitionist discourse), but in a way which makes them responsible for their bad ways, for which they must pay – doubly if they are foreign. All prostitution is collapsed into trafficking, making it difficult to propose appropriate policy solutions.

In stark contrast with Dinah Derycke just two years earlier, Janine Rozier (2002), author of the report on the bill by the Senate’s Delegation for women’s rights, argues that the bill is in keeping with the abolitionist position which is the basis of France’s international commitments. Part of the reason why she can do this is the malleability of the term ‘abolition’ which can mean either the eradication of prostitution or the abolition of regulations targeted at prostitutes. Derycke favoured the latter, although with the eventual disappearance of prostitution as a distant objective. Part of her understanding of abolitionism was that all prostitutes are by definition victims of a system of prostitution and must be helped to escape from it. This precludes the criminalisation of prostitutes. Rozier, on the other hand, stresses that ‘increasing the penalties for people who enter prostitution is justified by the dual need to stop networks of pimps and to ensure public order.’

Criminalising clients

The criminalisation of passive soliciting must surely draw attention to the fact that prostitutes are held solely responsible for the transaction with the client, who remains, in the eyes of the law, entirely innocent. Until March 2002, clients were completely absent from legislation on prostitution. Since then, they have been committing an offence if the prostitute is under 18 (Loi no. 2002-305 du 4 mars 2002, Legifrance, www.legifrance.gouv.fr). Sarkozy extends this provision to include clients of prostitutes who are particularly vulnerable, and he includes in this group those who are pregnant or have a mental or physical illness or disability which is clear to
the client (and I think there are some difficult issues to unravel here, too). With these exceptions, then, standing on the street waiting for someone to pay them in exchange for sex will become a serious offence. Stopping on the street and paying for sex, however, is a civil liberty. So who is disturbing the peace and upsetting the local residents? Why the prostitute and not the client? Is he merely an innocent victim of her active – or passive – temptations? And what does this tell us about men’s responsibility for their sexual behaviour? Does it re legitimise the defence of the rapist that ‘she was asking for it’, especially in the bill’s explicit inclusion of the way the prostitute dresses as a sign of her responsibility for the transaction?

An amendment tabled by three Socialist deputies proposing either to fine clients of prostitution or to offer them a course to make them aware of their responsibility for their actions was rejected by the National Assembly. Sarkozy said that we should wait and see what happens as a result of the criminalisation of clients of underage and vulnerable prostitutes (1ère séance du mardi 21 janvier 2003). There were also various calls on the left for information campaigns, education, and awareness-raising about the effects of prostitution (eg. Ségolène Royal, Martine Lignières-Cassou, 1ère séance du mardi 21 janvier 2003), but none of this found its way into the bill.

Some clients of prostitution have already been charged with soliciting and sexual exhibitionism, although these cases are rare and convictions even more so. It is interesting to note that middle class and professional men are reported to have moved away from street prostitution, the only form of prostitution affected by the new legislation, to other forms of commercial sex (Welzer-Lang 2001) where they will not be affected by the possibility of prosecution for soliciting or sexual exhibitionism, or for using underage or vulnerable prostitutes, nor by any future attempts to criminalise clients directly.

Conclusion
Prostitutes do not seem to share the right to security that Sarkozy is so attached to (http://www.premier-ministre.gouv.fr, 24 October 2002). Despite his repeated assertions that this was a means of assuring the security of the poorest members of society who are, he argued, the most frequent victims of crime, it in fact creates new groups of criminals which have in common poverty and/or social exclusion. The left have declared it ‘a war on the poor, not on poverty.’ Criminalising prostitutes without doing anything to remove the underlying causes of prostitution (for example, poverty, systematic gender segregation and discrimination in the labour market, systemic male domination of women, and widely accepted beliefs about men’s natural sexual urges) will make prostitutes’ living and working conditions even more dangerous and insecure. They will be forced to work in less safe areas; they will be even more reluctant to seek police help even when they are in serious physical danger; they will be inadequately protected from violent pimps; and foreign prostitutes will be at greater risk of deportation. The reintroduction of passive soliciting and its upgrading from minor to serious offence increases the likelihood of police focusing on women from particular ethnic groups.

International and EU-driven concern with reducing trafficking has exerted a growing influence on the way in which prostitution is perceived as a political issue, but there has been strong pressure from the influential abolitionist lobby to resist the trend towards focusing on trafficking and to try to maintain focus on prostitution itself. They draw on the 1949 UN Convention, which portrays prostitution and trafficking as inextricably linked, trafficking being an ‘accompanying evil’ of prostitution, not a discrete issue that can be addressed by separate measures. But this has not prevented an elision of ‘prostitution’ and ‘the prostitution of foreign women’, perceived as a homogeneous group, exploited by evil pimps, and both trafficked and forced. This has been ardently rejected by groups such as Cabiria, which claims that the portrayal of migrant women in
prostitution as victims is vastly exaggerated and grossly misleading, and that this removes their autonomy and agency, and obscures the real problems they experience which are associated with the social stigma attached to prostitution, and with their lack of access to social and health care and to full citizenship rights. On the other hand, however, Cabiria (http://perso.wanadoo.fr/cabiria/ra2000introeng) stresses the autonomy and rational decision making of third world women migrating to western industrialised nations to such an extent that the possibility of any form of manipulation, oppression or abuse appears to be excluded.

Sarkozy did not adopt a fully coherent position on prostitution; this is not what he set out to do. Instead, he aimed to satisfy voters concerned about the visible signs of prostitution that cause them anxiety (Sarkozy 2002). He intended to clean up the streets. But in so doing, he has transformed the terms of the debate and redefined street prostitutes not as victims, but as criminals. The prostitution debate is now framed in terms of public nuisance and law and order, and is closely entwined with the control of immigration. It creates a narrow view of prostitution as taking place only on the streets, thus exonerating middle class men who have become consumers of other forms of commercial sex, rather than the clients of prostitution who, although not targeted explicitly by this law, have finally been recognised in public debate as participants in prostitution, in contrast to their somewhat surreal invisibility until now. ‘Independent’, ‘traditional’, ‘French’ prostitutes have also to a large extent survived the worst effects of the law, with reassurances from the ministerial office that it was never intended to affect them. The targets, then, are those who, paradoxically, are more likely to be perceived as victims than any other women in prostitution: migrant women who, in the government’s eyes, if not in reality, have all been trafficked and are all being exploited, often viciously, by foreign pumps.

During the parliamentary debates, some of the measures from the modern slavery bill were incorporated into amendments to the bill in order to remove some of the harshest treatment of the victims of trafficking, but what the debates reveal is the continued inability to meet both the short-term and long term needs and interests of the diverse women who are currently working in prostitution in France.

References


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1 This paper is a revised and updated version of an article which appeared in Modern and Contemporary France, vol. 11, no. 2, June 2003.
2 Foreign prostitutes are estimated by the Office central pour la répression des trafics d’êtres humains, OCRETH, to account for two thirds of the 15-20 000 prostitutes currently working in France (Le Monde 11.07.02).
3 Such as the additional protocol to the Convention on Children’s Rights on the sale and prostitution of children and on child pornography, passed by the UN on 25 May 2000 and signed by 69 states, including all the member states of the EU, and the Convention on transnational organised crime with the additional protocol on trafficking, negotiated in Vienna and signed in December 2000 in Palermo.
4 The Netherlands was the first country to recognise prostitution as sex work (in 1999), making the distinction between free and forced prostitution. See Outshoorn (2000).
The UN Declaration on the Elimination of Violence towards Women (1993); the Beijing Platform for Action (1995); the Council of Europe Recommendation (No. 1325, 23 April 1997) on the traffic in women and forced prostitution in Council member states; and the European Parliament Resolution of the 19 May 2000 all refer to ‘forced’ prostitution, thus implying that there can be a voluntary kind. The report by the International Labour Office (Lim 1998) further reinforced the notion that voluntary prostitution should be considered a legitimate economic activity.

For abolitionist arguments see, for example Coquart and Huet (2000); UNESCO (2000); Nor (2001). For prostitutes’ rights arguments see Cabiria (2000); Mathieu (2001); Boucher (2001).

For example, Derycke (2000: 26) denied all agency to prostitutes when she wrote, ‘Leaving prostitution is an aspiration shared by all prostitutes at one time or another, whatever they may say’ (my emphasis).

About thirty parties and associations signed a call for opposition to this ‘war on the poor’. These included the CGT, ATTAC, CADAC, CNDF, LCR, LDH, MRAP, PCF and the PS. They stated that ‘This bill instigates a Republic where poverty is a crime (http://france.attac.org/ consulted 22 October 2002). See also President of the Ligue des droits de l’Homme, Michel Tubiana, in Le Monde 23.10.02.