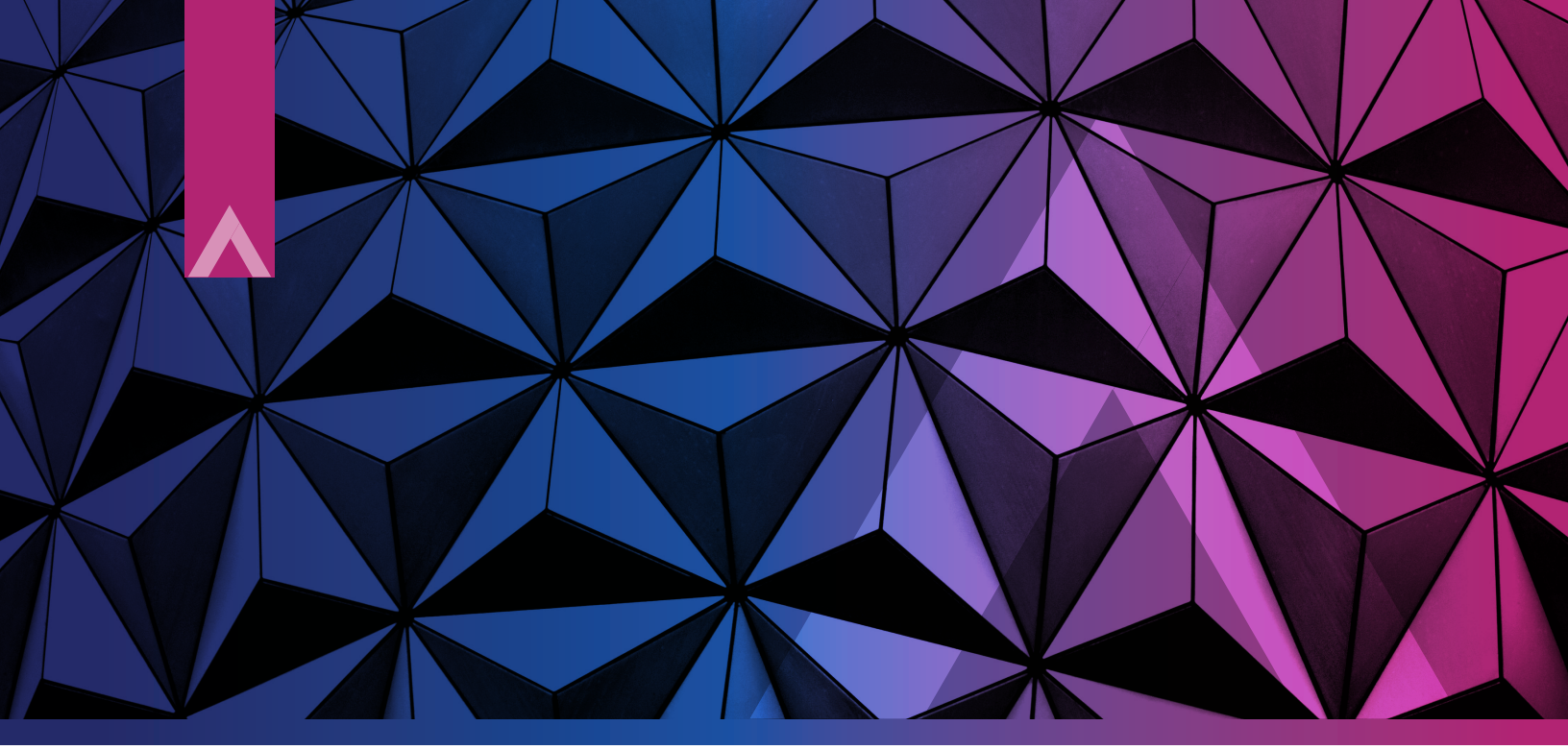

Is “Sex Work” Actually Work?

Human Dignity, Liberty, and Prostitution Policy in Canada

Renze Nauta

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cardus.ca

𝕏@cardusca

Head Office: 1 Balfour Drive, Hamilton, ON L9C 7A5

info@cardus.ca

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About the Author



RENZE NAUTA is director of the Work and Economics Program at Cardus. Before joining Cardus, Renze was policy director for two federal Leaders of the Opposition and held various roles in the Prime Minister's Office. He holds degrees in economics and philosophy. His writing has appeared in the *Globe and Mail*, the *National Post*, *The Hub*, *Policy Options*, the *Financial Post*, and other publications.

About Cardus Work and Economics

Cardus Work and Economics is committed to the renewal of an economic architecture that supports a wide array of individuals, communities, and the common good.

Key Points

- The Supreme Court of Canada recently deferred a decision on whether Canada's prostitution law violates the *Charter* right to liberty, making this a timely and urgent issue.
- The Canadian debate on prostitution has been defined largely by two streams of feminism.
    - Radical feminists tend to support the criminalization of prostitution on the basis that it commodifies women and entrenches patriarchal systems of oppression. Liberal feminists tend to support decriminalization on the basis that women need more autonomy, not less.
    - A third stream of feminism, known as sex-realist feminism, can contribute new insights to the prostitution debate by emphasizing the interdependent nature of human beings. Our relationality means that we must always encounter each other *as persons*, never merely as products or as means to our own gratification.
- Empirical studies expose the reality of prostitution in Canada.
    - Over 80 percent of prostituted persons are women. As many as 99 percent of buyers are men.
    - Over two-thirds of participants in a federal program for prostituted persons report being coerced into prostitution.
    - Over one-third of prostituted women in Vancouver are Indigenous, according to one study.
    - Among sex workers in Vancouver, 40 percent reported injection drug use and 69 percent reported non-injection drug use.
- Prostitution is incompatible with a rightly ordered understanding of human dignity, work, and liberty.
    - Prostitution violates human dignity by treating a person as a means to another's end.
    - It is not work, because it undermines human flourishing and the common good.
    - Nor is it compatible with economic liberty, because it undermines the dignity that is the very basis for freedom itself.
- Policy-makers should:
    - Retain the Nordic model: Criminalize the purchase of sex, but make prostituted persons immune from prosecution.
    - Stop using euphemisms such as "sex work." Instead, use language that reflects the violation of human dignity inherent in prostitution.
    - Provide additional supports for women and men to avoid or exit prostitution.

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Introduction

Every person has inherent human dignity and the right to have this dignity respected and upheld by others. They retain this inherent dignity regardless of their state in life, what they have done, or what has been done to them. Yet, too often, this dignity is obscured or violated by individuals and systems that prey on the most vulnerable in our society. Nowhere is this clearer than in systems of prostitution wherein third parties and purchasers of sex prey on vulnerable (mostly) women for their own profit or gratification.

The Supreme Court of Canada's 2025 ruling in *R. v. Kloubakov* briefly considered whether the *Canadian Charter of Rights and Freedoms* contains a right to liberty for prostitution. The Court elected not to decide the issue, saying that it would wait until lower courts had the opportunity to consider it. This makes a consideration of the nature of economic liberty as it relates to prostitution a timely, if not urgent, issue.

This paper begins with key principles to guide our thinking on work and economics—namely human dignity, the dignity of work, and economic liberty. Then, following a brief overview of Canada's prostitution laws, it analyzes two schools of thought, radical feminism and liberal feminism, that have fundamentally shaped the current public debate on prostitution, as well as a new strand of feminism, which this paper will refer to as sex-realist feminism, that has more recently influenced thinking on this topic. Finally, the paper suggests a way forward for thinking about Canadian prostitution policy.

The paper does not seek to consider the issue from a legal perspective *per se*, as it is a normative investigation into the nature of dignity, work, and liberty and whether they are consistent with prostitution. Nor does this paper seek to engage every phenomenon related to prostitution. There is no doubt significant overlap with other issues, such as pornography and human trafficking, but this paper focuses squarely on those activities that are contemplated by the *Criminal Code*'s prohibition on the exchange of sex for money.

The paper will usually discuss prostitution as it relates to female sellers of sex and male buyers, because they constitute the vast majority of the population involved.[1] This is not meant to negate or to diminish the existence of male prostitution or to deny nuances that exist, but simply to reflect the reality that the overwhelming experience of prostitution is men purchasing sex from women. The experiences of men are a crucial factor, but this paper engages this only incidentally in considering policy. This paper does not claim to speak to every angle of prostitution, but to contribute in a meaningful way to some of the main issues in the current debate.

The paper concludes that prostitution is incompatible with a rightly ordered understanding of human dignity, work, and economic liberty. It therefore recommends that Canada retain its current prostitution laws, while providing additional support for those seeking to leave

1 *Canadian Alliance for Sex Work Law Reform v. Attorney General*, at para 219. Complete citations are provided for all sources at the end of this report.

prostitution. It also recommends a move away from the terminology of "sex work" toward language that acknowledges the fundamental dignity of those who are involved in prostitution.[2]

Guiding Principles

All public policy is based on principles and values of some kind, even if policymakers do not always acknowledge them explicitly. In this section, we outline the principles, drawn in part from previous Cardus research, that underlie this paper's analysis. These principles are as follows:

1. Every person has a fundamental dignity inherent to their humanity.
2. Work has dignity because through it the worker contributes to the common good.
3. Economic liberty is an essential part of human life that allows people to pursue their flourishing.

Human Dignity

The second and third principles rest in some way on the first, which is the most basic of them all. The principle of human dignity involves the recognition in ourselves and in each other of that which makes us human and thus members of a shared humanity. Each human person has a dignity that gives them inherent worth by simple virtue of their humanity, independent of their abilities or disabilities, or their utility to others. Human dignity is an objective value that does not depend on the subjective estimation of that person's worth by anyone else. It is the mere fact that they are human that confers upon them this worth.[3]

The concept has ancient origins and modern applications. For Aristotle, it was rationality, recognized in each other, that gave humanity a special place above the other animals, and later philosophers developed this into the concept of dignity we have today. For Christians, the fact that human beings were created "in the image of God" gives them their inherent and infinite dignity.[4] Secular authorities have adopted the logic of dignity, as well. The *Universal Declaration of Human Rights* states that "recognition of the inherent dignity . . . of all members of the human family is the foundation of freedom, justice, and peace in the world."[5] The idea is also implicit in the *Canadian Charter of Rights and Freedoms* through its conferral of fundamental freedoms, legal

2 This paper argues that the terms "sex work" and "sexual services" are inappropriate for describing the phenomenon of prostitution and will propose different terminology. Nevertheless, the paper employs these terms in contexts describing laws, schools of thought, or references that themselves use it. It does not put the terms in quotation marks, except when discussing the terms themselves. This does not constitute an endorsement of the terms but an attempt to be respectful to the language of the authors whose work is described in this paper.

3 For a more complete exposition of the principle of human dignity, see Neil and Bennett, "Who Are You?"

4 Fernandez, *Dignitas infinita*.

5 United Nations General Assembly, *Universal Declaration of Human Rights*.

rights, and equality rights to "everyone" and "every individual" regardless of their background, their characteristics, or subjective value.[6]

Moreover, every human person has a right to be treated in a way that is consistent with their dignity. Unfortunately, too often, our treatment of one another does not live up to this ideal. Hence we are able to speak of living conditions that are "not dignified," by which we mean that conditions are not in conformity with inherent dignity.[7] It is therefore essential to distinguish between inherent human dignity (or "ontological dignity") and "social dignity" or "moral dignity" that describe the ways in which our choices, systems, and living conditions measure up to that more fundamental human dignity.[8]

There are certain ethical principles that flow from human dignity. The most obvious is the golden rule, which is evident in many religious traditions throughout the world: the idea that we should treat others as we would have them treat us.[9] Immanuel Kant famously proposed his "categorical imperative"—an alternative to the golden rule also based on the dignity of the human person, with the practical implication that we should never treat another person merely as a means to an end, but always as an end in themselves.[10] "A human being," says Kant, "is not a thing, hence not something that can be used *merely* as a means, but must in all his actions always be considered as an end in itself."[11] The idea that human beings are not things, but worthy of respect in and of themselves, is crucial for the foundation of ethics in general. Dignity is also a fundamental basis for all other ethical and moral principles, such as respect, equality, and justice. Recognizing our own humanity in the person of another gives us a basis for mutual respect and recognition of a fundamental equality of worth.

Dignity of Work and the Common Good

There are many ways in which we manifest our human dignity. One of the most important is through our work.[12]

The true meaning of work is too often obscured by how it is described in everyday discourse. When we talk about "work," we often mean a job that we may or may not feel provides us much more than just a paycheque. We may see it as labour for which we are compensated and that we use to support other, more fulfilling aspects of our lives, such as our family life and leisure time.

This is an impoverished view of work, however. There is no question that a positive aspect of work is that it can support family, leisure, and other important components of life. But this view

6 *Canadian Charter of Rights and Freedoms*, c 11. See, for example, sections 2, 7, and 15.

7 Fernandez, *Dignitas infinita*, at para 8.

8 Fernandez, *Dignitas infinita*, at para 7–8.

9 Matthew 7:12.

10 Kant, *Groundwork of the Metaphysics of Morals*, Ak 4:428, 41.

11 Kant, *Groundwork of the Metaphysics of Morals*, Ak 4:429, 41–42.

12 For a more expansive discussion of the dignity of work, see Dijkema and Gunderson, "Work Is About More than Money."

diminishes the objective value of work: that is, the ways in which work itself provides meaning and purpose to the human person doing it and to the community benefiting from it.

The idea that work has an objective dignity of its own goes back millennia. For Plato, work had an intimate connection with justice, as each person doing the work to which they are best suited was necessary for the proper functioning of the city. Work was less about the money gained from employment and more about what the work itself contributed to the good of society. In Plato's view, the work of each person is just when each is doing the work that is best suited to them in a way that contributes to the community as a whole.[13] This idea is echoed in modern thinking about work, as well. For example, Jacques Maritain, a key contributor to the *Universal Declaration of Human Rights*, described the "common work" of a society, connecting it to the common good. In Maritain's description, each person's work participates in building up the good of the entire community. Each person's work, in other words, is related to the common good as a part to the whole.[14]

There is also a rich tradition that has highlighted the role of work in developing a person's character and virtue. British humanist economist E.F. Schumacher, for example, argued that the communal nature of work restrains a person's ego by bringing them to participate in a "common task" with others.[15] Moreover, a properly ordered understanding of work, for Schumacher, is one that emphasizes a person's productive capacity—that is, what their work can do for others—not how much consumption their work affords them.

These schools of thought offer a much grander perspective on work. They do not view work as a necessary evil or as drudgery to be avoided, or even something that is for the worker alone. Rather, work is understood to be a profound activity in which we cooperate with each other, each in our own way, to build a common human project. Work is not an isolated activity, but rather a communal one. This is what gives work its fundamental dignity. Some thinkers have taken this idea even further to suggest, as Simone Weil did, that there is a "spirituality of work" and that the dignity of work is grounded in its connecting human beings to a higher calling.[16]

That work has a higher meaning finds support in data, as well. Research has repeatedly shown that people who have access to work have better physical and mental health. They are less likely to abuse drugs and alcohol or commit self-harm. Their marriages and family relationships tend to be stronger, as well. Research also shows that life satisfaction decreases when someone experiences unemployment, even when the research controls for income, confirming that the effects of unemployment are more than just financial.[17]

This is not surprising when we consider the perspective that work is an important way in which we are connected to the common good. And this idea is confirmed in our personal experiences

13 Hanson, *Philosophies of Work in the Platonic Tradition*. It should be acknowledged that Plato had problematic views about slavery, which raise questions about his view of justice. The point here is simply to draw out Plato's view that the value of work lies not in remuneration but in how it serves the community.

14 Maritain, *The Person and the Common Good*, 65.

15 Schumacher, *Small is Beautiful*.

16 Weil, *The Need for Roots*, 94.

17 See references cited in Dijkema and Gunderson, "Work Is About More than Money."

as well. We are most satisfied in our work when we feel that we are making a positive difference. Insofar as we aren't, or insofar as we can't see the difference we are making, we become less satisfied.[18] This last point highlights the fact that our perception of work in the real world does not always live up to the ideal. Often, we experience work as drudgery or toil and disconnected from purpose and meaning. But this does not negate the fundamental idea that work, properly speaking, should be ordered toward the common good of the community.

Of course, there may be differences of opinion about what constitutes the common good and what kinds of activities may or may not contribute to it. Certainly, there is room for disagreement on this and societies should exercise prudence in allowing a degree of pluralism in our conceptions of the common good. But the idea of the common good—that our society should be organized in such a way as to support the flourishing of each member of society—is crucial. Moreover, societies and governments can and should set some basic boundaries for how we conceive of the common good. At a minimum, gross violations of human dignity must fall outside these boundaries, because they actively undermine the flourishing of at least some members of society. An activity that so violates the dignity of another can therefore never be called work in the proper sense.

Ultimately, whether we call it the "common good," or a "common work" or a "common task," the idea that our individual work should be ordered to the good of the whole is well-supported not just in theory, but in data and experience as well. Through work, we place our gifts—our time and our talents—at the service of others who participate with us in our shared humanity. It is this communal aspect of work that gives it its dignity.

Economic Liberty and Human Flourishing

If work expresses our dignity in action, economic liberty concerns the conditions under which this action may be taken.

Economic liberty flows out of the more fundamental principle of human dignity. The basic idea is that people should be as free to pursue their own flourishing as possible, within some parameters that safeguard people, especially the poor and disadvantaged, against abuses. While this principle may enjoy less unanimity among the thinkers of the past than the other principles considered in this section, it remains a widely accepted idea in Western liberal societies.

There are many reasons why we should prefer a system of economic liberty, but the main one is that it follows directly from the inherent human dignity that we all hold as human beings. It is part of our dignity that we are born with the ability to choose. This freedom is not unlimited—we cannot exercise it in the early years of our lives and, even as adults, we constantly experience limits in our choices—but it is no less real as a result. Despite constraints, we retain a freedom in any given case to choose to do, or not to do, any given action.

Moreover, as discussed above, our dignity contains a communal aspect. Thus, our freedom, flowing from our dignity, contains a communal aspect as well. One of the constraints on our

18 This idea is so intuitive that it has been adopted by thinkers as diverse as Adam Smith and Karl Marx.

freedom is that the free choices of others affect us and thus condition our own choices. This fact leads to an important qualification on our freedom: because our choices affect others, we have a commensurate duty to use our freedoms with care and a sense of responsibility for others. In other words, we have a duty to exercise our rights with a view of the common good.

Economic liberty is one kind of this freedom and as such requires the same care for the common good. Article 22 of the *Universal Declaration of Human Rights* declares that "everyone . . . is entitled to realization . . . of the *economic*, social and cultural rights indispensable for his dignity and the free development of his personality."[19]

There are many practical reasons for liberty as well. For one, a system of economic freedom can lead to a more efficient use of resources than other economic systems, because individual persons are better equipped to know their own needs and wants as consumers than any central authority ever could.[20] Producers (including workers) are similarly better positioned to understand their productive capacity (or talents) and their limits than government officials. But even this is not merely a practical consideration. In a world of scarce resources, there is a moral imperative to steward these resources carefully so as to maximize the potential well-being of those human beings the economy serves.

However, it is crucial to notice that economic liberty does not exist for its own sake. We are not free just so that we may be free. Rather, our freedom serves a higher purpose, which is our flourishing as human beings. Therefore, economic liberty, when properly ordered, serves to promote our well-being and, ultimately, the common good. For a company, this means that it must use its liberty to steward its resources in a way that serves its shareholders, workers, and customers. For a worker, this means that they must seek to put their talents toward a job that in some way contributes to the good society.

An important implication of this conception of economic liberty is that liberty must never undermine human dignity. Because one flows from the other, liberty is always subservient to human dignity. No action that undermines human dignity can be justified on the basis that the action is free. To do so would be to contradict the very basis for freedom itself and thus collapse the whole structure of rights and freedoms.

Brief History of Canada's Prostitution Laws

Canada's laws on prostitution underwent a major transformation twelve years ago. Prior to 2014, the act of prostitution itself was not illegal, but many of the activities that surround prostitution were. For example, the *Criminal Code* prohibited solicitation (the offence of communication for the purpose of prostitution), managing a brothel (operating a bawdy house), and profiting off prostitution (living off the avails of prostitution), but remained silent on the act of prostitution itself. The law was found to be unconstitutional by the Supreme Court of Canada in the 2013

19 United Nations General Assembly, *Universal Declaration of Human Rights*. Emphasis added.

20 Hayek, "The Use of Knowledge in Society."

Bedford decision.[21] In response, Parliament introduced and passed the *Protection of Communities and Exploited Persons Act* (PCEPA) in 2014, amending the *Criminal Code* to criminalize, for the first time ever in Canadian law, the purchase of sex for money.[22]

In doing so, Parliament implemented a version of the so-called Nordic model of prostitution laws that were developed initially in Sweden, then adopted by several other countries, including Norway, Iceland, Ireland, France, and Israel.[23] Put simply, this model criminalizes the demand side of the market for prostitution (i.e. johns), while de-criminalizing part of the supply side (i.e. prostituted women themselves), based on the idea that most prostituted women are victims, not beneficiaries, of this activity. In the Canadian model, all exchange of sexual services for money is criminal, but those who sell their own sexual services are immune from prosecution. The law targets instead those who purchase sex and those who profit off the sexual services of others (i.e. pimps).

This law has since been challenged in the courts and has so far withstood these challenges. Most recently, the Supreme Court of Canada released a decision in 2025 on an appeal involving two men, Mikhail Kloubakov and Hicham Moustaine, who were drivers of women in a prostitution ring.[24] Both men had been convicted under PCEPA for receiving a material benefit from the sexual services of others (contrary to section 286.2 of the *Criminal Code*) and from procuring others to provide sexual services (contrary to section 286.3 of the *Criminal Code*). On appeal, the lawyers for the men argued that, among other things, the prohibition on purchasing sexual services restricted a prostituted person's ability to earn a living from their labour.

The Supreme Court unanimously upheld the constitutionality of the two PCEPA provisions with which the men had been charged on the narrow grounds that they do not infringe a prostituted person's right to security of the person under section 7 of the *Canadian Charter of Rights and Freedoms*. However, the Court briefly considered whether the law infringes on the liberty rights of Canadians to exchange sex. The Court ultimately decided not to answer whether PCEPA violates the right to liberty under the *Charter*, deferring a decision on that to future appeals.

Given this ruling, it is both important and urgent to clarify how questions of economic liberty relate to prostitution. As outlined above, the nature of economic liberty necessarily entails certain notions of human dignity and the nature of work. It is therefore essential to examine how these principles relate specifically to prostitution. The next section does so through the investigation of various schools of thought on prostitution.

Three Feminist Accounts of Dignity, Work, and Liberty

The guiding principles outlined above provide a clear set of values against which we can judge Canada's prostitution laws and the current policy dialogue on this issue. However, principles

21 *Canada (Attorney General) v. Bedford*.

22 Parliament of Canada, Bill C-36.

23 *Canadian Alliance for Sex Work Law Reform v. Canada (Attorney General)*, at para 475.

24 *R. v. Kloubakov*.

often become more complicated when applied to the real world. The development of the debate on prostitution over the last several decades underscores this.

While there are several philosophical traditions that have contributed to this debate, the debate in Canada has been especially defined by feminist thought. This is hardly surprising for an issue where the divide is so stark between buyers who are overwhelmingly male and sellers who are overwhelmingly female. Studies have shown that women constitute well over 80 percent of prostituted people.[25] On the demand side, the vast majority of buyers are men. In one survey of Canadian sex buyers, 99 percent of respondents were men.[26] Prostitution in Canada is thus overwhelmingly a phenomenon of men purchasing sex from women.

Yet feminists do not approach the issue uniformly. Different schools of feminist thought come to different perspectives on prostitution, but two of them—radical feminism and liberal feminism—are especially representative of the debate in Canada. However, in recent years, a new wave of feminism, sometimes called sex-realist feminism, has emerged that has brought new perspectives to light.

This section examines how each of these three schools of feminist thought approach the issue of prostitution. It does so through the lens of three seminal thinkers: Carole Pateman to represent radical feminism, Martha Nussbaum to represent liberal feminism, and Louise Perry to represent sex-realist feminism. The analysis that follows compares how each of these traditions interprets the principles above.

Radical Feminism and Prostitution

The radical feminist perspective on prostitution is illustrated in the life story of Christine Stark. She was a self-described "survivor of prostitution and incest," who was introduced to prostitution in childhood when her own father and other male relatives "bred" her into that life.[27] They taught her from a young age how to strip and pose in sexually provocative ways. Her father made her strip, raped her, and filmed these horrific acts.

Stark tells us that her father's teaching her how to strip humiliated her and caused deep shame in her. Stripping led to her abuse in pornography and prostitution. Her "handlers" used beatings and sexual violence to control the women under their influence.[28]

Stark's story highlights many of the features that radical feminists point to as inherent to prostitution: violence, male domination of women, and forced participation in an oppressive system. Her experiences are echoed in other radical feminist accounts that point out that women who enter prostitution often have early sexual experiences or even rape during childhood. They

25 Kennedy, "The Silent Majority." See also a review by the Government of Canada of a program for prostituted persons, in which 94 percent of clients were women or girls (Badets and Wichmann, *A Review of the Measures*).

26 Atchison, "Report of the Preliminary Findings for Johns' Voice."

27 Stark, "Stripping as a System of Prostitution," 41–42.

28 Stark, "Stripping as a System of Prostitution," 42.

have often suffered physical abuse, frequently at the hands of male power figures, such as fathers or other male relatives.[29]

The term "radical feminism" comes from the Latin word *radix*, meaning "root." The radical feminists are thus interested in addressing what they see as the root causes of inequalities between women and men. Radical feminists do not see the abuses described by Stark as incidental to prostitution, but inherent in it. They are therefore opposed to arguments by liberal feminists that prostitution has any legitimate basis. They reject the view that abuse merely accompanies prostitution and that prostitution can be isolated, even conceptually, from exploitation—because it is itself exploitation of women.

This view is reflected in British theorist Carole Pateman's seminal text outlining a radical feminist position on prostitution. She argues that the fundamental problem with prostitution is that it treats not just sex but women themselves as commodities and reaffirms the male dominance of a patriarchal society. Central to her thinking is the idea that the body is an integral part of a person—the "embodiment of the self," as she calls it—not a thing that can be separated from someone's personhood.[30] Therefore, buying access to someone's body is not simply a matter of buying sex from someone, but buying their very selves. For Pateman, procuring prostitution from a woman is renting her very personhood.

Pateman sees prostitution as an extension of a fundamental problem of sexual relations between men and women. She argues that in our society, men "affirm their manhood" through sexual mastery of women—not just of a woman's body, but of the woman as such.[31] Thus, when a woman enters prostitution, she puts her very self, not just her body, on the market—and the man rents access to *her*.

The implications of this view are profound. It means that the personhood of the woman is fully instrumentalized: She is turned into a thing that can be bought and sold like property.[32] To legitimate prostitution as an occupation is thus to legitimate an institution specifically designed to commodify a woman's self for the satisfaction of someone else's manhood. Prostitution is therefore inherently exploitative of women and must never be condoned.

Human Dignity

Although Pateman does not use the word "dignity," the concept is apparent throughout her essay. For her, the dignity of the person is tightly bound up with the inseparability of the body from the self. As she states, when a man buys sex from a woman, he doesn't desire to purchase some "disembodied services"; he desires rather to purchase "a *woman* for a given period."[33] Thus, the terminology of "purchasing sexual services" is a euphemism for what is really entailed by the act of prostitution: the purchase of a woman's very self.

29 Carter and Giobbe, "Duet."

30 Pateman, "What's Wrong with Prostitution?" 204.

31 Pateman, "What's Wrong with Prostitution?" 207.

32 Pateman, "What's Wrong with Prostitution?" 204.

33 Pateman, "What's Wrong with Prostitution?" 207, emphasis in the original.

The unbreakable bond between the self and the body means that the woman must alienate *herself* from *herself* when she engages in prostitution with a man. If he is to master her, then she no longer truly owns herself during that period of time. As other anti-prostitution feminists put it, "She does not exist so that he can." They argue that this phenomenon can be seen in women who have to dissociate from the experience just to get through it: the act of prostitution "necessitates that a woman alienate her mind from her body."[34]

Related to this, there is a strong undercurrent in Pateman of the Kantian restriction on using other people solely as a means to an end. She explicitly invokes Kant's views on prostitution as turning a person into a thing for the purpose of someone else's pleasure. In the radical feminist view, the woman is completely subsumed under the man's quest for sexual satisfaction and mastery. Stark puts it frankly: the stripping that led to her prostitution "made my body not mine; it made it his."[35]

While Pateman does not use the term "dignity," it does appear in other radical feminist literature, notably in Stark's account of her experience with prostitution.[36] In that account, she associates dignity with the related concept of worth, arguing that women must escape prostitution to have any semblance of either.

Dignity of Work

This account of dignity leads to a particular perspective on work. Pateman's analysis does not provide a theory of work as such, nor does she engage much in a discussion of the terminology of "sex work." In fact, the one significant mention of work or workers is a reference to Karl Marx's comparison of workers and prostitutes. But Marx's reference is not meant to elevate prostitutes to the dignity of workers, but rather to highlight that workers in a capitalist system are more akin to prostitutes, being taken advantage of and having their labour alienated from them.

Other radical feminists ridicule the idea that prostitution could be a "career choice" or a "job."[37] But even in Pateman, there are important references to concepts related to work. Most important is the concept of slavery. Slavery is the ownership of one person by another and the slave trade is the buying and selling of persons. As described above, Pateman's view of the human person involves an intimate connection between the body and the self and that selling one's body inherently means selling one's personhood. She argues, therefore, that prostitution does not resemble a market in which goods and services are traded so much as a slave market in which human beings and their bodies are bought and sold.

Here we can discern in Pateman an implicit theory of work and how it relates to prostitution. Her comparison of prostitution and slavery clearly removes any sense that prostitution has dignity that we associate with work properly understood. Although slavery certainly involves labour, it does not carry with it the dignity of work. We know this even from our language. We

34 Carter and Giobbe, "Duet," 46.

35 Stark, "Stripping as a System of Prostitution," 42.

36 Stark, "Stripping as a System of Prostitution," 47.

37 Stark, "Stripping as a System of Prostitution," 45; Carter and Giobbe, "Duet," 52.

never speak of "slave work," but only of "slave labour." In the true sense of work, the worker puts their talents at the service of others, and so gains meaning and purpose in contributing to the common good. The dignity of work involves the realization of the humanity of the person doing it. But the humanity of the slave is not realized in their labour. Rather, their humanity is owned by the slave owner.

As with slavery, so with prostitution. No humanity, meaning, or purpose is realized in the act of prostitution. Each is in fact undermined by it. Therefore, for radical feminists, to speak of prostitution as "sex work" is simply not rational.

Economic Liberty

From the above, it should be clear that radical feminists see no possible compatibility between prostitution and true freedom. For them, autonomy is largely an illusion as far as prostitution is concerned. Vednita Carter and Evelina Giobbe's point that women who enter prostitution usually do so following a life of sexual or physical abuse, with early sexual experiences or neglect from their family, suggests that the choice to enter prostitution is not really a free choice at all, but highly conditioned by experience. As Stark described it, "Believing that sexual exploitation is inevitable and deciding to get paid for it is a direct result of being sexually abused as a girl."[38] For her, convincing women and girls to get paid for their sexual abuse is not helping them to exercise their freedom; it is deception designed to gaslight them into a patriarchal institution.

But on a more fundamental level, there is an inherent contradiction between liberty and prostitution. Just as slavery cannot be free because it involves the removal of a person's freedom, so prostitution cannot be free because it deprives the woman of her own self, which is the source of her freedom. In this way, Pateman denies that freedom is even possible in the prostitution contract. She criticizes a liberal notion of freedom in which a disembodied mind can contract out the body that is attached to it. For her, this is an impossible notion of freedom, because the mind can never be separated from the body, or vice versa. To attempt a separation is to deny who women actually are. And to deny who we are is the antithesis of freedom.

It should be clear from this that the impossibility of freedom in the prostitution contract is connected to Pateman's views of prostitution as slavery. In her view, the patriarchal system makes men the "sexual masters" of women, who become commodities in a capitalist trade. Such a system can never be free for those whose bodies are traded in a market.

Pateman concludes that contracts that subject women to such a patriarchal system are "full of contradictions, paradoxes and ironies" and, far from liberating women to make their own choices, just end up subjecting women to the mastery of men in a new way.[39] No such system can be consistent with dignity, because it undermines it at its very core.

38 Stark, "Stripping as a System of Prostitution," 45.

39 Pateman, "What's Wrong with Prostitution?" 218.

Liberal Feminism and Prostitution

Tia Billinger rose to mainstream cultural awareness in January 2025 as "Bonnie Blue" when she claimed to have had sex with 1,057 men in the span of twelve hours, setting a record for the largest number of sexual partners in a single day.[40] She is often described as a sex worker and operated as an escort before becoming more well-known as a "content creator" on platforms such as OnlyFans. Although the activity that propelled her to fame does not quite fit the description of prostitution under discussion in this paper, her rise is nonetheless instructive. For much of 2025, Billinger was the poster child of an extreme sexual liberation. An apparently liberated woman, she did not exhibit the signs typical of an abused sex worker. She did not appear to have a history of abuse from childhood, although details of her early years are scant. As an adult, she had a stable job with the British National Health Service and was married in her early twenties. Moreover, Billinger made huge sums of money on content platforms, reportedly earning more than $2 million every month at the height of her popularity.[41]

Billinger's story is instructive for the liberal feminist perspective precisely because this perspective typically views sex work as a legitimate employment choice for women. Liberal feminists often point to "high-end escorts" as examples of women who have freely chosen this occupation. To be sure, Billinger is not representative of all "high-end escorts." But extreme cases like hers test the limits of theories that justify prostitution as work and a genuine expression of economic liberty.

The seminal thinker in liberal feminist theory as it relates to prostitution is Martha Nussbaum, who provides a stark contrast to the radical feminist theory of Carole Pateman. Nussbaum is in favour of decriminalization of prostitution insofar as it is a person's choice to enter a contract.

Her argument has two main parts. First, she argues that societal attitudes about prostitution are often based not on reason, but on prejudicial and irrational stigma. To demonstrate this, she compares prostitution to six real and hypothetical occupations: a feather-plucker in a chicken factory, a domestic servant, a nightclub singer, a philosophy professor, a masseuse, and a "colonoscopy artist."[42] She compares how the body is used in each case and breaks down the similarities and differences among these occupations. She argues that the real problem that society has with prostitution is based not on any intrinsic difference with these other jobs that could be held up rationally, but rather on outdated moral views about female sexuality. Prejudice against prostitution is, in Nussbaum's view, born not from reason but out of a fear of the female body and is thus unjustifiable.

Second, Nussbaum considers seven arguments in favour of criminalizing prostitution and breaks them down to argue that they do not stand up to reason. Her arguments follow a similar form as employed in the section comparing prostitution with the six occupations, arguing that there is no reason to split prostitution off from other occupational activities as a special case. She argues that there is no reason to criminalize prostitution for its health and physical risk, for its relative lack of autonomy, or even its commodification of sexual organs. All of these things happen in

40 Turner, "Bonnie Blue."

41 Phillippi, "Bonnie Blue Makes More."

42 Nussbaum, "Whether from Reason or Prejudice," 701.

other occupations and phenomena of life, she argues: many jobs entail physical and health risks; most jobs lack autonomy; and dating involves a kind of commodification of sex. It is therefore irrational to single out prostitution for criminalization for these reasons, and the main practical effect of criminalization is to further stigmatize those involved.

It should be noted that Nussbaum does not believe that prostitution is a good option for women. Rather, she acknowledges that many women face "bad economic options" from which they need to choose. It is easy for privileged people to condemn the decisions of a prostituted person, but they do not face the difficult choices of those in lower economic classes between selling sex and letting their families go hungry. Nussbaum ends her essay arguing that society, and feminists in particular, should stop obsessing about prostitution and get on with providing women better economic choices. "Feminist philosophers in the United States do not write many articles about credit and employment," she writes; "they should do so far more."[43]

Human Dignity and Economic Liberty

Where radical feminists speak of dignity in terms of the wholeness of the self, the liberal feminists speak of it with the language of individual consent. Unlike Pateman's essay, Nussbaum's does use the term "dignity," but notably, she uses it in the same breath as the term "economic autonomy."[44] This is no accident, as the two concepts are intertwined in liberal thought. The dignity of the human person is bound up in whether their decisions are chosen freely or not. Generally, liberals believe that people should be left to decide what is best for themselves, trusting that they know their unique circumstances better than anyone else does.

It must be stressed that Nussbaum's essay does not justify any fraud or coercion in prostitution, such as kidnapping and human trafficking, or child prostitution of any kind. Here, she acknowledges that these entail a lack of consent and no real choice on the part of the people involved. For Nussbaum, it is consent that marks the clear line between prostitution activities that are morally permissible and those that are not. Prostitution that is consensual between adult buyer and adult seller is different from activities that involve fraud or coercion.

This conception of prostitution is consistent with a line of liberal thinking that can be traced back to John Stuart Mill's "harm principle," according to which government should interfere in someone's activity only to prevent harm to other people, not to protect the actor from themselves.[45] Mill argues that no one better understands and has a greater interest in one's needs than oneself. Too often, governments proscribe certain activities not for rational reasons but based only on the feelings and preferences of those who can impose their opinions on the rest. Interference in a person's own judgement about what is best for themselves is most likely to be wrong and poorly applied.

43 Nussbaum, "Whether from Reason or Prejudice," 721, 722.

44 The exact reference is: "But the correct response to this problem seems to be to work to enhance the economic autonomy and the personal dignity of members of that class, not to rule off limits an option that may be the only livelihood for many poor women and to further stigmatize women who already make their living this way." Nussbaum, "Whether from Reason or Prejudice," 207.

45 J.S. Mill, *On Liberty*.

Mill himself was not entirely clear on whether prostitution should be criminalized, however. He acknowledged important caveats to the harm principle, namely that the actors must be of "full age, and the ordinary amount of understanding," and he said that governments could intervene if the activity was universally understood to be wrong.[46] On prostitution specifically, Mill acknowledged that there was a difference between, on the one hand, two consenting adults engaging in sexual relations and, on the other hand, pimps who recruit women into prostitution. In the latter case, there is a tension between the harm principle and the idea that the government can prevent people from earning a profit off activities that society deems harmful. Mill never explicitly resolves this tension, but he did recognize that there is a case for intervention of the state when a person is profiting off another's participation in an activity widely regarded as harmful.

Nussbaum does not cite Mill directly in her essay on prostitution, but she draws on him explicitly in related works.[47] Both her logic and her language are reminiscent of Mill's, and her argument flows directly from the idea that individuals should retain the liberty to make decisions about their own lives. This applies not just to "high-end" escorts who appear to be making a freer choice about their occupation. It applies also to prostitution that occurs at the street level or in lower-end brothels by women who are significantly more constrained in their economic choices. It does not matter if the woman is choosing a livelihood in prostitution simply because it is the "least bad" of bad options. That is not coercion, argues Nussbaum. Her choice may be constrained among bad options, but that does not negate her right to make the choice herself.

Moreover, Nussbaum argues, to limit the autonomy of a woman in prostitution would necessarily leave her worse-off. If she freely chose prostitution, then she must have made a calculation that her other options were worse, either because she found the employment alternatives less dignified or because the consequences of foregoing the compensation from prostitution (e.g. homelessness, inability to feed her family) would be more undignified than the prostitution itself. To criminalize prostitution is thus not just irrational, according to Nussbaum; it introduces harm to women by limiting their choice as they struggle through difficult decisions unknown to those privileged enough never to have to face them.

But what of the radical feminist argument that prostitution violates the bodily integrity of the woman for the sake of men asserting their sexual mastery? This is where Nussbaum brings in the hypothetical job of "colonoscopy artist" in which a person is a training subject for medical students. Society would never argue that this is an immoral job, despite the deeper invasion of the person's body than is usually involved in sex. The hypothetical example may seem peculiar, but she would argue that the incongruity of the example is beside the point: her argument is that our moral qualms about sex have as little rational basis as hypothetical qualms about colonoscopies.

It should also be noted that, compared to the radical feminist view, Nussbaum's is a more individualistic view of human dignity, focusing as it does on individual autonomy. Liberal feminists place greater emphasis on the consent of each party in the prostitution contract than on power structures. By contrast, the radical feminists are much more attuned to the relation between the two parties of the exchange. For them, the differential in power between men

46 J.S. Mill, *On Liberty*, 78.

47 See M. Nussbaum, *Sex and Social Justice*.

and women leads to a master-slave dynamic, regardless of the appearance of a free choice. For Nussbaum, though, even a contract with strong power dynamics between men and women can be legitimate, provided that the choice remains free of coercion.

Dignity of Work

This notion of dignity as consent has implications for the liberal feminist view of work. It follows from the above that Nussbaum sees prostitution as a legitimate form of work, referring to it as an "employment option," even if not an ideal one. Through the comparison of prostitution to the six occupations identified above, she attempts to break down the distinctions among them, which she believes are irrational. Like a factory worker, the prostituted person faces risks to her health; but unlike the factory worker, she probably has more control over her schedule and more creativity in her work. Like the nightclub singer, she uses her body to offer pleasure to other people; but Nussbaum reminds us that singing in public used to be considered shameful, just as prostitution is now. Like the masseuse, she engages in physical touch of an intimate nature for the purpose of pleasure; but Nussbaum argues that the differences in how the two are perceived are culturally contingent, borne of "moral prejudice."[48]

Nussbaum's point is that prostitution is not fundamentally different from—and shares many similarities with—other occupations that we consider legitimate. What holds us back from legitimizing prostitution are our irrational cultural attitudes, not something inherent in prostitution that makes it more morally problematic than other activities.

At the same time, Nussbaum calls the dignity of work a "legitimate moral concern."[49] However, for her, the dignity of work is tied up in the degree of autonomy involved in it. Invoking the philosophies of Aristotle and Marx, Nussbaum argues that human flourishing in the workplace is achieved by having some kind of ownership over one's work. Ideally workers should not be confined to monotonous labour over which they have no control, but should be able to direct their own work to some degree. However, she points out that lack of control is not a feature that is unique to prostitution and certainly offers no basis for criminalizing it. A worse indignity, she argues, could be unemployment. In any event, the solution to the less-than-ideal nature of prostitution work (or other forms of work where the worker lacks control) is *more* autonomy, not less: we ought to give the prostituted person more economic options from which to choose, not to limit her choices even further by criminalizing her chosen occupation.

We see in the liberal feminist view of Nussbaum a very different perspective on prostitution as work from the radical feminist perspective of Pateman. Where Pateman says that prostitution is more akin to slavery than anything else, Nussbaum is willing to describe it as employment. Never does she argue that prostitution is *great* employment, but for her the indignity of unemployment—and more fundamentally, the indignity of removing the woman's choice—is worse.

48 Nussbaum, "Whether from Reason or Prejudice," 705, 714.

49 Nussbaum, "Whether from Reason or Prejudice," 712.

Sex-Realist Feminism and Prostitution

The previous two sections have considered two contrasting ways of looking at prostitution, leading to different conclusions about human dignity, work, and economic liberty. These two schools of thought have dominated the debate about prostitution, at least in the Anglo-American world, for the last several decades. However, in recent years, a new constellation of feminist thinkers has emerged that merits consideration for their perspective on sex and prostitution in particular.

Variously called "dependence feminists," "sex-realist feminists," or other labels, this loose grouping includes the thinkers Mary Harrington, Erika Bachiochi, Leah Libresco Sargeant, and Louise Perry, among others. Although not a unified school, these thinkers share certain anthropological assumptions. As one of its labels suggests, this feminism recognizes the dependence that exists at the core of what it means to be human and that relationality is essential for understanding who we are. What gives meaning to our lives are the relations that intersect us. This does not deny our individuality, but it does mean that mere individuality is insufficient to explain our identity as human beings.

The implication is that the liberal feminist idea that we are fundamentally autonomous is wrong. We are not defined solely by our individuality, but by how we relate to each other. We are, for example, defined in part by our relation to a spouse or to a child.

The rejection of individualism is a common ground between dependence feminism and radical feminism, but the reasons for this rejection are quite different. Recall that Pateman views male-female relations in general as imbued with power dynamics that fundamentally undermine women. Sex-realist feminists see things differently. They place greater emphasis on the interdependency of human beings, including of men and women. They do not see this interdependency as a bad thing, for it is these relations that give meaning to our lives. This does not mean that there isn't conflict or that social systems and structures are not biased in favour of men—in fact, Leah Libresco Sargeant speaks forcefully of how the world doesn't always fit the female body very well—but sex-realist feminists reject the idea that men and women are fundamentally at odds in our system.[50]

These new feminist thinkers speak some profound truths about who we are as human beings. We are not atomized individuals and individualism is not the epitome of humanity. Rather, key to our humanity is relationality—to members of our family, to our community, to our fellow citizens, and ultimately to the world in our shared humanity. Moreover, this is not a relationality fundamentally based in conflict, although conflict does happen. And although interdependence *can* lead to strife, it is nonetheless a fact of life that can also bring great meaning to our lives.

Of these new feminist thinkers, it is Perry who has most explicitly considered the implications of this for prostitution. As explained below, Perry shares some conclusions with the radical feminists, but grounds them in a different anthropology, offering new insights about prostitution that align with the three principles outlined earlier in this paper.

50 Libresco Sargeant, *The Dignity of Dependence*.

At the core of Perry's critique is what she calls the "disenchantment" of sex that took place during the sexual revolution.[51] From the 1960s to today, society went from viewing sex with a sense of mystery to considering it more as a recreational activity. Crucially, this latter view of sex made the act more transactional. Perry argues that, even outside the formal commercial context of prostitution, the no-strings-attached nature of sexual relations in the second half of the twentieth century turned dating culture into an exchange of services, as for example when a man expects a woman to "put out" after a dinner date.

To be clear, Perry is not under the illusion that prostitution is a product of the sexual revolution. Far from it. She points to its long history in closing what she calls the "sexuality gap," a term she uses to describe the phenomenon of heterosexual men generally seeking more variety in their sexual partners (or, higher "sociosexuality") than heterosexual women.[52] Prostitution was the system that reserved an underclass of prostituted women to be the outlet for the higher desire among males for casual sex, while preserving the sexual integrity of the majority of women for the nobler institution of marriage. Thus, the prostituted women were instrumentalized and rendered into "products" for the gratification of male sexual appetites.[53]

Perry's point is not that the sexual revolution has made prostitution more rampant. Rather, it is that the sexual revolution has made sex in general more like prostitution by making sex more transactional. It has pushed women in general to bend to the higher sociosexuality of men. In this way, the sexual revolution, argues Perry, has served the interests of men, not women.

Human Dignity

The language of human dignity is central to Louise Perry, much more so than to Pateman or Nussbaum. Perry explicitly describes her project as "propos[ing] an alternative form of sexual culture—one that recognizes other human beings as real people, invested with real value and dignity."[54] The implication is that the disenchantment of sex is fundamentally dehumanizing, with prostitution being an egregious example of this. In prostitution, she says, people become "products" in a most explicit way.

Here we can recognize that Perry has a lot in common with the radical feminists. Where Pateman compares prostitution to slavery, Perry compares it to rape. She highlights the indignity of having to endure sex that one does not desire, even sex that one finds revolting. The woman has to "ignore her own lack of desire or even bone-deep revulsion"[55]—an insight that is reminiscent of Carter and Giobbe's point that prostitution "necessitates that a woman alienate her mind from her body."[56]

51 Perry, *The Case Against the Sexual Revolution*, 10.

52 Perry, *The Case Against the Sexual Revolution*, 138–39.

53 Perry, *The Case Against the Sexual Revolution*, 135, 138.

54 Perry, *The Case Against the Sexual Revolution*, 20.

55 Perry, *The Case Against the Sexual Revolution*, 141.

56 Carter and Giobbe, "Duet," 46.

At one point, Perry quotes Carter directly in identifying the fundamental problem with prostitution as "the sex act itself."[57] In other words, the indignity of prostitution is real. It is not borne of some irrational moral prejudice, as Nussbaum would say. Nor is the indignity merely a function of the coercion that usually accompanies prostitution or some other incidental factor associated with prostitution. No, the indignity is intrinsic to prostitution itself.

In prostitution, Perry argues, people become "products"—a term reminiscent of Pateman's view that prostitution turns a woman into a thing.[58] Their humanity is stripped away. They become objects for the gratification of others—as Kant would say, simply a means to someone's end. In this way, prostitution is a violation of human dignity and cannot be justified.

Dignity of Work

Among the dependence feminists, it is perhaps Erika Bachiochi who has put forward the most positive account of the dignity of work. Drawing on previous generations of feminists, including Mary Wollstonecraft and Betty Friedan, Bachiochi describes work as essential to the "development of human excellence." At the same time, she is quick to expand the scope of work beyond just paid employment—to homemakers, for example. But importantly, Bachiochi insists upon the idea that work, properly considered, must go beyond simple self-actualization and development of one's capabilities. We must also ask whether the end we are working for is *good*—or, as Bachiochi puts it, whether it is "directed toward his or her proper end as a rational creature." Channeling the thought of Wollstonecraft, Bachiochi says that this end is "wisdom and virtue," which is achieved through benevolent service of our fellow human beings.[59]

Bachiochi's project is to raise questions about what we typically consider to be feminine work, so she does not directly address the issue of prostitution. But her view of work is important context for sex-realist feminist thought on this topic. By linking work with human excellence and service, Bachiochi is essentially making the same point as outlined in the guiding principles above: that work gains its dignity from its connection with the common good. Bachiochi gives the example of her nine-year-old son hypothetically using his skills to become a thief. It may involve labour, the exchange of services, or even the exchange of money, but it would not be work as such. Work must be attached to a noble end in some way.

Importantly, Bachiochi's thinking leads to the conclusion that anything that undermines human dignity could not properly be counted as work as such. Combining this with Perry's thoughts on prostitution and human dignity, outlined above, leads in turn to the conclusion that prostitution is completely at odds with the dignity of work.

The trope that "sex work is work" is, for Perry, a "luxury belief"—an idea that the privileged adopt to demonstrate their status as open-minded progressives, but that no one truly acquainted with the reality of prostitution would ever actually believe. Moreover, treating prostitution as legitimate work leads to absurd changes in language and terminology that are revealing of the

57 Carter, "The Pimping of Prostitution," mentioned in Perry, *The Case Against the Sexual Revolution*, 154.

58 Perry, *The Case Against the Sexual Revolution*, 7.

59 Bachiochi, *The Rights of Women*, 164, 165.

disenchantment of sex. The language of "sex work" is the most obvious, but others are just as incongruous with reality, as when rape becomes a "contract breach" or sexually transmitted diseases become "occupational health risks." These attempts to normalize prostitution have deliberately used the "sterile language of business."[60] This, Perry argues, has further served the disenchantment of sex in general.

Economic Liberty

Finally, Perry reframes the question of liberty itself, her critique of the sexual revolution being grounded in a critique of liberalism more broadly. She does not mean an attack on the notion of liberty itself, but rather on a strand of liberalism that pursues a radical autonomy and elevates liberty to the pinnacle of all principles, often at the expense of other principles that are necessary for human beings to flourish.

Perry draws on the philosophy of Patrick Deneen, a contemporary American political philosopher considered a father of a strand of thought known as "post-liberalism." In Deneen's view, liberalism is fundamentally unsustainable because it undermines the very principles that enable its success. He argues that liberalism owes its success in the post-Enlightenment period (in spurring economic growth, for example) to a "preliberal inheritance" of ideas and institutions that were the legacy of earlier societies. This inheritance includes the cultivation of virtues that lift people from their natural self-centredness to a view of the common good and service to others. However, in Deneen's view, the radical autonomy of liberal individualism undermines these very ideas and institutions, rendering it an "unsustainable" ideology. In the absence of these, liberalism ultimately collapses in on itself.[61]

What does this have to do with prostitution? The point is that radical autonomy does not necessarily lead to happiness: only freedom that is directed at some good can do so. A "free" act that undermines human dignity cannot be genuinely free because it undermines the very thing that gives us our freedom in the first place. Thus, we cannot rationally speak of a "freedom" to engage in prostitution, which the sex-realist feminists see as a violation of human dignity.

This does not mean that human freedom has no value. On the contrary, liberty is important to post-liberal thought. The difference is that the post-liberals believe that freedom must be rightly ordered and point toward the good. This requires, among other things, an understanding of the good (or at least an understanding of what is objectively wrong), as well as institutions that will help to shape and guide our freedom toward that good (or at least away from those things that objectively undermine human dignity). Only in such a context can human beings truly be free. Without a view of the good, human beings become slaves to things that fail to bring them happiness, giving them only an illusion of true freedom.

Prostitution may be the perfect example of this dynamic. From Perry's perspective, there can be no real freedom in prostitution. Because prostitution turns people into things, it undermines the very dignity that gives them their freedom in the first place. As Perry concludes her chapter on

60 Perry, *The Case Against the Sexual Revolution*, 146, 149.

61 Deneen, *Why Liberalism Failed*, 29, 41.

prostitution, "Once you permit the idea that people can be products, everything is corroded."[62] Including human freedom.

Toward a Coherent Prostitution Policy for Canada

Of the various schools of thought outlined above, it is radical feminism and liberal feminism that have most significantly influenced the legal and policy discussion on prostitution in Canada. This section draws this out and also suggests that sex-realist feminists have potential to add to this debate in profound ways.

The recent Supreme Court case discussed earlier, *R. v. Kloubakov,* offers a good illustration of how the different schools of thought have influenced this debate. The case had many interveners with sharply varying perspectives on whether prostitution should be legalized. A close reading of the interveners' factums (written legal arguments) reveals the philosophical assumptions underlying each.

For example, the factum of the Women's Equality Coalition draws from many of the ideas of radical feminism. It views prostitution as inherently exploitative—not a benign activity that is simply accompanied by harms, but the "source of the harm" itself. It rejects the terminology of "sex work" and "sex workers," arguing that these euphemisms mask the violence inherent in the practice. Moreover, it rejects any definition of liberty that would "facilitat[e] men's sexual access to women's bodies." For the Coalition, liberty does not mean allowing the proliferation of prostitution, which it sees as a form of oppression, but rather establishing the conditions such that women never have to "resort to prostitution" in the first place.[63] Thus, the Coalition argued against the decriminalization of prostitution, effectively arguing to keep the Nordic model legislated by PCEPA.

By contrast, the factum of the Women's Legal Education and Action Fund (LEAF) draws on many of the ideas of liberal feminism. Similar to Martha Nussbaum, LEAF roots liberty in a concept of human dignity that emphasizes autonomy of the individual. Its factum claims that "any measure that denies an already marginalized and disadvantaged person the ability to make choices about their fundamental being, dignity and autonomy is a grave infringement of that individual's liberty." There is very little wiggle room in this statement to allow for public policy objectives outside of promoting that person's autonomy. Note that this view of freedom is not simply to give the person the tools to ensure their security of the person, which LEAF treats separately in its factum. Rather, LEAF is addressing the freedom of an individual person to "make one's own decisions" to realize their "self-determination."[64] Thus, LEAF argued for the decriminalization of prostitution and against the legislative framework of PCEPA.

In Canada, it is also important to acknowledge a racial component to prostitution. In one study, for example, over one-third of surveyed female sex workers in Vancouver identified as

62 Perry, *The Case Against the Sexual Revolution*, 160.

63 Factum of the Interveners, Vancouver Rape Relief Society, et al., at paras, 2, 5, 7, and 12.

64 Factum of the Intervener, Women's Legal Education and Action Fund, at para 19.

Indigenous, despite Indigenous people representing only 2 percent of the population of that city.[65] But even the racial aspect has been interpreted differently by organizations influenced by the divergent schools of feminist thought. For example, Asian Women for Equality has interpreted this aspect as further evidence that prostitution dehumanizes women and must be criminalized as under PCEPA. It points to advertisements for prostitution that promote "racist constructions" like "geisha" or "Madame Butterfly."[66] By contrast, the Migrant Workers Alliance for Change has argued that the marginalization of "racialized migrant sex workers" is exacerbated by the continued criminalization of prostitution.[67]

Whether to decriminalize, or even legalize, prostitution is a vigorous debate in Canada. Although the *Kloubakov* decision found that PCEPA did not violate the security of the person, it remains an open legal question, as outlined above, as to whether the *Charter* contains a freedom to consensual prostitution among adults. There is a significant movement in Canada to argue that it does. For example, the Canadian Alliance for Sex Work Law Reform, the leading appellant in one of the most comprehensive legal challenges to Canada's prostitution laws, has argued that those laws "violate the sexual autonomy" of those involved in prostitution because they limit their consent.[68] The Alliance has called for the repeal of all criminal laws against prostitution, as well as for deregulation of these activities, with a view to establishing instead a framework of labour standards around activities related to prostitution. The Pivot Legal Society has made similar recommendations with a focus on repealing the *Criminal Code* provisions on prostitution.[69]

On the other side of the debate, the London Abused Women's Centre has long advocated for the Nordic model in Canada, seeing prostitution as inherently exploitative of women. It argues that the choice of entering prostitution bears no resemblance to genuine freedom, particularly since the vast majority of women involved in prostitution come from marginalized backgrounds that have left them oppressed and vulnerable. The Centre cites evidence that over half of sex-trafficked women are Indigenous, arguing that these women do not have an "unforced choice."[70] Similarly, Trisha Baptie of Formerly Exploited Voices Now Educating (EVE) argues strongly for the prohibition of prostitution through PCEPA, using language reminiscent of Carole Pateman. "Men buying sex make prostitution unsafe," she argues. "Not stigma, not laws, nor location. It's men's behaviour that should be criminalized as it is with PCEPA as that stops the capitulation of this behaviour."[71]

65 Puri et al., "Burden and Correlates of Mental Health Diagnoses"; Statistics Canada, "Profile Table."

66 Factum of the Intervener, Asian Women for Equality, at para 18.

67 Factum of the Intervener, Migrant Workers Alliance for Change, at para 1.

68 Canadian Alliance for Sex Work Law Reform, "Safety, Dignity, Equality," 8. The comprehensive legal challenge was *Canadian Alliance for Sex Work Law Reform v. Attorney General*, 2023 ONSC 5197.

69 Pivot Legal Society, "Evaluating Canada's Sex Work Laws."

70 Coulter and Walker, "Choosing the Nordic Model," 29.

71 EVE, "Our Position."

A Way Forward

Canadian advocates influenced by radical feminism have predominantly aligned with the Nordic model, calling for a prohibition on the practice but recognizing the fact that women are mostly the victims in the system. Advocates influenced by liberal feminism have mostly called for decriminalization or legalization of prostitution as a solution to the negative effects associated with it.

There is some common ground between these two groups. Notably, both recommend more supports for women, although for different reasons. For radical feminists, these supports would provide women the means to protect themselves against exploitation. For liberal feminists, they would increase the available options to women so that they can have greater choice.

The two groups also broadly agree that the law should not criminalize the women who provide their own paid sexual acts. Again, though, the reasons are fundamentally different. Radical feminists see the women as victims of oppression, not perpetrators, in an unjust system. Liberal feminists see the women as exercising their freedom of choice.

On the question of broader legalization of the system, however, the two groups are—irreconcilably, it seems—opposed. It is here that new feminist thinkers such as Louise Perry, although closer to radical feminists than liberal feminists, offer insights that help chart a new way forward in this debate.

Recall that for sex-realist feminists, the relationality of human beings is core to our identity. When we understand that interdependence lies at the heart of our humanity, the world becomes a place where human beings encounter each other and discover their interdependency with each other. But for this to happen, the human persons we encounter must be encountered *as persons*, not as things to use. In this, sex-realist feminism agrees with radical feminism that we must never use a person merely as a means to an end.

The idea of interdependence offers a thoughtful critique of the notion that autonomy is the most fundamental aspect of our dignity. In fact, we never really encounter the world as autonomous individuals but rather as persons with relationships and responsibilities toward others. This does not diminish our individuality; it infuses our individuality with meaning. In this light, work becomes an activity that is as much for others as for ourselves. Freedom becomes the condition through which we pursue this encounter.

In this way, the idea of interdependence gives meaning to the guiding principles outlined at the beginning of this paper. It offers a robust account of human dignity that elevates the human body and protects it against commodification or use solely as a means and not as an end in itself. Its understanding of work considers not just the contractual aspect of paid employment, but sees it as an activity that contributes in some way to the common good. And its concept of liberty directs it firmly toward some higher good—something that we are free *for*.

Prostitution and Human Dignity

First and foremost, sex-realist feminism offers a strong critique, on the grounds of human dignity, of the liberal-feminist attempt to equalize prostitution with other activities of life. Recall Martha Nussbaum's comparison of prostitution with other jobs such as factory workers,

nightclub singers, and philosophy professors, failing to find any fundamental difference of kind among them. But this view simply does not stand up to our intuition, and for good reason. Nussbaum's own argumentation reinforces the opposing point: she argues that it is at least as invasive—perhaps more so—for a philosophy student to have "invaded" the mind of a philosophy professor with a new idea as it is for a john to do so physically to a woman.[72] But this is clearly ridiculous. Nussbaum's fundamental argument is that all these kinds of work involve use of the body for the exchange of money in some way, but her supposition fails to account for the intimate nature of a person's sexuality and the violation that occurs when one's body is "invaded" sexually. It is the disenchantment of sex that Perry describes that allows these absurd comparisons to be made to other forms of employment or activity. Violating the dignity of someone's sexuality is so obviously graver than imprinting a new idea upon someone's mind that it hardly needs to be stated. Presumably no one except Nussbaum has ever considered the possibility of sending impudent students of philosophy to prison.

Moreover, studying philosophy does not necessarily involve using the philosophy professor purely as a means to an end. In the act of prostitution, however, the purchaser of sex is using the seller in one of the crudest ways possible. Perry, Carter, and Giobbe's point that prostituted women have to dissociate mentally from the act just to get through it makes this clear. This is no activity in which the person is truly encountered *as a person*. In prostitution, the body is turned into a product and rented out for someone else's pleasure and satisfaction. It is not merely an exchange of services, but the purchase of a human person. In this way, prostitution fails to treat persons as ends in themselves. It commodifies them, turns them into things to be exchanged, and thus violates their human dignity.

Prostitution and the Dignity of Work

Taken together, the sex-realist feminists suggest a framework to clarify that prostitution cannot properly be considered work. Work is said to have dignity because it enhances and upholds the dignity of the worker, allowing them to contribute meaningfully to the common good—that is, the set of conditions that allow for the flourishing of all members of society. But by the same token, anything that violates the basic human dignity of any person cannot be said to contribute to the common good, for by definition it serves to undermine the flourishing of that person. Since, as has been said, prostitution does violate the dignity of the woman, it cannot be said to contribute to the common good, nor have the dignity associated with work.

It is also noteworthy that prostituted women tend to have much higher rates of addiction and mental health issues than average. Yet research shows that employment typically results in *lower* rates of addiction and mental health issues, suggesting that prostitution does not have the benefits normally associated with work.[73] One study of sex workers in Vancouver showed that 49 percent of respondents (338 of 692) stated that they had been diagnosed with a mental health issue such as depression or anxiety.[74] That same study found that 40 percent of respondents

72 Nussbaum, "Whether from Reason or Prejudice," 704.

73 See the references cited in Dijkema and Gunderson, "Work Is About More than Money."

74 Puri et al., "Burden and Correlates of Mental Health Diagnoses."

reported injection drug use and 69 percent reported non-injection drug use. Another study of Vancouver women who used drugs found that 56 percent of respondents had engaged in prostitution.[75] Some may blame this phenomenon on the fact that the criminalization of prostitution has stigmatized those involved. But to lay the blame entirely on stigma ignores the exploitation that is inherent in prostitution itself. It is difficult to see these statistics and not see the headline problem: that addictions and mental health issues go along with prostitution at very high rates—the opposite of what we would expect from work. The better conclusion may be that prostitution is not actually work at all.

Even if prostitution is not work as such, that does not mean prostitution bears no resemblance to labour. There are, after all, several aspects of prostitution that resemble traditional paid employment, such as the provision of a product in exchange for financial remuneration (as crude as it is to speak of sex as a "product"), a contract (even if only verbal), even a management system (in the case of pimps or a brothel). There are clearly actions involving labour of some sort, but this does not mean that they have the same dignity as work itself. And this is not unique to prostitution: there are all sorts of activities that involve labour that we would never speak of as having the dignity of work. An apt example is slavery, which clearly involves labour, but can never be said to carry the dignity of work because of its violation of the basic dignity of the labourer.[76] This is an important point because it makes it possible to push for better conditions for women in prostitution, as proponents of the Nordic model would do, while nonetheless condemning prostitution itself as an oppressive system, criminalizing it, and calling for its eradication.

Prostitution and Economic Liberty

Data on prostitution are extremely difficult to collect, but the data that do exist call into question the idea that prostitution in Canada is a choice for many of the women involved in it.

One of the best sources of information is a review conducted by the Government of Canada of nearly 3,000 people who accessed programming through the Measures to Address Prostitution Initiative (MAPI) to help people involved in prostitution. It should be noted that the people who sought programming under MAPI are naturally less likely to be those content with their current involvement in prostitution, but it is nevertheless a useful window into an industry for which useful data are often difficult to obtain.

Most notably, over two-thirds of MAPI participants reported being "physically and/or psychologically coerced by others to provide sexual services."[77] Beyond that, 5.7 percent of those who accessed this programming were under the age of 18 years. Though that may not seem like a

75 Harris et al., "Association of Sex Work and Social-Structural Factors." Note that this paper presents the data as evidence for the decriminalization of prostitution, laying the blame for the incidence of sex work and addiction at the feet of "violence, punitive policing, and access to care in the community, rather than sex work itself" (p. 3). But the headline data speak volumes about the correlation between prostitution and addiction.

76 Hannah Arendt provides a relevant, albeit different, distinction between labour and work. For her, work differs from labour in creating lasting goods that serve the future in a more concrete way. Though not the same, there are overtones of similarity in Arendt's distinction with the idea that work, properly speaking, serves the common good. See Arendt, *The Human Condition*.

77 Badets and Wichmann, *A Review of the Measures*, 11.

large percentage, it still represents a large number of girls who have been prostituted before even attaining the age of majority. Moreover, this figure does not reflect the proportion of women now over the age of majority who began in prostitution when they were less than 18 years old. Estimates for the average age when women and girls enter prostitution vary widely, but even a conservative estimate showed that 29 percent of sex workers "first sold a sexual service before age 19."[78]

There is also strong evidence that many participants who want to leave prostitution do not succeed in doing so. Over 80 percent of MAPI participants indicated they were seeking to exit prostitution (excluding participants whose goal was unknown, that figure rises to over 98 percent), but only 21 percent of them were recorded as successfully doing so.

It is also important to acknowledge again the racial characteristic of prostitution in Canada. The review of MAPI participants shows that over 15 percent of them identified themselves as Indigenous. In some areas, this proportion is even higher, as outlined above concerning Indigenous sex workers in Vancouver, where they represent one-third of all sex workers.[79] These data highlight that prostitution is drawing disproportionately from groups of people whose choices may be more limited than other Canadians who benefit from greater social and economic advantages.

Many more statistics could be brought to bear on this issue, but the point is to draw out empirically what has already been made clear conceptually: that prostitution is generally not a true choice. Recalling the two scenarios outlined above that John Stuart Mill discusses, of, on the one hand, two consenting adults and, on the other, a pimp recruiting a vulnerable woman into prostitution, the data suggest that the reality is closer to the latter than to the former. Thus, even in a liberal framework concerned with protecting individual liberty, the frequency of coercion and underage prostitution, the difficulty of exiting, and the over-representation of more vulnerable groups are solid grounds for restricting this activity.

The other schools of thought shed additional light on liberty. Sex-realist feminists, for example, provide a helpful framework for understanding economic liberty as it relates to prostitution. Louise Perry's insistence that liberty is *for* pursuing good ends helps to clarify that there are certain activities that can never be justified. Specifically, in Perry's view, anything that violates human dignity necessarily undermines the very basis for liberty itself, even if it looks like a free act on the surface. This is consistent with international frameworks that condemn anyone who "exploits the prostitution of another person, even with the consent of that person."[80]

This view of liberty is highly consistent with the Canadian conception of freedom, too. Our culture has never treated liberty as an absolute that trumps other principles, such as human dignity.[81] The Supreme Court of Canada has always interpreted the right to liberty in section 7 of the *Charter* as having certain intrinsic limits that constrain certain kinds of economic exchange. The *Kloubakov* decision itself highlights these limits, referencing previous decisions of the Court that the *Charter* does not guarantee "an unconstrained right to transact business whenever

78 Benoit et al., "Gender, Violence, and Health," 6.

79 Puri et al., "Burden and Correlates of Mental Health Diagnoses."

80 United Nations, "Convention for the Suppression of the Traffic in Persons."

81 For an extended reflection on the Canadian tradition in this respect, see Grant, *Lament for a Nation*.

one wishes."[82] There are many other elements of Canadian law that place significant limits on our economic liberties. For one, it is not permissible to sell oneself into slavery,[83] to consent to serious bodily harm,[84] or to sell one's organs.[85] Why? Because these involve gross violations of one's dignity as a human person. It is the same argument that justifies a limit in the case of prostitution.

This need not be controversial, even for those in the liberal tradition. John Stuart Mill himself accepted that no one is "free not to be free."[86] Through this principle, he ruled out selling oneself into slavery, on the basis that it undermines the foundation for liberty itself. Mill did not enumerate all the circumstances in which this principle applies, but noted that they are "far wider" than just slavery.[87] The case for including prostitution among them is strong. As has been stated above, prostitution is not merely one among many sub-optimal markets that exist in our economy. Rather, it is a phenomenon that alienates women from themselves and undermines the very dignity of the human person that gives rise to liberty itself.

This does not mean that the government should criminalize every economic transaction that fails to uphold human dignity. Determining when and how to use the power of the state requires a careful exercise of prudence. But in practices that involve such a violation of human dignity as prostitution does, the case for serious limits is clear.

Policy Recommendations

Retain the Nordic Model

Canada's laws on prostitution post-*Bedford* follow the Nordic model. By criminalizing acts of prostitution, the Canadian justice system recognizes that the system of prostitution violates the dignity of those involved in it. But by providing prosecutorial immunity for those who sell their own sexual services, Canadian law also recognizes that these people are the victims, not the perpetrators, of that system.

Prudence must be exercised in determining whether to criminalize an activity, and this paper does not seek to engage legal theory as such. But the conceptual case for criminalizing the practice of prostitution is strong, given the gross violation of dignity that is involved in it.

There are also practical benefits to the Nordic model. It provides a way for prostituted people to seek help in leaving the system, without fear of being prosecuted themselves. Yet some voices have suggested that this benefit is meaningless, because the fear will continue as long

82 *R. v. Kloubakov*, at para 165 (citing *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, at p. 786, per Dickson C.J.).

83 Subsection 279.01 (2) of the *Criminal Code* clarifies that "no consent to [human trafficking] is valid."

84 *R. v. Jobidon*, 1991, 2 SCR 714.

85 Department of Justice, *Criminal Code*, ss. 240.1 (2).

86 J.S. Mill, *On Liberty*, 107.

87 J.S. Mill, *On Liberty*, 107.

as everyone around the woman (johns, pimps, brothel owners, drivers, etc.) continue to face criminal prosecution for their involvement. This was the argument of the appellants in *R. v. Kloubakov* and of the applicants in *Canadian Alliance*. But a key measure of the soundness of a law is whether it accurately reflects the reality of who is exploiting whom. As outlined in this paper, it is a reasonable reflection of reality that those who are prostituted are exploited, while most of the others involved are perpetrators of exploitation. Moreover, the argument that leads to legalization of the system fails to grapple with the gravity of the violation of dignity that prostitution represents. It would remove from our society one of the tools at its disposal—the criminal law—to denounce the oppression of women that is inherent in prostitution and to put a stop to its abuses.

Canada's current law does grapple with this and largely achieves the right orientation toward the problem of prostitution and where the violation of dignity mostly lies. This model should be retained. Efforts to further decriminalize prostitution or even legalize it should be resisted.

Stop Using Euphemisms Such as "Sex Work"

As the scholar Debra Haak has said, the terms "prostitution" and "sex work" are not interchangeable, despite much equivocation in many judgments of Canadian courts.[88] In practice, "sex work" has a much wider definition, covering a host of activities—such as stripping and pornography—that do not constitute prostitution as contemplated by the *Criminal Code*. This does not justify the term "sex work" for these other activities, but the equivocation of prostitution with "sex work" is problematic in that it conflates the act of prostitution with other acts that are not criminal. Using accurate language is essential for conceptual clarity.

But more importantly, it is crucial to reject the idea that prostitution constitutes work. If prostitution violates the dignity of human beings, it cannot have the dignity of work. So we should stop calling it that. The terms "sex work" and "sex worker" are not just misleading; they are inaccurate.

Similarly, it is important to reject other euphemistic language, such as "sex trade" and "sexual services," that perpetuates inaccuracies about the prostitution industry. "Trade" can imply a free exchange, which does not exist in an activity that undermines the dignity of one party. "Sexual *services*" diminishes the dehumanizing nature of prostitution, as though we could separate the "service" from the indignity done to the person. This term is particularly challenging, as it is embedded in the language of the *Criminal Code*, which ought to be amended to use language reflective of the reality of prostitution.

Society should avoid the "sterile language of business," as Louise Perry would describe so much of the terminology commonly used to discuss prostitution.[89] It is this language that contributes to treating prostitution as a business and people as "products."[90]

88 Haak, "Re(de)fining Prostitution and Sex Work."

89 Perry, *The Case Against the Sexual Revolution*, 149.

90 Perry, *The Case Against the Sexual Revolution*, 135.

We must also distinguish between the terms "prostitution" and "prostitute." Many people rightly reject the latter term, because of its derogatory connotation. The term is also out of step with the spirit of the Nordic law, which sees the seller of sex as the victim. The term "prostitution," however, remains accurate for the system that exploits these victims. The term may cause squeamishness, but our language should reflect reality. Sanitizing the language may ease the consciences of those who wish not to think about the reality, but it does nothing to help those who are victimized.

In discussions about systems and policies, it can be easy to forget that it is human beings who are at the centre of this debate. Real human lives are affected by the choices of public policy makers. Our language should reflect this and should focus on the human person. An alternative to "prostitute" could be a "person involved in prostitution" or a "prostituted person," versions of which have been used in this paper.

Language will always evolve and the terminology will need to adjust as we become more sensitive to the realities of prostitution, but the erasure of the term "sex work" is essential for the proper framing of this discussion. The term seeks to dignify something that is fundamentally at odds with dignity. It is thus a corrosive term that should be done away with.

Provide Additional Support for Women and Men to Avoid or Exit Prostitution

The criminal law is a tool that can help in reducing prostitution, but it is not the only tool—nor is it sufficient on its own to accomplish this. The practical purpose of the Nordic model is to encourage the women involved to exit the system without fear of the law. Making them immune from prosecution is not enough, however. The reality is that many of them find themselves in prostitution because they lacked the means and the social capital to avoid it in the first place. They will need supports to help them set their lives on a new foundation.

On this, we have to acknowledge that the liberal feminists have a point, which they share with the other schools of thought outlined in this paper. A reason that some women get involved in prostitution is because of a lack of better options. Our economic and social systems need to better enable women to thrive. Although the radical feminists and the liberal feminists disagree on whether prostitution should be criminalized, both Christine Stark and Martha Nussbaum converge on the practical policies of supporting better economic options for women. Stark argues for more job training, more access to housing, better education, access to drug and alcohol treatment, and other services.[91] Nussbaum argues that feminists need to talk more about getting women better jobs and access to credit, while promoting literacy and social programs.[92] And Leah Libresco Sargeant argues that the world needs to better accommodate women more generally and that workplaces need to be more flexible for women.[93]

Support to exit prostitution is a necessary parallel to the criminal law. The original Nordic model adopted in Sweden has four pillars: two relate to the criminal law (decriminalization

91 Stark, "Stripping as a System of Prostitution."

92 Nussbaum, "Whether from Reason or Prejudice."

93 Libresco Sargeant, *The Dignity of Dependence*.

of sellers and criminalization of buyers) and two relate to social policy (exit supports and public education).[94] It is the task of future research to outline these supports in detail, but it is important to emphasize the role of all levels of society in putting an end to the injustice that is prostitution. There is certainly a role for government in enacting the criminal law and in providing some of the supports necessary for those seeking to exit. But there is also an important role for civil society in providing support based on principles of community and care.[95]

It is also important to remember the role of men and boys. Men constitute the vast majority of buyers of sexual services and cannot be ignored. There is a great need for organizations such as EmpowerMen that speak to men and boys about honouring the dignity of those who have been exploited by prostitution.[96] Measures include prevention, to discourage participation in prostitution, as well as restorative efforts, to help those who have already engaged in exploitative actions.

All persons have an inviolable human dignity that can never be taken away, regardless of what they have done or what has been done to them. And everyone has the right to pursue a life in accordance with their inherent dignity. We all have a responsibility, therefore, for establishing the conditions that enable them to do so. Condemning them to a life of prostitution—either by condoning the system through our policy and language or failing to provide them with the tools to escape it—falls short of our responsibility to one other.

94 ILVA Foundation, "The Equality Model."

95 For a deeper reflection on the connection between community and care and the unique role of civil society in providing that care, see Nauta, "Bonds of Solidarity."

96 EmpowerMen, "Engaging Men and Boys to Prevent Sexual Exploitation."

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