

University of Zagreb

European Master's Programme in Human Rights and Democratisation
A.Y. 2024/2025

Dignity Under Duress

A Comparative Analysis of Commercial Sex Policy and its Human Cost in Sweden
and New Zealand

Author: Aoife Dempsey

Supervisor: Antonija Petričušić

Word Count Declaration: 25,735

Abstract

This thesis explores how contrasting legal frameworks for regulating the commercial sex industry, abolitionism in Sweden and decriminalization in New Zealand, impact the human dignity of those who sell sex. Framed within feminist legal theory and grounded in Martha Nussbaum's Capabilities Approach, this study critically analyses whether these models enhance or undermine the substantive freedoms of individuals involved in prostitution. Sweden's abolitionist model, which criminalizes the buyer but not the seller, is evaluated for its symbolic commitment to gender equality and its practical consequences, including marginalization and limited access to services. Conversely, New Zealand's decriminalization model treats commercial sex as legitimate labour, integrating it into general labour and health protections. Through a comparative dignity-based analysis of five central capabilities: bodily integrity, affiliation, practical reason, bodily health and control over one's environment, this paper seeks to assess the extent to which each framework supports or restricts human flourishing. Whilst both models aim to promote dignity, they do so through fundamentally different logics and produce divergent outcomes in practice. This study contributes to the broader discourse on human rights, gender and law by offering a nuanced evaluation of prostitution regulation through the lived realities of those most impacted.

Acknowledgements

Firstly, my deepest thanks go to my thesis supervisor Antonija Petričušić, for her steady support and for helping me feel at home in Zagreb during what was a challenging and transformative time.

I am also sincerely grateful to Dr. Judit Villena Rodø and Dr Orla Ní Cheallacháin for their constant reassurance and kindness throughout the Masters programme. You always had time for questions, concerns or doubts, and your support was felt from start to finish.

To my EMA friends, Kate, Ben, Pien, Alice and Mattia, and the rest of the Neighbours group chat. Thank you for always being there to answer what felt like stupid questions, reminding me again and again that solidarity and humour go a long way. Ben in particular, deserves a special thank you for constantly reminding me I could never find a thesis *that* hard because “*you love talking*”.

Thank you my housemates Tessa and Teresa for their never-ending support, countless hugs and the sheer number of proofreads you somehow always had time for. You made even the most stressful moments lighter, and I truly couldn't have done this without you both.

Finally, I am deeply grateful to my family for their unwavering support throughout this journey. To my younger sister Aisling, thank you for your humour, distraction and perspective which kept me grounded. To my older sister Laoise, my first teacher, who inspired my interest in this field, read every rambling, every idea and endured every voice note. Thank you for always reminding me that while the process of academic research can be difficult, the work itself has meaning. To my dad, Finn, thank you for your quiet strength and enduring patience . Your steady support and calm reassurance have been a constant I could always rely on and would have been lost without.

Most importantly my mom Jane, whose unwavering support has been the foundation of every academic endeavor I have pursued. She made this Masters possible and has always encouraged me to follow my passions. Through countless phone calls, endless reassurance and quiet acts of care, she has been my constant.

Table of Abbreviations

UN- United Nations

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

ECHR- European Convention on Human Rights

ECtHR-European Court of Human Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

NGO- Non-Governmental Organization

PTSD- Post Traumatic Stress Disorder

NMT- National Task Force against Prostitution and Human Trafficking (Sweden)

NZ- New Zealand

EU- European Union

PRA- Prostitution Reform Act 2003 (New Zealand)

NZPC- New Zealand Prostitutes' Collective

Table of Contents

Chapter One: Introduction.....	1
1.1 Background.....	1
1.2 Definitions and Terminology.....	2
1.3 Conceptualizing Dignity in Human Rights Law	5
1.4 Feminist Legal Theories on the Sex Industry	9
1.5 Outline	11
Chapter Two: Theoretical Framework and Methodology	13
2.1 Justification for Case Studies: Sweden and New Zealand	13
2.2 Introduction to Nussbaum’s Capabilities Approach	14
2.3 Why This Framework Is Appropriate for Evaluating Prostitution Laws	17
2.4 Methodological Approach: Capability Based Study Comparison	18
2.5 Scope and Limitations	19
Chapter Three: The Nordic Model in Sweden.....	21
3.1 Overview of the Sex Purchase Act and its Objectives	21
3.2 Analytical Framework: Dignity Based Evaluation	24
3.3 Summary: The Laws Impact on Dignity	36
Chapter Four: The Decriminalization Model in New Zealand	38
4.1 Background of the Prostitution Reform Act 2003	38
4.2 Analytical Framework: Dignity Based Evaluation	43
4.3 Summary: The Laws Impact on Dignity	53
Chapter 5. Comparative Analysis	54
5.1 Capability by Capability Comparison	54
5.2 Towards a Capabilities Orientated Model: Comparative Reflections	62
Chapter Six: Conclusion and Future Directions	65

Chapter One: Introduction

1.1 Background

Prostitution is often referred to as “*the oldest profession*”, with evidence for prostitution as an occupation dating back to 2400 BCE in Mesopotamia.¹ However, some have argued that it would be better rendered the “*oldest form of oppression*”.² This is illustrative of the deep and enduring feminist divide over the legitimacy of the commercial sex industry. The regulation of prostitution is a contentious issue within contemporary feminist and legal discourse, engaging complex and often conflicting ideas about autonomy, labour, coercion and exploitation.

At the core of this discourse there is a core but typically ambiguously defined concept; the right to dignity. Legal and policy debates often invoke this concept as a justification for regulatory approaches. However, the actual experience of dignity among individuals involved in the sex trade remains under researched. A significant gap in scholarship exists with regard to how different regulatory frameworks of prostitution shape the conditions under which individuals live and work, and whether these conditions promote or undermine the ability of those who sell sex to live with dignity.

This thesis will focus on two of the most influential and ideologically conflicting legal models regulating the commercial sex industry: the abolitionist model as implemented in Sweden and decriminalization as implemented in New Zealand. These frameworks are illustrative of fundamentally different understandings of prostitution. The abolitionist model, often referred to as the Nordic model, decriminalizes the selling of sex in all forms and seeks to assist those who are prostituted to exit.³ This model solely criminalizes the buyer, in an attempt to reduce the demand which drives sex trafficking.⁴ Abolitionism is defined as a movement working for the abolition of regulationism.⁵ In contrast, decriminalization entails the complete removal of all criminal and administrative sanctions that people who sell sexual services experience, including arrests and constant police surveillance.⁶ It is a demand

¹ Catherine A Salmon, ‘The World’s Oldest Profession: Evolutionary Insights into Prostitution’ in Joshua Duntley and Todd K Shackelford (eds), *Evolutionary Forensic Psychology* (Oxford University Press 2008) 144.

² Catharine A MacKinnon, *Sex Equality* (3rd edn, Foundation Press 2016).

³ Associazione Iroko, ‘Abolitionist Model’ (Associazione Iroko, 2025)

<https://www.associazioneiroko.org/abolitionism/abolitionist-model/> accessed 1 March 2025.

⁴ *ibid.*

⁵ Ripa Y, ‘Prostitution (19th-21st centuries)’ *Encyclopedie d’histoire numerique de l’Europe* [online] (22 June 2020) <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/prostitution-1800-today/prostitution-19th-21st-centuries#sommaire-abolitionism-a-movement-with-european-ambitions> accessed 10 March 2025.

⁶ India Thusi, ‘Organizing for the Decriminalization of Sex Work in South Africa’ (2024) 148 *Radical History Review* 155, 155.

for state recognition of prostitutes' autonomy to make choices regarding how they employ their bodies.⁷ The decriminalization approach treats the exchange of sexual services as a legitimate form of labour, prioritizing occupational safety, legal protection and rights based governance.

These frameworks are not solely representative of policy tools but are rooted in wider ideological commitments within feminist legal theory. Radical feminist perspectives typically support abolitionism, understanding prostitution as inherently exploitative and inseparable from patriarchal gender structures.⁸ Alternatively liberal feminist approaches typically advocate for decriminalization, emphasizing bodily autonomy, harm reduction and the importance of legal recognition and protection.⁹

The concept of dignity lies at the core of these opposing positions. Some deem prostitution to be inherently degrading and incompatible with human dignity. However, others perceive the denial of agency by criminalization of consensual adult labour as the real affront to dignity. This thesis seeks to move beyond abstract or rhetorical uses of dignity by critically analyzing how these frameworks function in reality. Specifically, it will explore how laws in Sweden and New Zealand shape the lived realities of those involved in the sex trade, through the lens of Martha Nussbaum's capabilities approach.¹⁰ This approach provides a structured, normative framework under which to assess whether legal and social arrangements enable people to live lives they have reason to value.

1.2 Definitions and Terminology

Sex Work and Prostitution

Terminology used to describe the exchange of sexual acts for compensation has proven significant in influencing legal, academic, and public discourse. In particular, the distinction between sex work and prostitution plays a significant role, as these terms carry different social and political connotations.

'Sex work' acts as an umbrella term which encompasses a range of sexual services including acts of direct physical contact between buyers and sellers (prostitution, lap dancing etc.) as well as indirect sexual stimulation (pornography, erotic webcam performances etc.).¹¹ In contrast, 'prostitution' typically refers specifically to the exchange of money for sex.¹² Historically, the term has carried

⁷ *ibid* 155.

⁸ Andrea Dworkin, 'Prostitution and Male Supremacy' (1993) 1 (1) *Mich J Gender & L* 1, 10.

⁹ Wendy Chapkis, *Live Sex Acts: Women Performing Erotic Labour* (Routledge 1997) 3.

¹⁰ Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press of Harvard University Press 2011).

¹¹ Ronald Weitzer, *Sex for Sale: Prostitution, Pornography and the Sex Industry* (2nd edn, Routledge 2009) 45.

¹² Jonathan Law (ed), *A Dictionary of Law* (10th edn, Oxford University Press 2022).

stigma and associations with criminality and has been framed as a legal and moral issue. Calling a person a prostitute ascribes immorality, corruption and degradation to them.¹³

Smith and Mac explore the adoption of the term ‘sex work’ by sex workers with the goal of establishing a collective labour identity and separate themselves from the stigma that accompanies the phrase ‘prostitution’.¹⁴ The activist who coined it said her goal in making up the term was “to create an atmosphere of tolerance”.¹⁵ It is used by advocates and researchers seeking greater recognition for sex workers as workers with labor rights and protections. In contrast to ‘prostitution’, the term ‘sex work’ emphasizes the work aspect of these activities, contributing to their destigmatisation and framing them as legitimate forms of labour. However, the term ‘prostitution’ remains dominant in legal discourse influencing debates regarding the rights of sex workers, public health policy and legal frameworks internationally.

Terminology and Language Sensitivity

As aforementioned, terminology used to describe the exchange of sexual acts for compensation has proven significant in influencing legal, academic and public discourse. This thesis uses the term ‘prostitution’ instead of ‘sex work’ to more accurately reflect the exploitation and harm associated with the practice. Many with lived experience of the industry have argued that prostitution is inherently linked to violence and systematic abuse and the term ‘sex work’ can obscure the marginalization and lack of agency inflicted on those within the trade.¹⁶ The term ‘sex work’ has a tendency to normalize the practice and is arguably not reflective of lived realities.¹⁷

While ‘sex work’ is commonly used within sex worker advocacy, this thesis adopts ‘prostitution’ to describe the exchange of sexual services, while recognizing that terminology can vary depending on context and perspective. Where appropriate, terms such as ‘those within the sex trade/industry’, ‘individuals involved in prostitution’ or ‘individuals who sell sex’ will be used to capture the diverse experiences of those engaged in sexual commerce, acknowledging the complex social, economic and legal factors that shape the experiences of those involved in the industry.

¹³ Anita Bernstein, ‘Working Sex Words’ (2017) 24(2) *Mich J Gender & L* 221.

¹⁴ Molly Smith and Juno Mac, *Revolting Prostitutes: The Fight for Sex Workers’ Rights* (Verso 2018).

¹⁵ Carol Leigh, ‘Inventing Sex Work’ in Jull Nagle (ed), *Whores and Other Feminists* (Routledge 1997) 225.

¹⁶ Rachel Moran, ‘I Got into Prostitution as a Homeless Fifteen-Year- Old Girl on the Streets of Dublin’ (Space International, 2015) www.spaceintl.org/voice/rachel-moran-2/ accessed 10 April 2025.

¹⁷ Elena Jeffreys, ‘Sex Worker Politics and the Term ‘Sex Work’” (2015) 14 *Research for Sex Work* 12.

Decriminalization and Legalisation

In order to understand decriminalization frameworks of prostitution regulation, it is crucial to understand how it differs from legalization. They are two distinct legal frameworks which significantly differ in their approach, implementation, and impact. Decriminalization involves the repeal of all laws against prostitution, recognizing it as a legitimate business and as such, it comes under conventional employment and health regulations.¹⁸ Under this framework, those in the sex trade have the same rights and responsibilities as all other individuals in the labour market.¹⁹

Legalization also moves away from full criminalization but differs significantly from decriminalization frameworks. Legalization permits prostitution under ‘state-specified conditions’²⁰. It authorizes states to impose regulations on sex work such as licensing or designated work locations. This is illustrated by the German Prostitutes Protection Act,²¹ which legalizes the sex trade but imposes numerous regulations on individuals who operate within it such as mandatory registration with local authorities²², mandatory health consultations²³ and mandatory condom use.²⁴ These forms of regulation which states can impose under legalization frameworks undermine prostitute’s human rights to dignity and autonomy by restricting where they can live and work, violating their privacy and placing burdens on them which do not apply to other members of the labour market. In this way, legalization does not treat prostitution as any other form of work, but as a special form of work which can be heavily controlled and monitored by the state.²⁵

Unlike legalization, decriminalization does not create prostitution specific regulations but seeks to integrate it into preexisting legal and labour frameworks. Decriminalization seeks to avoid the emergence of a two-tiered system whereby those within the sex trade who do not comply to state regulations are driven underground.²⁶ In decriminalized regimes, there is typically a shift in power from the state and clients to prostitutes themselves.²⁷

¹⁸ Elaine Mossman, *International Approaches to Decriminalisation or Legalising Prostitution* (Ministry of Justice, 2007) 7.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *Prostitutes Protection Act* (Prostituirtenschutzgesetz, ProstSchG) 2017 (Germany).

²² *Prostitutes Protection Act* s3.

²³ *Prostitutes Protection Act* s10.

²⁴ *Prostitutes Protection Act* s32.

²⁵ Global Network of Sex Work Projects, *Guide to Legal Models: Decriminalization vs. Legalisation* (NSWP 2021) 3 https://www.nswp.org/sites/default/files/guide_to_legal_models_english_prf04.pdf accessed 19 March 2025.

²⁶ Mossman, (n 18) 13.

²⁷ *ibid* 13.

Abolitionism/ Partial Decriminalization

Abolitionism, often referred to as ‘partial decriminalization’ aims to abolish prostitution through targeting the demand, while decriminalizing those selling sex in an ostensible effort to protect those within the sex trade- constructed as passive victims of gendered violence- from criminalization.²⁸ This model also criminalizes third-party profiteers such as pimps and brothel owners implicating them as contributors to gender violence.²⁹ In contrast to both criminalization and legalization/ decriminalization frameworks, this model is premised on the understanding that women’s equity depends on excising structural barriers that preclude women’s full economic, social and political inclusion.³⁰

First formally introduced in Sweden via the Nordic Model in 1999,³¹ the abolitionist approach aligns with the perspective that sex work is not legitimate labour and instead represents a structural inequality. It proceeds from an understanding of prostitution as gendered violence which creates a very different framework from those that identify prostitution as either labour or a consequence of female immorality.³²

1.3 Conceptualizing Dignity in Human Rights Law

Legal Definitions of Dignity

Human dignity is a key idea in human rights discourse and practice, commonly invoked as the moral ground of human rights.³³ However, its precise legal meaning remains contested and context dependent. The Universal Declaration of Human Rights marked a significant progression in codifying human dignity in international human rights law.³⁴ The preamble states *”recognition of the inherent dignity...of all members of the human family is the foundation of freedom, justice and peace in the world”*.³⁵ Article 1 builds on this stating that *”all human beings are born free and equal in dignity and*

²⁸ Jay Levy and Pye Jakobsen, ‘Sweden’s Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Swedish Sex Workers’ (2014) 14(5) *Criminology and Criminal Justice* 593.

²⁹ Gabriella Mesce, ‘Sex Work Decriminalization and Feminist Theory’ (2020) *Senior Theses*, University of South Carolina, 34 https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1368&context=senior_theses accessed 20 March 2025.

³⁰ Gunilla S Ekberg, *Swedish Laws, Policies and Interventions and Trafficking in Human Beings* (2015) 2.

³¹ Act Prohibiting the Purchase of Sexual Services (Lag om förbud mot köp av sexuella tjänster) (Sweden) SFS 1998:408.

³² Mesce, (n 29) 396.

³³ Christopher McCrudden, *Understanding Human Dignity* (OUP 2014) 17.

³⁴ UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III).

³⁵ *ibid* preamble.

rights”.³⁶ These affirmations establish dignity not as a right in itself but as a value unique to itself, on which human rights are built.³⁷

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) closely echoes the approach taken by the UDHR with regard to the right to dignity.³⁸ It closely aligns the right to dignity with gender equality. The preamble reaffirms faith in the ‘dignity and worth of the human person’,³⁹ while Articles 1⁴⁰, 5⁴¹ and 11⁴² emphasize the elimination of discriminatory practices which impact the woman’s right to dignity, particularly in cultural norms and employment settings.

The European Convention on Human Rights (ECHR) makes no explicit reference to dignity in its text.⁴³ However, the European Court of Human Rights (ECtHR) has implicitly included a right to dignity within its jurisprudence. An example of this can be observed in *Pretty v United Kingdom* in which the court linked Articles 3 and 8 of the ECHR to human dignity, ruling that the prohibition of degrading treatment and the protection of private life were central to preserving the claimant's sense of self-worth.⁴⁴ Similarly, in *Goodwin v UK*, the ECtHR emphasized dignity in the context of gender identity and legal recognition.⁴⁵

As per McCrudden, dignity in international human rights law contains a minimum core of the meaning of human dignity, which affirms that every human being possesses an intrinsic worth, merely by being human, while still allowing for significant divergence in its interpretation across differing legal and social contexts.⁴⁶

Dignity and Regulation of the Sex Trade

The relationship between dignity and prostitution remains a contentious and highly debated issue in legal and academic discourse. Whilst dignity within international human rights law has a minimum core shared across cultures which recognizes the inherent worth of all persons, the application of a

³⁶ *ibid* Article 1.

³⁷ *ibid* McCrudden (n 33) 681.

³⁸ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

³⁹ *ibid* preamble.

⁴⁰ *ibid* Article 1.

⁴¹ *ibid* Article 5

⁴² *ibid* Article 11.

⁴³ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

⁴⁴ *Pretty v United Kingdom* (2002) 35 EHRR 1.

⁴⁵ *Goodwin v United Kingdom* (2002) 35 EHRR 18.

⁴⁶ Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19 *EJIL* 655, 655.

right to dignity in practice is context specific and varies significantly from jurisdiction to jurisdiction.⁴⁷ This ambiguity with regards to a specific meaning of dignity is particularly evident in the regulation of prostitution, where different interpretations of dignity are used as an argument to justify differing legal models.

For example, the Preamble of the 1949 UN Convention on the Suppression of the Traffic in Persons frames prostitution as “*incompatible with the dignity and worth of the human person*” which is indicative of a moralistic interpretation of dignity.⁴⁸ Numerous regional texts echo this approach, aligning prostitution with indignity.⁴⁹ For example, in a February 2014 resolution the European Parliament characterized prostitution as a “*form of slavery incompatible with human dignity*”.⁵⁰ This approach frames prostitutes as passive victims, who are denied agency and autonomy by prostitution.

However, the argument has been made extensively that criminalizing prostitution undermines the human dignity of individuals who sell sex services by opening them to discrimination, police abuse and exclusion from healthcare.⁵¹ Yacoub notes an example from the South African Jordan case where the court deemed that criminalizing the prostitute rather than the client violates the prostitute’s right to dignity.⁵²

Many scholars and advocates argue that from a labour rights perspective, commercial sex work links with the right to dignity as there is a right to choose one’s occupation. Olijere in his writings considers a prostitute’s right to be autonomous in their choice of profession, as is enshrined in in the International Covenant of Economic, Social and Cultural Rights (ICESCR)⁵³ and other international instruments, is a key factor with regard to human dignity.⁵⁴ Thus, dignity acts as both a shield and a sword regarding prostitution debates, meaning it is shaped by wider cultural, legal, and ideological frameworks.

Policy and Advocacy Perspectives

⁴⁷ *ibid* 655.

⁴⁸ UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271 (Preamble).

⁴⁹ Amin R Yacoub, ‘Consensual Sex Work: An Overview of Sex Workers’ Human Dignity in Law, Philosophy and Abrahamic Religions’ (2019) 76 *Women’s Studies International Forum* 102274, 1.

⁵⁰ European Parliament, ‘Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and Its Impact on Gender Equality’ [2014] OJ C285/9.

⁵¹ Yacoub (n 49) 1.

⁵² *Jordan and Others v State* [2002] ZACC 22, 2002 (6) SA 642 (CC).

⁵³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁵⁴ Aloy Ojilere, ‘Sex Work and Human Dignity: Perspectives from International Human Rights Law’ (2019) 3(2) *Nigerian Human Rights Journal* 1, 12.

With regard to prostitution, policy and advocacy actors interpret the concept of dignity in numerous different ways. Many perceive it as inherently degrading and contrary to human dignity. An example of this is in the preamble of the 1949 Convention for the Suppression of the Traffic in Persons which declares prostitution to be “*incompatible with the dignity and worth of the human person*”.⁵⁵ This is reflective of a moralistic and protectionist interpretation of dignity. This perspective is commonly influential with regard to contemporary policy. Paragraph one of the European Parliament’s 2014 resolution on sexual exploitation directly labels prostitution as a “*violation to human dignity*”.⁵⁶ The European Parliament’s 2023 resolution reaffirms this approach stating “*sexual exploitation through the prostitution of others is a gross violation of women’s rights and dignity and implies that both a person and their consent to sexual activity can be purchased for a given sum*”.⁵⁷

However, numerous international bodies also adopt a different approach with regard to dignity and prostitution. Many of these views contrast sharply with rights-based advocacy approaches, which believe that dignity is not a protection from prostitution but instead as a legitimate ground for recognizing prostitution as a legitimate form of labor. An example of this can be seen in the approach adopted by Amnesty International. In a 2016 report Amnesty argues that dignity is best protected when those in the sex trade are free from criminalization and able to access health care, justice and labor protections without fear’.⁵⁸ The Global Commission on HIV and the Law links dignity with autonomy, concluding that punitive laws violate dignity by reinforcing stigma, violence and vulnerability among those within the sex trade.⁵⁹ The UNDP Asia-Pacific Report also adopts this approach by framing dignity as empowerment and inclusion, encouraging states to dismantle legal frameworks which criminalize consensual prostitution and instead support safe, rights-based environments.⁶⁰

These two differing approaches are illustrative of the broader debate which exists within human rights law regarding perspectives of dignity within prostitution. The two differing approaches essentially view dignity either as moral constraint or as a basis for autonomy and self-determination.

⁵⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271, preamble.

⁵⁶ Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and Its Impact on Gender Equality [2017] OJ C285/9, para 1.

⁵⁷ Resolution of 14 September 2023 on the Regulation of Prostitution in the EU: Its Cross-Border Implications and Impact on Gender Equality and Women’s Rights’ [2024] OJ C 117, recital C.

⁵⁸ Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016) 7-8, 15.

⁵⁹ Global Commission on HIV and the Law, *Risks, Rights & Health* (UNDP 2012) 36-38.

⁶⁰ UNDP, *Sex Work and the Law in Asia and the Pacific* (UNDP 2012) 17.

1.4 Feminist Legal Theories on the Sex Industry

Radical Feminism

Radical feminist theories typically view prostitution as a form of legalized sexual exploitation and an institutionalized system of male violence. The radical feminist framework does not view prostitution as a legitimate form of labour and it is utilised to push for criminalisation of several actors in the sex trade, particularly the client.⁶¹ Radical feminist scholars such as MacKinnon⁶², Dworkin⁶³ and Farley⁶⁴ have extensively critiqued the sex trade on this basis believing it perpetuates patriarchal control of women. The radical feminist framework aligns with the abolitionist framework of regulating prostitution. Signatories of this approach typically advocate for the Nordic Model, favouring criminalising the buyer of sexual services.⁶⁵ A central belief of radical feminism is that prostitution is inherently not a genuine choice for women and is symptomatic of male dominance within society.⁶⁶ MacKinnon argues that sexuality under patriarchy is structured to reinforce male dominance over women.⁶⁷ In accordance with her theories, prostitution is symptomatic of the eroticization of women's subordination which is legitimized by its misrepresentation as a contractual exchange, concealing the reality that coercion and inequality are the driving force for women entering the sex trade. Dworkin's work echoes this belief, asserting that prostitution is a patriarchal manifestation, utilized by men to assert dominance over and express their contempt for women.⁶⁸

Farley substantiates this perspective with empirical evidence underlining the levels of physical and sexual violence experienced by women in prostitution.⁶⁹ The studies she cites show 68% of prostituted women across nine countries met the criteria for PTSD, a comparable statistic to that of rape victims and state-sponsored torture.⁷⁰ She rejects the idea that the legalization or decriminalization of prostitution would better protect those within the sex trade due to the fact sexual and physical violence is a normative experience for women in prostitution in both legal and illegal settings.

⁶¹ India Thusi, 'Radical Feminist Harms on Sex Workers' (2019) 55(2) *Cal W L Rev* 439
<https://scholarlycommons.law.cwsl.edu/fs/242/> accessed 13 March 2025.

⁶² Catherine MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

⁶³ Dworkin (n 8).

⁶⁴ Melissa Farley, "'Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized" (2004) 10(10) *Violence Against Women* 1087.

⁶⁵ Kate Sutherland, 'Work, Sex and Sex-Work: Competing Feminist Discourses on the International Sex Trade' (2004) 42(1) *Osgoode Hall LJ* 139.

⁶⁶ Thusi (n 61).

⁶⁷ MacKinnon (n 62).

⁶⁸ Dworkin (n 8).

⁶⁹ Farley (n 64).

⁷⁰ Farley (n 64) 1105.

Liberal Feminism

In contrast, liberal feminists argue that women have the right to sexual self-determination and the right to embrace commercial sex as ‘potentially liberating terrain’.⁷¹ Liberal feminism approaches prostitution from the perspective of autonomy, labour rights and harm reduction.⁷² Unlike the approach adopted by radical feminism, liberal feminism views prostitution as a legitimate form of labour when freely chosen and that criminalization is inherently harmful for those in the trade. Liberal feminist scholars such as Nussbaum (1999),⁷³ Doezema (2010)⁷⁴ and Chapkis (1997)⁷⁵ are proponents of decriminalization, arguing that legal recognition and labour protections better safeguard prostitutes and reduce their vulnerability.

A core aspect of this approach is the belief that prostitution should be viewed as a legitimate form of labour rather than a manifestation of male dominance. Nussbaum is critical of patriarchal ideas which view prostitution as inherently exploitative but fail to apply the same belief system to other forms of corporeal labour, such as surrogacy, massage therapy and acting, submitting that the biggest difference between these forms of labour and prostitution is stigma.⁷⁶ Chapkis adopts a similar approach in her arguments emphasizing that a refusal to acknowledge the physical and emotional labour involved in prostitution perpetuates economic and social exclusion.⁷⁷ These perspectives support the argument that prostitution should be equated to any other form of labour in order to provide individuals in the sex trade with the rights and safeguards afforded to workers in different industries.

Nussbaum expands on this by counterarguing with the viewpoint of numerous radical feminist scholars such as MacKinnon and Dworkin that prostitution is inherently never a free choice under the patriarchy. These scholars argue that economic coercion forces numerous women into prostitution rendering the basis of their consent meaningless. Nussbaum argues that economic necessity is a driving factor in countless professions, yet there is no argument to be made in favor of criminalizing these professions.⁷⁸ She argues that criminalization of prostitution in any capacity would fail to provide further protections

⁷¹ Laura Connelly, ‘Debates on Prostitution: An Introduction to Feminist Politics and Their Influence upon International Policy and Practice’ in Frank Jacob (ed), *Prostitution: A Companion of Mankind* (Peter Lang 2016) 61.

⁷² Kimberly Lux, ‘Work, Violence or Both? Framing the Sex Trade and Setting an Agenda for Justice’ (2009) *Advocates’ Forum* 1.

⁷³ Martha C Nussbaum, *Sex and Social Justice* (Oxford University Press 1999).

⁷⁴ Jo Doezema, *Sex Slaves and Discourse Matters: The Construction of Trafficking* (Bloomsbury Academic 2010).

⁷⁵ Chapkis (n 9).

⁷⁶ Nussbam (n 73) 287.

⁷⁷ Chapkis (n 9) 79.

⁷⁸ Nussbam (n 73) 287.

to women in this situation. Instead, the correct response to the problem is to work to enhance the economic autonomy and the personal dignity of individuals in this situation and not to further stigmatize women who earn their living through the sex trade.⁷⁹ Doezema builds on this critiquing the abolitionist framework which frames those within the sex trade as victims, erasing their agency and reinforcing state control on their autonomy rather than providing them with legitimate safeguards.⁸⁰

Liberal feminists maintain that decriminalization offers the most effective safeguards for prostitutes in practice. Doezema states that abolitionist laws which ostensibly protect prostitutes by criminalizing only those who profit from them are in practice used against prostitutes and their families.⁸¹ Scholars argue that decriminalization plays a crucial role in dismantling the stigma that perpetuates social exclusion, enabling prostitutes to work without fear of legal repercussions or discrimination.⁸²

1.5 Outline

This thesis is divided into five further chapters. Chapter two outlines the theoretical and methodological foundations of the research. It introduces Nussbaum's Capabilities Approach as the central evaluative framework and explains its relevance for analyzing prostitution laws through a dignity-based lens.⁸³ This chapter also explains the selection of Sweden and New Zealand as comparative case studies and addresses the scope and limitations of the approach.

Chapter three focuses on the Swedish legal framework, commonly known as the Nordic Model. After introducing the Swedish Sex Purchase Act and its stated objectives, the chapter applied the capabilities approach to analyze the law's impact on those in the commercial sex trade in Sweden. Each of the five selected capabilities, concluding with a summary of the broader implications for dignity.

Chapter four then focuses on the New Zealand model of decriminalization. Following a contextual overview of the Prostitution Reform Act,⁸⁴ the same five capabilities are applied to evaluate how the legal framework impacts those in the commercial sex trade's lived experience and access to rights. As in the previous chapter, the analysis ends with a reflection on the overall impact of the law on human dignity.

⁷⁹ Nussbaum (n 73) 297.

⁸⁰ Doezema (n 74) 175.

⁸¹ Doezema (n 74) 23.

⁸² Mossman (n 18) 13.

⁸³ Nussbaum (n 10).

⁸⁴ Prostitution Reform Act 2003 (NZ).

Chapter five directly compares the two case studies. It begins by outlining the comparative approach before moving into a capability-by-capability analysis of both frameworks. This chapter identifies key strengths and limitations within each framework and concludes by reassessing the role of dignity in the legal regulation of the commercial sex trade.

The final chapter of this thesis summarizes the central arguments and findings of the research. It reflects on the implications for legal and policy reform and suggests avenues for future research. By the conclusion of this paper, it becomes evident that applying a dignity-based capabilities framework to prostitution law offers a valuable insight into how legal systems can promote or inhibit the fundamental rights of those who sell sex.

Chapter Two: Theoretical Framework and Methodology

2.1 Justification for Case Studies: Sweden and New Zealand

This thesis will focus on Sweden and New Zealand as case studies grounded in their implementation of distinctly contrasting legal approaches to the regulation of the commercial sex industry, which makes them uniquely positioned for comparative analysis. The frameworks for regulating prostitution in these countries serve as paradigmatic examples of the abolitionist model (Sweden) and decriminalization (New Zealand) models respectively. The aim of these thesis is to critically analyse how these two regulatory frameworks impact the dignity of those who sell sex in practice. By focusing on New Zealand and Sweden this paper seeks to derive meaningful insights into the practical and ethical of each model in reality.

Sweden is known as the pioneer of the Nordic Model. This model was introduced in Sweden via ‘The Law That Prohibits the Purchase of Sexual Services’⁸⁵ which came into effect on January 1st, 1999, as part of state’s broader Violence Against Women Policy.⁸⁶ This act criminalizes the purchase of sex whilst decriminalizing its sale. This framework is rooted in gender and abolitionist perspectives which view prostitution as inherently exploitative and incompatible with gender inequality. Sweden justifies this model as a means of protecting human dignity by reducing demand for commercial sex, thereby discouraging trafficking and supporting exit strategies for those selling sex in the state.⁸⁷ Sweden’s well documented policy outcomes, considerable state involvement and its role in promoting this framework internationally make it a compelling case study by which to evaluate the abolitionist stance.

Alternatively, in New Zealand the Prostitution Reform Act was adopted in 2003 and fully decriminalizes consensual adult involvement in the commercial sex industry.⁸⁸ This framework is rooted in a human rights and harm reduction perspective which prioritizes the agency, safety and health of those who sell sex in New Zealand. This model is often referred to as the best practice example by advocates of decriminalization due to its collaborative approach with organizations representing individuals in the commercial sex industry in New Zealand, incorporation of occupation health and safety standards and efforts to remove the stigma associated with prostitution.⁸⁹ New

⁸⁵ Act Prohibiting the Purchase of Sexual Services (n 31).

⁸⁶ Government Bill, *Kvinnofrid (prop. 1997/98:55- the Violence Against Women Act)*.

⁸⁷ Gillian Abel, Catherine Healy, Calum Bennachie and Anna Reed, ‘The Prostitution Reform Act’ in Gillian Abel, Lisa Fitzgerald and Catherine Healy (eds), *Taking the Crime Out of Sex Work: New Zealand Sex Workers’ Fight for Decriminalization* (Policy Press 2010) 76-77,104-106.

⁸⁸ Prostitution Reform Act 2003 (NZ).

⁸⁹ Abel et al (n 87) 76-77.

Zealand acts as a valuable case study to analyse the real-world implications of treating prostitution as legitimate labour within a human rights based legal framework.

The choice to compare these two countries is additionally justified by their similarities in democratic governance, socio-economic development, and commitment to human rights and equality. These shared characteristics help control broader systemic variables that might otherwise confound analysis, allowing for a more focused examination of the legal frameworks themselves and their respective impacts on human dignity.

Furthermore, both Sweden and New Zealand were the first states in the world to implement their respective legal models. As pioneering examples, each state has accumulated substantive qualitative and quantitative data documenting the impacts of these legal regimes. There is a breadth of government reports, academic evaluations and firsthand accounts from individuals involved in the commercial sex industry which contributes to the depth and credibility of this comparative analysis. Significantly, both frameworks have significantly shaped debates and policy development internationally. This positions them not only as national case studies but also as emblematic of broader ideological approaches to regulating the commercial sex industry.

In choosing Sweden and New Zealand as case studies, this thesis does not seek to present an exhaustive global survey but instead to engage in a deep, critical exploration of two influential and antithetical regulatory models. This comparative approach enables a nuanced understanding of how regulatory frameworks shape lived experiences, influence societal attitudes and either promote or undermine human dignity in the context of the commercial sex trade.

2.2 Introduction to Nussbaum's Capabilities Approach

Martha Nussbaum's Capabilities Approach is a normative framework for evaluating justice, human development, and the conditions necessary for an individual to fully realize their right to dignity.⁹⁰ Developed as a response to traditional economic indicators such as GDP, this approach focuses on one fundamental question: *what is each person actually able to do and be?*⁹¹ Rather than measuring well-being through wealth or utility, the Capabilities Approach assesses real freedoms, what Nussbaum calls 'substantial freedoms', which individuals have to pursue to have a flourishing life.⁹²

⁹⁰ Nussbaum, *Creating Capabilities* (n 10).

⁹¹ *ibid* X.

⁹² *ibid* 20.

Nussbaum's capabilities approach originates from a collaboration with economist Amartya Sen but diverges in significant ways. Sen introduced the idea that an individual's well-being should be analyzed through their capabilities rather than their income or preferences, but Sen neglected to specify a definitive list of core capabilities.⁹³ In contrast, Nussbaum proposed ten specific 'central capabilities' which are essential thresholds that must be met in order to lead a dignified human life.⁹⁴ Nussbaum defines the Capabilities Approach as an approach to comparative quality-of-life assessment and theorizing about basic social justice.⁹⁵ They serve as a metric for both human development and justice, acting as a concrete set of criteria by which to evaluate social and legal structures.

She outlines that these capabilities are not solely internal abilities but also the freedoms or opportunities created by a combination of personal abilities and the political, social and economic environment.⁹⁶ Her theory also distinguishes between 'internal capabilities'- personality traits, intellectual and emotional capacities, states of bodily fitness and health, internalized learning, skills of perception and movement and 'combined capabilities' which are the opportunities available to a person in a given context.⁹⁷ This is an important distinction as a society may develop internal capabilities through means such as education but unless social and political structures permit individuals to exercise them, they cannot constitute combined capabilities. In accordance with the Capabilities Approach, respect for human dignity requires that all individuals in a society be placed above an ample, specified threshold in each central capability, below which their dignity is compromised.⁹⁸

Nussbaum's approach is inherently pluralistic. She outlines that the central capabilities are qualitatively distinct and cannot be reduced to a single measure such as utility or preference satisfaction.⁹⁹ This is a significant aspect which distinguishes her theory from utilitarian or purely libertarian models. She grounds her list in a conception of equal human dignity, the idea that all individuals have a claim to a set of opportunities that make a dignified life possible, simply by virtue of the fact they are human.¹⁰⁰

⁹³ Amartya Sen, 'Capability and Well-Being' in Martha C Nussbaum and Amartya Sen (eds) *The Quality of Life* (Clarendon Press 1993).

⁹⁴ Nussbaum (n 10) 33-34.

⁹⁵ *ibid* 18.

⁹⁶ *ibid* 20.

⁹⁷ *ibid* 21.

⁹⁸ *ibid* 32.

⁹⁹ *ibid* 18.

¹⁰⁰ *ibid* 186.

Among the ten capabilities identified by Nussbaum, there are several which are particularly relevant with regard to evaluating frameworks and policies which regulate prostitution. These include:

1. Bodily Integrity- being able to move freely, be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.¹⁰¹
2. Affiliation- the ability to live with others, experience respect and non- stigma, and engage in social relationships.¹⁰²
3. Practical Reason- the ability to form a conception of the good and plan one's life accordingly.¹⁰³
4. Control Over One's Environment- this includes participation in political decision making and legal rights in work.¹⁰⁴
5. Bodily Health- the ability to have good health, including reproductive health, to be adequately nourished and to have adequate shelter.¹⁰⁵

This paper will seek to analyze these five capabilities specifically and they are the most directly implicated in the lived realities of the sex trade. Other capabilities, such as 'play' or 'concern for other species', whilst significant with regard to broader human development, arguably fall outside of the scope of this legal and policy analysis.

Each of these five aforementioned capabilities has direct implications for individuals involved in prostitution, in particular in assessing whether a framework promotes or restricts their agency, safety and inclusion. For example, a model which fosters stigma can undermine affiliation and emotional wellbeing.

A critical aspect of Nussbaum's approach is her rejection of mere functioning as a sufficient goal for justice. Instead, she submits that justice must provide capabilities, or the genuine freedom to choose.¹⁰⁶ She illustrates this in her writings using Sen's example of contrasting between a person who fasts and a person who starves- whilst both function without food, only the former has the ability to eat and thus the freedom to choose not to.¹⁰⁷ In this way she submits that the existence of options to an individual- even if they are not exercised- are essential to human dignity.

¹⁰¹ *ibid* 33.

¹⁰² *ibid* 34.

¹⁰³ *ibid* 33.

¹⁰⁴ *ibid* 34.

¹⁰⁵ *ibid* 34.

¹⁰⁶ *ibid* 25.

¹⁰⁷ *ibid* 25.

In using capabilities as a benchmark, the capabilities approach offers a concrete and ethically grounded means by which to assess whether a legal or policy framework protects or hinders the freedom of individuals to lead lives they value.

2.3 Why This Framework Is Appropriate for Evaluating Prostitution Laws

The capabilities approach is a suitable method by which to evaluate prostitution laws as it provides a concrete, dignity-based standard which emphasizes agency, choice and the necessary social conditions which promote or restrict a person to live how they wish to. This approach does not solely focus on outcomes or moral judgements, it evaluates what options are available to individuals in reality. It recognizes that two people may have similar observable lives but vastly different freedoms, as illustrated by the aforementioned starving vs fasting example. This distinction is crucial when evaluating regulatory frameworks which govern prostitution: the question is not simply whether an individual is engaging in prostitution, but whether they are doing so under conditions of genuine choice, safety and dignity. The capabilities approach opposes frameworks which impose a single idea of a good life on all members of a society, and instead focuses in ensuring individuals have genuine opportunities to make their own choices about how they live.¹⁰⁸ Nussbaum explicitly warns against approaches which impose 'one size fits all' solutions and fails to cater to lived realities. She states "*to promote capabilities is to promote areas of freedom, and this is not the same as making people function a certain way*".¹⁰⁹ This means the capabilities approach remains sensitive to the diversity of experiences within prostitution, accommodating both those who wish to exit and those who seek better labour conditions.

Furthermore, the capabilities approach is concerned with entrenched social justice and inequality, especially capability failures that are the result of discrimination or marginalization.¹¹⁰ Nussbaum outlines that the absence of education¹¹¹, bodily integrity¹¹² and economic independence¹¹³ limits women's options. This is directly applicable with regard to choices such as entering or exiting the sex trade. Legislation which criminalizes or stigmatizes prostitution often compounds these limitations by stripping individuals of agency, safety and access to justice. Accordingly, the capabilities approach

¹⁰⁸ *ibid* 25.

¹⁰⁹ *ibid* 25.

¹¹⁰ *ibid* 25.

¹¹¹ *ibid* 6.

¹¹² *ibid* 8.

¹¹³ *ibid* 8.

provides a clearly defined normative standard for evaluating human dignity, grounded in a threshold level of ten central human capabilities, including bodily integrity, emotional well-being, political participation, and control over one's environment. This approach acts as a basis for a substantive assessment of whether individuals in the sex trade are genuinely capable of exercising essential freedoms in practice, rather than merely surviving under oppressive conditions. In the context of this paper, it will act as a concrete and principled basis by which to compare real world impacts of the Abolitionist framework in Sweden and the Decriminalization model in New Zealand. The capabilities approach supports a justice-orientated legal analysis by focusing on whether legal frameworks enable or inhibit access to the conditions necessary for a dignified life, emphasizing autonomy, context and human flourishing over formal equality or abstract moral claims

2.4 Methodological Approach: Capability Based Study Comparison

This thesis will adopt a comparative case study methodology informed by the capabilities approach as outlined by Martha Nussbaum.¹¹⁴ Previous sections have outlined the theoretical rationale for applying this capabilities framework and identified the five core capabilities most relevant to analyzing the regulation of prostitution. This section will outline how that framework is employed methodologically to evaluate and compare the real-life impact of abolitionist and decriminalization models in both Sweden and New Zealand.

The goal of this methodology is to analyze whether and how legal frameworks enable or inhibit individual's' substantive freedoms, what Nussbaum labels 'combined capabilities' in practice.¹¹⁵ This will involve not solely analyzing statutory texts but additionally empirical data, including government reports, evaluations by international organizations, and testimonies or studies involving those directly impacted by both legal regimes. Particular emphasis will be placed on whether these differing legal frameworks promote or inhibit individuals' access to bodily, integrity, affiliation, practical reason, bodily health, and control over one's environment.

This comparative structure will enable a context sensitive analysis which does not frame legal models as isolated constructs but as embedded within broader social, cultural, and political climates. For example, while Sweden's framework may promote dignity via exit programmes and reduced demand, this thesis will investigate whether it inadvertently compromises certain capabilities such as affiliation

¹¹⁴ *ibid.*

¹¹⁵ *ibid* 21.

or control over one's environment. Similarly, New Zealand's framework is analyzed not solely for its legal status but its practical impacts on actual safety, autonomy, and opportunity.

This methodological approach avoids depending solely on legal formalism or outcome based indicators. Alternatively, this approach combines normative assessment with empirical evidence, analyzing not just whether this law exists but whether in reality it functions in a manner which promotes or inhibits the real opportunities of individuals in the commercial sex industry in both countries. This is reflective of Nussbaum's theory that human dignity is not fulfilled by mere functioning or survival, but by the presence of real, substantial freedoms which enable individuals to pursue autonomous lives which they value.¹¹⁶

Furthermore, the capability approach is particularly appropriate to navigate the moral and political tensions which are often present in conversations regarding prostitution regulation. It does not presuppose one singular moral stance but instead analyses whether a framework accounts for the plural realities of those impacted by it. In doing so, it aligns with this thesis's broader commitment to a justice orientated legal analysis which centers human dignity not solely in theory but in tangible lived experiences.

2.5 Scope and Limitations

The scope of this thesis is restricted in several important respects. Firstly, the study will be limited to two jurisdictions. Whilst Sweden and New Zealand both present instructive and ideologically constraining frameworks, they are not representative of the full diversity of legal approaches to prostitution worldwide. Countries with regulatory or prohibitionist frameworks, or with different socio-political and economic contexts fall outside the scope of this research. As a result, the findings of this thesis should be understood as illustrative rather than representative of all legal models and their impacts worldwide.

Secondly, this analysis will rely on secondary sources, including government reports, academic literature, NGO publications, and firsthand accounts documented in qualitative studies. Due to practical and ethical considerations this thesis will not include original fieldwork or direct interviews with individuals impacted by the frameworks or engaged in the commercial sex industry. This restricts the immediacy of the voices represented within this study and may constrain the potential to fully

¹¹⁶ ibid 31.

capture the complexity of lived realities. However, effort has been made to prioritize sources which incorporate such voices via participatory or peer-informed methodologies.

Thirdly, cultural and legal developments are dynamic. This thesis will analyze the Swedish and New Zealand models as they currently exist, however the findings are only reflective of the legal landscape up to 2025. Future legislative reforms, changes or developments in enforcement practices, or changes in societal attitudes may alter the operation or interpretation of these frameworks as they currently stand. These temporal limitations are acknowledged as inherent to any legal or policy analysis.

Finally, whilst the capabilities approach offers a robust normative framework, it is not without criticism. This thesis will adopt Nussbaum's list of central capabilities as working evaluative standard, but ongoing debates surrounding universality, cultural specificity and threshold setting within capabilities theory are acknowledged. Scholars such as Ingrid Robeyns have questioned the epistemological legitimacy and democratic inclusiveness of a fixed, universal list of capabilities proposed by a single theorist.¹¹⁷ She submits that any list of capabilities intended for use in policy or empirical analysis should be developed through a public, democratic process that reflects context specific values and doesn't impose external moral frameworks.¹¹⁸ Furthermore, she emphasizes the importance of allowing impacted groups to speak for themselves and warns that failure to engage them meaningfully risks undermining the legitimacy of any normative framework used to analyze their lives.¹¹⁹ These criticisms highlight the need for methodological caution in applying Nussbaum's capabilities as a normative benchmark and are acknowledged, though not fully resolved, within the scope of this thesis.

In clearly defining the scope but acknowledging the limitations of this thesis, it seeks to provide a focused, principled and ethically grounded comparative analysis, without overextending its findings beyond what the evidence and framework can reasonably support.

¹¹⁷ Ingrid Robeyns, 'Selecting Capabilities for Quality of Life Measurement' (2005) 74 *Social Indicators Research* 191, 198.

¹¹⁸ *ibid* 205.

¹¹⁹ *ibid* 199.

Chapter Three: The Nordic Model in Sweden

3.1 Overview of the Sex Purchase Act and its Objectives

The development of the Swedish model, also known as the Sexköpslagen (Sex Purchase Law), emerged within a broader national effort to address gender-based violence.¹²⁰ In May 1998, the Swedish Government was presented a Government Bill which aimed to address male violence against women.¹²¹ One of the key proposals made in this bill was the criminalization of the purchase of sexual services. This bill was composed by two Commissions of Inquiry- the Commission on Violence Against Women and the Commission on Prostitution. Both reports were presented in 1995.¹²² These reports emphasized the structural nature of prostitution as a form of male violence and exploitation of women, framing it within Sweden's broader commitment to gender equality.

The culmination of these efforts was the passage of legislation in 1999 that introduced the Sex Buyers Act. The Act was designed to reduce prostitution; in the short term by actively policing it and in the long run by changing attitudes towards the purchase of sex.¹²³ This law asymmetrically criminalizes those who buy sexual services and third-party profiteers (pimps and brothel owners), while maintaining the decriminalization of individuals who sell sex.¹²⁴ The model proceeds from an understanding of prostitution as gendered violence, which creates a very different framework than those that identify prostitution as either labour or a consequence of female morality.¹²⁵ This legislative shift marked Sweden as the first country to adopt a legal framework that treated prostitution not as a moral or public order issue, but as structural gendered violence.

In 2000 the Swedish government formally implemented this law, accompanied by a broader set of prostitution related policies and strategies. These included public awareness campaigns, exit programmes and inter agency coordination aimed at preventing trafficking for sexual exploitation and supporting individuals seeking to exit prostitution.¹²⁶ This model is underpinned by a strong ideological stance which rejects the framing of sex work as a legitimate form of labour, instead framing it as inherently exploitative and incompatible with Sweden's vision of gender equality. This

¹²⁰ Swedish Sexual Purchases Act (n 31).

¹²¹ *Kvinnofrid* (n 85).

¹²² SOU 1995:60, *Kvinnofrid: Slutbetankande av Kvinnovaldskommisionen* (Statens Offentliga Utredningar, 1995).

¹²³ Charlotta Holmström and May-Len Skilbrei, 'The Swedish Sex Purchase Act: Where Does it Stand?' (2017) 4(2) Oslo Law Review 82, 83.

¹²⁴ Ane Mathieson, Easton Branam and Anya Noble, 'Prostitution Policy: Legalization, Decriminalization and the Nordic Model' (2016) 14 Seattle J Soc Just 367, 371.

¹²⁵ *ibid* 371.

¹²⁶ Ekberg (n 30) 31.

view was epitomized by then Minister for Equality, Mona Sahlin who stated, "if you are a feminist, you cannot relate to prostitution in any other way than to see it as male domination".¹²⁷

The Sex Purchase Law Act criminalizes the purchase of sexual services under Chapter 6, Section 11 of the Swedish Penal Code and does not criminalize the sale of these services.¹²⁸ This asymmetrical criminalization is illustrative of the State's position that individuals selling sexual services are victims of structural inequality and that those who purchase it perpetuate exploitation and reinforce patriarchal norms. Furthermore, Swedish law also prohibits third-party profiteering, such as pimping or operating brothels, under provisions which predate the 1999 law.¹²⁹ The purpose of these laws is to reduce the commercialization and organisation of sex work. Moreover, under Swedish law there are also restrictions on soliciting in public places¹³⁰ and immigration regulations that permit the state to deport foreign nationals if they suspect they intend to sell sexual services, despite the official policy of decriminalizing those in the sex trade.¹³¹

A significant aspect of Sweden's approach is the implementation of supportive social policies which seek to support individuals exiting the sex trade.¹³² These include exit programs which include psychological services, health care, housing support and employment and education assistance. However, access to these services have tended to differ over time from city to city in Sweden depending on the extent to which local authorities interpret and prioritize national guidelines.¹³³ Law enforcement plays a vital role in the Swedish framework, with police instructed to monitor and deter the demand side of prostitution. The particular focus of these initiatives is to target human trafficking.¹³⁴ These operations are typically used to identify and prosecute buyers, while sellers are usually approached by social services rather than criminalized.¹³⁵ Social workers and NGOs often work in collaboration with law enforcement to provide support to victims of the sex trade and providing referrals to exit programmes.¹³⁶ However, many critics argue that these practices can lead

¹²⁷ Hölmstrong and Skilbrei (n 123) 491 (quoting Mona Sahlin in Hulden 2003).

¹²⁸ Swedish Penal Code (Brottsbalken), ch 6 s11.

¹²⁹ Swedish Penal Code (Brottsbalken), ch 6 s 12

¹³⁰ *ibid* ch 6 s 11

¹³¹ Swedish Aliens Act (Utlänningslagen), ch 8 ss 2(2), 7a(1).

¹³² Swedish Social Services Act (Socialtjänstlagen) 2001: 453, ch 5 s 11.

¹³³ Sven- Axel Månsson, 'The History and Rationale of Swedish Prostitution Policies' (2017) 2(4) *Dignity: A Journal of Sexual Exploitation and Violence* 8.

¹³⁴ Kasja Wahlberg, Targeting the Sex Buyer: *The Swedish Example- Stopping Prostitution and Trafficking Where It All Begins* (Swedish Institute 2010) <https://documentation.lastradainternational.org/doc-center/2578/targeting-the-sex-buyer-the-swedish-example-stopping-prostitution-and-trafficking-where-it-all-begins>.

¹³⁵ *ibid* 9.

¹³⁶ European Commission, 'Sweden' (Migration and Home Affairs, 23 March 2022) https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/sweden_en accessed 7 April 2025.

to increased marginalisation and that compounding levels of stigma affect these groups and they have been largely left out of the conversation regarding Sweden's policy.¹³⁷

The Swedish framework is based on a feminist and human rights framework which views prostitution and the commercialisation of male violence and gendered exploitation. Within this ideological structure, prostitution is not seen as a job or choice, but rather as an obstacle to the development of society based on gender equality.¹³⁸ As such, the 1999 Act must not solely be viewed as a criminal law reform, but a tool to advance gender equality and the protection of women's dignity by the Swedish state.

As per Ekberg, Swedish law conceptualises prostitution as incompatible with internationally accepted principles of human rights: the dignity and worth of the human person and the equal rights of men and women.¹³⁹ In the Swedish model, the purchase of sex is criminalized while the sale is decriminalized, effectively placing the burden of the criminal responsibility on the 'masculinised client' while the 'feminized sex worker' is supposedly protected from legal repercussion.¹⁴⁰ This legal distinction is illustrative of a broader gender construction where the sex buyer is framed as a male perpetrator and the female seller is framed as a victim of structural inequality.

Eliminating the demand as the root cause of prostitution and trafficking in human beings for sexual purposes is a cornerstone of Swedish policies. The law aims to hold male buyers accountable not only legally but also ethically and normatively for sustaining an exploitative system.¹⁴¹ As per Bindel, abolitionist efforts aim to expose how men's needs are routinely put before the rights of the women they abuse. The truth about men who pay for sex is being lifted from the shadows by the survivor abolitionists and placed in full view of the general public.¹⁴² This public unmasking is echoed by sex trade survivor and radical feminist Rachel Moran in her writings who asserts "*the invisible man is invisible no more- we are holding him up to face the music*".¹⁴³

¹³⁷ Library of Parliament, *Prostitution: A Review of Legislation in Selected Countries* (Publication No 2022-21-E, 17 June 2022) https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202221E#fn81 accessed 7 April 2025.

¹³⁸ Ekberg (n 30) 4.

¹³⁹ Ekberg (n 30) 8.

¹⁴⁰ Levy and Jakobsen (n 28) 594.

¹⁴¹ Ekberg (n 30) 9.

¹⁴² Julie Bindel, *The Pimping of Prostitution: Abolishing the Sex Work Myth* (Palgrave Macmillan 2017) 125.

¹⁴³ Rachel Moran, *Paid For: My Journey Through Prostitution* (2015, Gill & Macmillan).

Sweden's approach under the Nordic Model includes state-funded support services designed to assist individuals exiting prostitution, with a focus on holistic rehabilitation rather than criminalisation. This encompasses a range of supports such as exit programs, trauma-informed counselling, education and housing support. Organisations such as Talita, a state supported NGO, provide rehabilitation services for women exiting prostitution assisting women via a holistic approach.¹⁴⁴

With regard to institutional collaboration, the Swedish government established the National Task Force against Prostitution and Human Trafficking (NMT).¹⁴⁵ This is an inter-agency body comprised of the Swedish Police Authority, the Prosecution Authority, the Migration Agency, and representatives from social services, healthcare and tax authorities.¹⁴⁶ The NMT's role is to coordinate national responses, facilitate multi-agency interventions and coordinate national responses.¹⁴⁷

Police and healthcare services are central to the implementation of anti-trafficking efforts. The Swedish Police Authority combats trafficking primarily at the regional level through special human trafficking groups with units like the Prostitution Group in Stockholm which work to combat the purchase of sexual services.¹⁴⁸ In their role, police are responsible for identifying presumed victims of human trafficking in their surveillance and investigation activities¹⁴⁹ and are tasked with initiating risk assessments and informing victims of their rights.¹⁵⁰ Likewise, healthcare providers may also identify victims of trafficking in their work¹⁵¹, as part of the National Task Force network, and are expected to address both urgent physical and psychological needs.¹⁵²

3.2 Analytical Framework: Dignity Based Evaluation

Sweden's legislative approach is often justified as a progressive tool which combats exploitation of those who sell sexual services and reduces demand. Advocates for the model claim it prioritises the

¹⁴⁴ "Our Work", Talita <https://en.talita.se/om-talita/vart-arbete> accessed 10 April, 2025.

¹⁴⁵ "Prostitution and Human Trafficking", Swedish Equality Agency, accessed April 10, 2025

<https://swedishgenderequalityagency.se/men-s-violence-against-women/prostitution-and-human-trafficking/>.

¹⁴⁶ *National Task Force against Prostitution and Human Trafficking*, Swedish Gender Equality Agency, accessed April 10, 2025 <https://swedishgenderequalityagency.se/men-s-violence-against-women/prostitution-and-human-trafficking/> accessed 10 April 2025.

¹⁴⁷ *ibid.*

¹⁴⁸ Swedish Gender Equality Agency, *National Referral Mechanism: A Support and Protection Process for Victims of Trafficking in Human Beings in Sweden*, 2nd edn (Swedish Gender Equality Agency 2019) 22.

¹⁴⁹ *ibid* 36.

¹⁵⁰ *ibid* 41.

¹⁵¹ *ibid* 24.

¹⁵² *ibid* 44.

dignity of those in the sex trade by defining them as victims rather than offenders. However, there has been numerous arguments made against this by critics of the model, who submit that the model's symbolic status often obscures the material realities it creates. A dignity-based analysis pushes beyond rhetorical commitments to ask whether the Nordic Model, in practice, affirms or undermines the lived dignity of those impacted by it.

This chapter will seek to critically evaluate the Nordic Model of sex work regulation in Sweden using Nussbaum's Capabilities Approach.¹⁵³ Under this theory, dignity requires more than protection or symbolic recognition, it requires the creation of substantive opportunities for individuals to exercise agency, experience safety, form relationships with others freely and shape the direction of their lives. With regard to prostitution regulation, this requires evaluation of whether the law empowers those in the sex trade to live with autonomy, security and respect, or whether it reproduces harm, stigma and exclusion under a protective guise.

This chapter will analyse the model through six overlapping capabilities drawn from Nussbaum's framework; bodily integrity, affiliation, practical reason, bodily health and control over one's environment. By analysing the model's capacity to fulfill these specific capabilities, this chapter will seek to assess the extent to which the Nordic Model enables substantive opportunities and freedoms for its citizens.

These sections will analyse a range of critical scholarship such as Holmström & Skilbrei¹⁵⁴, Dodillet & Östergren¹⁵⁵, Waltman¹⁵⁶, Kingston & Thomas¹⁵⁷ in order to analyse how the Swedish framework fares when evaluated against standards of dignity. This evaluation seeks to conduct a deeper evaluation than policy success or failure, but to conduct a more in depth inquiry of how the law can reflect and reproduce power, and whether it adequately serves those it is designed to protect.¹⁵⁸

Bodily Integrity

¹⁵³ Nussbaum (n 10).

¹⁵⁴ Hölmstrong and Skilbrei (n 123).

¹⁵⁵ Petra Dodillet and Susanne Östergren, *'The Swedish Sex Purchase Act: Claimed Success and Documented Effect'* (Conference paper, Lund University, 2011).

¹⁵⁶ Max Waltman, 'Sweden's Prohibition on Purchase of Sex: The Law's Reasons, Impact, and Potential' (2011) 34 *Women's Studies International Forum* 449.

¹⁵⁷ Sarah Kingston and Terry Thomas, 'The Police, Sex Work, and Innovation: Lessons from the Literature' (2021) 5 *Justice, Power and Resistance* 184.

¹⁵⁸ Dodillet and Östergren (n 156).

Under Nussbaum's capabilities approach, bodily integrity entails being able to move freely from place to place, to be secure against violent assault including sexual assault and domestic violence and being able to make autonomous decisions about one's body and reproductive life.¹⁵⁹ By analysing the Nordic Model through this lens, it reflects an intention to affirm dignity by protecting bodily autonomy and safety for individuals in the sex trade. In principle, the framework aligns with the capability of bodily integrity by shifting blame from the prostituted person to the buyer and offering symbolic recognition of harm. However, when analysed in practice, the framework presents a more complex reality.

One way in which the model promotes the capability of bodily integrity is through its normative stance. By explicitly associating prostitution with gendered violence, the model aims to reduce the commodification of women's bodies and affirm their right to not be treated as objects which can be purchased. Evidence from Sweden indicates that this shift has had a deterrent effect on demand and contributed to a shift in social attitudes.¹⁶⁰ This reallocation of legal and moral responsibility aligns with Nussbaum's conception of bodily integrity, as it affirms a woman's right to physical autonomy and freedom from coercive sexual intrusion.

However, critiques of the model also illustrate significant failures in protecting bodily integrity by the model, particularly for migrants and those still engaged in selling sex. Vuolajärvi's ethnographic research documents how the implementation of the Nordic model disproportionately targets migrant's selling sex through immigration and third party laws.¹⁶¹ State organised services, geared towards motivating exit from commercial sex through counselling, therapy and support, were supposed to be the backbone of the Swedish prostitution policy. However, this approach to social work fails in a situation where the majority of people who sell sex are irregular migrants. These individuals without a permanent residence permit are not entitled to state services.¹⁶² This creates a dual regime of enforcement where the bodily integrity of native citizens is nominally protected, while that of migrant sex workers is systematically undermined.

¹⁵⁹ Nussbaum (n 10) 33.

¹⁶⁰ Dodillet and Östergren (n 156) 17: "Swedes are to a larger extent viewing it as an undesirable phenomenon.. Support for criminalization was almost equally strong in the two latest surveys: 76 percent in 2002 and 71 percent in 2008"; Coy et al 4: "A poll in 2008 found [sex buying] had fallen to 7.9%, own from 13.6% in 1996..providing evidence of a decrease in men buying sex".

¹⁶¹ Nina Vuolajärvi, 'Governing in the Name of Caring- the Nordic Model of Prostitution and its Punitive Consequences for Migrants who Sell Sex' (2019) 16 *Sexuality Research and Social Policy* 151,159.

¹⁶² *ibid* 160.

Furthermore, third party laws intended to target exploiters are often accused of impacting those who offer safety measures to those who sell sex. Laws which intend to target those who exploit or profit from the sale of sex make it difficult for those who are prostituted to work together, rent apartments or have partners, as they risk being accused of profiting or soliciting.¹⁶³ Moreover, several studies describe that sex sellers experience distrust, stigmatisation and discrimination in their experiences.¹⁶⁴ This disparity between the law's protective aims and its application in reality exposes the limits of its ability to safeguard bodily integrity in practice.

In summary, Sweden's Nordic model does meet certain aspects of Nussbaum's bodily integrity capability, particularly with regard to its symbolic and legal recognition of the harm in prostitution and its measures to hold exploiters accountable. However, the model's selective protection, particularly its exclusion of migrants from social and legal protections undermines its broader human rights commitments. Additionally, by criminalizing third parties who offer basic safety and support, the law risks isolating those who sell sex and exposes them to greater harm, highlighting a failure to truly uphold bodily integrity in practice. A capability truly fulfilled must be universal and context sensitive. Where enforcement mechanisms contradict the model's ideological aspirations, the capability of bodily integrity remains inconsistently realised.

Affiliation

The capability of affiliation that Nussbaum outlines, involves the ability to live with others within society without shame, humiliation or stigma. It requires both opportunities for social interaction and the "*social bases of self-respect and non-humiliation*" in order for individuals to be treated as dignified equals.¹⁶⁵ The Nordic Model in Sweden, which criminalizes the purchase of sexual services but not its sale, was introduced with the intention to combat prostitution, which was seen as harmful, both for those involved and for society at large.¹⁶⁶ The long-term goal of the legislation was to change the attitudes towards the purchase of sex.¹⁶⁷ It reframes those who sell sexual services as victims of structural gender inequality, reflecting the states view that in a society of equality between women and men it is unacceptable that men obtain casual sex with women for remuneration.¹⁶⁸ In

¹⁶³ *ibid* 161.

¹⁶⁴ Hölmstrong and Skilbrei (n 123) 97.

¹⁶⁵ Nussbaum (n 10) 34.

¹⁶⁶ Hölmstrong and Skilbrei (n 123) 83.

¹⁶⁷ *ibid* 83.

¹⁶⁸ Maddy Coy, Helen Pringle and Meagan Tyler, *The Swedish Sex Purchase Law: Evidence of its Impact* (Nordic Model Information Network, July 2016) <https://www.catwa.org.au/?q=node%2F72> accessed 12 May 2025.

this way, the Swedish framework rejects commodification and positions the purchase of sex as incompatible with gender justice. Through this approach, the model attempts to support the capability of affiliation by promoting social respect and moral equality, challenging norms which have historically stigmatised and marginalised those who sell sex.

The shifting of legal blame under the Nordic Model has been recorded in some cases to have improved perceptions of safety. Some who sell sex in Sweden have described it as a '*tool*' to protect themselves against clients as they are now the ones committing a crime and not the seller.¹⁶⁹ These interactions reflect a partial but important shift toward recognising the rights of those who sell sex to set boundaries and experience safety, core dimensions of affiliation as dignity and mutual respect.

However, affiliation requires more than just symbolic protection, it pervades the other capabilities, requiring an individual is respected as a social being.¹⁷⁰ This requires institutional trust, and the ability to form human relationships without stigma. Stigma remains a defining feature of life under the model. Its implementation often reinforces a binary discourse in which prostitutes are cast as either passive victims or denied meaningful agency.¹⁷¹ This approach strips individuals of complexity and reduces their social visibility. This undermines the affiliation capability, which requires individuals be recognised as moral equals and treated with respect, not reduced to caricatures which deny their autonomy and voice.

Whilst the Swedish model aims to symbolically affirm the dignity of those who sell sex, surveys show increasingly negative attitudes not just toward the purchase of sex but also towards those who sell it.¹⁷² Notably, the Swedish government has at time defended stigma as a legitimate tool of deterrence, stating in its official evaluation that negative effect experienced by people still engaged in prostitution should be '*regarded as positive*', as they serve the broader goal of reducing prostitution.¹⁷³ This contradicts Nussbaum's framework, which insists on freedom from humiliation as essential to full human dignity.

It also must be considered that this stigma is experienced unequally. Whilst Swedish citizens who sell sex are more likely to be offered social support or viewed as in need of assistance, the Swedish framework has been reported to open up migrants to further harms. Research conducted in the area suggests that Swedish authorities often use the Sex Purchase Act to carry out immigration

¹⁶⁹ Vuolajärvi (n 162) 157.

¹⁷⁰ Nussbaum (n 10) 39.

¹⁷¹ Bindel (n 142) 54.

¹⁷² Vuolajärvi (n 162) 158.

¹⁷³ Government of Sweden, *Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008* (SOU 2010:49, Fritzes 2010).

enforcement, targeting those in the sex trade- particularly third-country nationals- for checks, raids and deportation.¹⁷⁴ The Swedish implementation of the Nordic Model illustrates a persistent tension between protective rhetoric and exclusionary practice. The law is framed as a feminist intervention to affirm dignity. However, its enforcement is often weaponised as immigration control. Such unequal treatment reflects a form of conditional recognition- one that conflicts with Nussbaum's view that dignity must be equal in all who are agents and all deserve equal respect from laws and institutions.¹⁷⁵

Affiliation also requires trust in institutions, but this is arguably undermined by the law's implementation. The criminalization of buyers, combined with strict third-party and immigration regulations, has led to a climate of surveillance and control. Many who sell sex in Sweden, particularly migrants, report avoiding contact with police or social services due to a lack of trust in how authorities enforce the law.¹⁷⁶ They fear eviction, deportation or other punitive consequences, even in cases of violence or abuse.¹⁷⁷ These outcomes reinforce marginalisation rather than providing protection. Without the ability to safely seek help or participate in public life, the capability for affiliation cannot be fully realised.

Additionally, the Nordic Model has contributed to the physical and social isolation of those who sell sex. Their work increasingly takes place in more concealed and fragmented spaces, making outreach and peer connection more difficult.¹⁷⁸ This loss of community erodes the ability of those who sell sex to build supportive networks which are crucial for social participation and mutual recognition.

In summary, while the symbolic aims of the Nordic Model align with aspects of affiliation, particularly with regard to rejecting exploitation and affirming the dignity of women who sell sex, the reality of its implementation often undermines the very social inclusion and respect it intends to promote. Through the reinforcement of stigma, unequal treatment of migrants and erosion of trust in public institutions, the model frequently falls short of fulfilling the conditions necessary to meet Nussbaum's capability of affiliation.

Practical Reason

¹⁷⁴ Vuolajärvi (n 162) 159.

¹⁷⁵ *ibid* 31.

¹⁷⁶ Hölmstrong and Skilbrei (n 123) 97.

¹⁷⁷ Vuolajärvi (n 162) 157.

¹⁷⁸ Hölmstrong and Skilbrei (n 123) 95.

Nussbaum's 'Practical Reason' capability is defined as the ability to form a conception of the good and to engage in critical reflection about the planning of one's life".¹⁷⁹ This capability is foundational to her conception of human dignity. Under this rationale, in order for an individual to fully realise their right to dignity they must have the substantive freedom to reflect on and pursue their own values. Within the context of prostitution, this capability is deeply tested. It raises the question of whether individuals who sell sex have real opportunities to author their life paths or are their decisions constrained by systematic inequalities and coercion.

As outlined, the Nordic Model in Sweden criminalizes the purchase of sex and not the sale. This legal asymmetry aims to condemn the act of purchasing sex as inherently exploitative, whilst also supporting those who sell sex rather than punishing them.¹⁸⁰ The law recognises prostitution's relation to violence and aims to clearly condemn the inequality of prostitution.¹⁸¹ In this context, the framework explicitly aims to affirm the dignity and autonomy of those who sell sex by discouraging men's perceived entitlement to sexual services in exchange for payment.

The Swedish state's intention through this framework is to enable prostituted individuals to exit the trade and support them in pursuing alternative futures.¹⁸² For example, Sweden couples its criminal sanctions with social interventions such as exit programs, housing support and job training which are all part of the broader policy apparatus. These initiatives are intended to promote the capacity of individuals who sell sex to engage in practical reasoning by reducing economic dependency on the selling of sexual services and opening up alternative routes.

However, the framework's impact on the capability of practical reason is contested in reality as it risks narrowing the field of choice for those who do not wish to exit the industry. Dodillet and Östergren argue that the symbolic value of the Act, framed as promoting gender equality, has in reality been prioritised over the potential adverse effects for individual women who sell sex, including violations of their right to self-determination.¹⁸³ The framework is based on the assumption that social interventions would help those who sell sex to '*get away from the destructive life they lead*', reflecting a singular vision of prostitution as inherently harmful.¹⁸⁴ This approach marginalises those who do not fit the model of the victim. Research shows that some women who sell sex feel pressured to perform victimhood to receive support, while others are treated like criminals if they do

¹⁷⁹ Nussbaum (n 10) 34.

¹⁸⁰ Coy et al (n 169) 1.

¹⁸¹ Waltman (n 157) 450.

¹⁸² Hölmstrong and Skilbrei (n 123) 83.

¹⁸³ Dodillet and Östergren (n 156) 2-3.

¹⁸⁴ Government of Sweden, *Bill 1997/98:55 Kvinnofrid* [Women's Peace] (Fritzes 1998) 105.

not conform.¹⁸⁵ Furthermore, many who sell sex report avoiding health and social services due to a fear of stigma and being questioned due to anticipated discrimination.¹⁸⁶ In this way, the framework may limit the space for autonomous decision making rather than enhance it.

Criminalizing solely the buyer of sexual services often pushes the industry into more concealed and fragmented spaces. In reality this means those who sell sex are under increased pressure from clients and given less time to negotiate terms or assess risks as the clients fear being caught.¹⁸⁷ This consequently increases the vulnerability of the individual selling sex. This not only places the individual in danger but also restricts their required stability and autonomy to make meaningful life choices. As per Nussbaum's theory, practical reason requires conditions which allow for reflection and planning.¹⁸⁸ When work becomes risk-driven and reactive that capacity is arguably significantly diminished.

The Nordic Model is representative of ideological commitment to abolition. The assumption that all prostitution is inherently exploitative leaves little room for nuanced responses or supports which are reflective of the diverse realities of those within the sex trade. However, from an abolitionist perspective, the Nordic Model is viewed as necessary. Proponents of abolitionism argue that the vast majority of prostituted women and girls do not enter the industry out of genuine choice, and most who are found in prostitution are either pimped, trafficked or coerced by social forces including in particular poverty, racism and sex inequality.¹⁸⁹ Under this framing, removing prostitution as a viable economic option is not coercive but rather a step towards genuine freedom. This aligns with Nussbaum's conception of practical reason, which requires not just formal freedom, but also the substantive conditions such as economic security and social respect which make critical reflection and life planning possible.

Whilst the aim of the Nordic Model is to enhance the capability of practical reason, its success is dependent on whether it delivers real, viable alternatives such as education, employment and housing. If this is not achieved, the model risks closing one path (the sex industry) without opening others. In doing so it may fall short of fulfilling Nussbaum's vision of dignity, enabling individuals to plan the lives they wish to lead and have reason to value.

¹⁸⁵ Hölmstrong and Skilbrei (n 123) 98 (quoting Jay Levy).

¹⁸⁶ *ibid* 98.

¹⁸⁷ Dodillet and Östergren (n 156) 22.

¹⁸⁸ Nussbaum (n 10) 34.

¹⁸⁹ Waltman (n 157) 468 quoting Catherine MacKinnon.

Control Over One's Environment

The next applicable capability under Nussbaum's theory is 'Control Over One's Environment'. This capability encompasses both political and material dimensions. It considers the ability to participate effectively in political choices and to have equitable property and employment rights on an equal footing with others as essential for human dignity.¹⁹⁰ Analysing this capability with regard to Sweden's Nordic Model raises complex questions about to the extent to which those who sell sex, particularly women, retain genuine control over the lives they lead and their environments.

The Swedish framework in many ways makes significant steps in order to affirm this capability. Unlike other model, Sweden legally frames individuals who sell sex as victims of structural gender inequality rather than offenders. This recognition removes the legal burden from those who sell sex and can enhance their sense of agency and control, with some describing it as a '*tool to protect themselves against clients*'.¹⁹¹ This shift in legal burden, when coupled with symbolic and practical support services, can in some cases enhance personal control and negotiation power.

The Swedish state also takes measures to support material control via exit programmes, social housing and counselling. These measures are reflective of a broader welfare-orientated vision that links the sex industry to socio economic vulnerability. In principle, these measures fulfil Nussbaum's requirement that control over one's environment requires real opportunities to pursue alternative forms of livelihood and security. Exit programs and ongoing supports offers individuals exiting the sex trade the tools to reshape their futures in line with their personal values, aligning with the material side of environmental control.

However, these strengths are not unqualified. Critics submit that whilst the symbolic intent of empowering those who sell sex is strong, implementation sometimes constrains the very control it aims to promote.¹⁹² The framework prohibits brothel keeping, third party assistance and working together with others.¹⁹³ These restrictions mean that those in the industry cannot legally organise collectively, hire security, or share premises, practices essential to creating safer and more autonomous working conditions. In practice, this restrains autonomy, particularly for those who remain in the industry and do not wish to exit.

¹⁹⁰ Nussbaum (n 10) 34.

¹⁹¹ Vuolajärvi (n 162) 157.

¹⁹² Kingston and Thomas (n 158) 429.

¹⁹³ Swedish Penal Code, ch 6 s 12.

Furthermore, the enforcement environment can undermine political control. A large portion of the Swedish sex industry, similarly to many countries, is comprised of migrants. Migrants in this context are often subjected to immigration enforcement under the guise of upholding the Sex Purchase Act. While the law does not criminalize them directly, they may be subject to police raids, evictions or deportations.¹⁹⁴ Furthermore, migrants without residence permits are excluded from welfare services stemming from the Sex Purchase Act. A divide exists between EU citizens and third-country nationals who sell sex when it comes to deportability, access to the labour market and freedom of movement.¹⁹⁵ These structural inequalities severely limit the ability of many within the industry to influence the institutions that shape their lives and foster a mistrust in public authorities. As a result, they are excluded from the political rights Nussbaum identifies as essential to fulfilling the capability for political participation.

Nevertheless, the framework's explicit commitment to dismantling gender inequality does create a platform for the recognition of those who sell sex's rights and dignity. In contrast to regimes which treat prostitution as morally neutral, the Swedish model embeds a normative vision of justice. The law was designed to hold buyers accountable for exploiting prostituted persons' vulnerability and for engaging in what is deemed predatory behaviour.¹⁹⁶ By targeting demand while decriminalizing the prostituted, the law affirms that individuals, should not have to endure prostitution as a result of coercive preconditions, such as poverty, sexual abuse and marginalisation.¹⁹⁷ In this regard, the framework supports the control capability by seeking to change the structural environment that often limits meaningful choice.

In summary, the Swedish framework has made notable advancements with regard to fulfilling the control capability by decriminalizing the seller, offering exit supports and affirming a radical feminist vision of dignity. However, this progress is tempered by regulatory constraints which limit safety due to the unequal treatment of migrants and by a gap between the law and its practice in reality.

Bodily Health

¹⁹⁴ Vuolajärvi (n 162) 152.

¹⁹⁵ *ibid* 158.

¹⁹⁶ Waltman (n 157) 450.

¹⁹⁷ *ibid* 451.

Nussbaum's Bodily Health capability involves being able to have good health, including reproductive health; to be adequately nourished and to have adequate shelter.¹⁹⁸ In analysing Sweden's Nordic model of prostitution regulation, a nuanced picture emerges. The model aims to safeguard the health and dignity of those selling sex in Sweden. However, in reality, it both advances and impedes bodily health, largely depending on an individual's socio-legal location within the system.

The Nordic model positively contributes to the bodily health capability by seeking to reduce demand for prostitution, and therefore potentially mitigating exposure to sexually transmitted infections, violence and substance abuse commonly associated with the sex trade. The exit programmes provided for by the model, which include healthcare, counselling and social services are reflective of an intent to promote the physical wellbeing of individuals wishing to exit prostitution.¹⁹⁹ The law has been reported to significantly reduce visible street prostitution and improve social attitudes, making the purchase of sex less socially acceptable and thereby reducing overall exposure to harm.²⁰⁰

However, reports have also stated serious adverse effects of the Sex Purchase Act on the health and well-being of prostituted individuals in the state, particularly on those from marginalised communities.²⁰¹ Migrants constitute a large proportion of the sex trade in the region yet the majority of them are ineligible for permanent residence permits, and as such are not entitled to state services such as social benefits and public healthcare, including basic STI testing.²⁰² Migrant prostituted individuals are often denied access to public health and harm reduction services due to their immigration status, face stigma in medical settings and avoid seeking care out of fear of deportation or discrimination.²⁰³ This discrepancy between Swedish citizens and migrant women reveals a troubling gap in the model's universal promotion of bodily health.

Critics of the Nordic model consistently highlight its unintended consequences on health access and outcomes for those who sell sex in Sweden. Whilst the model is rhetorically anchored in the

¹⁹⁸ Nussbaum (n 10) 33.

¹⁹⁹ Hölmstrong and Skilbrei (n 123) 102.

²⁰⁰ Waltman (n 157) 455.

²⁰¹ Dodillet and Östergren (n 156) 3.

²⁰² LSE News, 'Policy Makers Must Not Look to 'Nordic Model' for Sex Trade Legislation' (LSE, 22 December 2022) [https://www.lse.ac.uk/News/Latest-news-from-LSE/2022/1-December-22/policy-makers-must-not-look-to-nordic-model-](https://www.lse.ac.uk/News/Latest-news-from-LSE/2022/1-December-22/policy-makers-must-not-look-to-nordic-model-for-sex-trade-)

[legislation#:~:text=The%20%E2%80%9CNordic%20model%E2%80%9D%20of%20sex.a%20report%20published%20by%20LSE.](https://www.lse.ac.uk/News/Latest-news-from-LSE/2022/1-December-22/policy-makers-must-not-look-to-nordic-model-for-sex-trade-) Accessed 22 May 2025.

²⁰³ Vuolajärvi (n 162) 151.

protection of dignity and health, research reveals that its implementation has risked creating significant barriers regarding access to healthcare.

Furthermore, critics often highlight its unintended consequences on health access and outcomes for sex workers. While the model is rhetorically anchored in the protection of dignity and health, its implementation reveals a stark disconnect between intent and impact. While policymakers claim the framework supports those in prostitution, in practice it risks curtailing vital health resources for those in the trade. A 2015 advocacy toolkit by NSWP notes that Swedish authorities have discouraged harm reduction measures like condom distribution, viewing them as incompatible with the abolitionist framework.²⁰⁴ Outreach workers report that prostituted individuals in the state often avoid carrying condoms, fearing they could be used as evidence by the police.²⁰⁵ This is corroborated in a 2016 report by HIV Ireland which documents that some social workers in Sweden have opposed condom distribution entirely, with one official remarking *"if they make so much money maybe they should buy their own condoms"*.²⁰⁶ These reports indicate a serious failure under the Nordic model to uphold Nussbaum's capability of Bodily Health, as they deny those who sell sex, particularly those who choose to remain in the trade, reliable access to healthcare, reproductive autonomy and basic physical security. This is ultimately indicative that a framework in certain aspects which is ideologically and structurally hostile to prostitution as a form of livelihood. This results in health harms as predictable outcomes of a system designed to eradicate the sex trade rather than support those who wish to continue operating within it.

However, advocates of the model argue that by criminalizing the purchase of sexual services rather than their sale, the law affirms the rights and dignity of this in prostitution. For example, Bindel draws on testimonies from survivors to present the model as an essential step toward placing accountability on the exploiters rather than the exploited.²⁰⁷ Waltman expands on this by arguing that the law's normative effect has helped reduce the social acceptability of purchasing sex, thereby affirming the idea that women are not commodities to be bought.²⁰⁸ In this sense, the model can be understood as supporting Nussbaum's capability of bodily integrity by legally and culturally reinforcing the principle

²⁰⁴ NSWP, Sex Work and the Right to Health: Swedish Model Advocacy Toolkit (November 2015) <https://www.nswp.org/sites/default/files/6.%20Sex%20Work%20and%20the%20Right%20to%20Health%2C%20Swedish%20Model%20Advocacy%20Toolkit%2C%20NSWP%20-%20November%202015.pdf> accessed 22 May 2025.

²⁰⁵ *ibid.*

²⁰⁶ HIV Ireland, *Potential Impact of the Swedish Model on Rates of HIV/AIDS among Sex Workers and Their Access to Healthcare* (June 2016) https://www.hivireland.ie/wp-content/uploads/hiv_ireland_swedish_study_online_single_pages1.pdf accessed 22 May 2025.

²⁰⁷ Bindel (n 142).

²⁰⁸ Waltman (n 157) 450.

that no one should be subject to bodily invasion as a condition of economic survival. From this perspective, the model can be understood as supporting Nussbaum's capability of bodily integrity not only by decriminalising those who sell sex, but by legally and culturally reinforcing the principle that no one should be subject to bodily invasion as a condition of economic survival.

The model's selective protection, conditional on citizenship and legal status, is reflective of a failure to universally ensure adequate shelter, healthcare and protection. This is further illustrated by evidence that harm reduction practices such as condom distribution are actively discouraged in Sweden, undermining access to basic healthcare and reproductive autonomy. It is evident that implementation gaps must be addressed for the law to truly enhance the capability of bodily health.

3.3 Summary: The Laws Impact on Dignity

The Swedish Sex Purchase Act is innovative in its framing of prostitution as gendered exploitation and its ambition to shift legal and moral accountability away from prostituted individuals and onto those who purchase sex. Through a dignity-based lens, it is evident that the model demonstrates clear intentions to affirm the inherent worth of individuals who sell sex by decriminalizing the seller, targeting demand and embedding gender equality within its normative rationale.

However, this analysis has indicated that the laws interaction with dignity in reality is far from unambiguous. Whilst there has been a recorded reduction in visible street prostitution since the introduction of the Sex Purchase Act and it has helped to catalyse a societal shift in attitudes toward prostitution, its implementation reveals ongoing tensions between symbolic aims and the lived reality of the sex trade in Sweden. In reality, individuals who sell sex continue to experience surveillance, marginalisation and barriers to access services and justice, particularly migrants, racialised groups and those who do not conform to traditional narratives of victimhood.

Whilst the Swedish framework aspires to promote the key dimensions of dignity as articulated through Nussbaum's capabilities, its ability to deliver these in practice is hindered by shortcomings in enforcement. Though the legislation sets out an ambitious vision grounded in gender equality and human dignity, the research suggests a disconnect between policy intentions and lived outcomes. Key capabilities are compromised when those who sell sex, in particular migrants and those who do not seek to exit the trade, face barriers to healthcare, are excluded from services or are placed at greater risk due to restrictive third-party laws. The framework's protective intentions are further weakened by

a lack of consultation with prostituted individuals themselves and by punitive or inconsistent enforcement practices. For the model to fulfill its dignity-based aims, implementation in reality must be more inclusive and responsive to the diverse realities it seeks to protect.

The Swedish model undoubtedly marks a significant ideological shift, but one that remains constrained by gaps in practical implementation, accountability and inclusivity. In order for the framework to fully realise its protective promise, greater emphasis must be placed on how dignity is not just legislated but experienced.

Chapter Four: The Decriminalization Model in New Zealand

4.1 Background of the Prostitution Reform Act 2003

In 2003, New Zealand was the first country in the world to fully decriminalize the sex trade with the passage of the Prostitution Reform Act (PRA) in 2003.²⁰⁹ This act emerged within a broader context of democratic values and harm minimisation policy.²¹⁰ Prior to its enactment prostitution was technically never illegal, however nearly every activity of the sex trade- such as soliciting, brothel keeping, procurement or living off the earnings of prostitution were criminalized, making it virtually impossible to legally work within the sex trade.²¹¹ This fostered conditions of exploitation, secrecy and limited access to justice for those within the sex trade. The reformation of this legal status was predominantly led by New Zealand Prostitutes Collective (NZPC), a peer-run advocacy group who partnered with public health researchers in an attempt to highlight the harms of criminalization and advocate for the rights of those who chose to earn their living within the sex trade. This organisation provided the foundation for pushing decriminalization onto the legislative agenda.²¹²

As a colonised country, prostitution laws in New Zealand were historically shaped by British colonial law and moral codes which framed prostitution as public nuisance.²¹³ However, New Zealand's particular historical, social and cultural climate marked by its arguably fluid social structures and liberal tradition prioritising diversity, freedom of choice and human rights, created the groundwork for a favourable environment for the decriminalization approach.²¹⁴ By mid 1990s, increased concern for the health and safety of those in the sex trade, particularly with regard to HIV/AIDS prevention, acted as a catalyst for public health actors and prostitution activists to advocate for systematic legal change. It was envisaged that by repealing the laws that criminalized all activities associated with prostitutes, their autonomy, as well as their capacity to protect themselves, would be increased.²¹⁵ The PRA, introduced as a private member's bill by Labour MP Tim Barnett, was passed in New Zealand in 2003

²⁰⁹ Prostitution Reform Act 2003 (NZ).

²¹⁰ Abel et al (n 87).

²¹¹ Gillian Abel, 'A Decade of Decriminalization: Sex Work "Down Under" But Not Underground' (2014) 14(5) *Criminology and Criminal Justice* 580, 581.

²¹² *ibid* 582.

²¹³ Lynzi Armstrong, 'Decriminalisation of Sex Work in the Post-Truth Era? Strategic Storytelling in Neo-Abolitionist Accounts of the New Zealand Model' (2021) 21(3) *Criminology & Criminal Justice* 369, 370.

²¹⁴ Abel et al (n 87) 1.

²¹⁵ *ibid* 15.

by a narrow margin of one vote, making New Zealand the first country in the world to fully decriminalise prostitution in all sectors of the industry.²¹⁶

The PRA removed all criminal penalties governing prostitution and related offences. The sex industry under this Act is subject to the same controls and regulations as those which other businesses operate under.²¹⁷ All the previous laws which criminalized aspects of the sex trade, such as soliciting or living on the earnings of prostitution, were dissolved and those in the sex trade in New Zealand became subject to similar laws applicable to any other occupational group.²¹⁸ The specific aims of the Act, as stated in section 3, are to safeguard the human rights of those in the sex trade and to protect them from exploitation; and to promote the welfare and occupation health and safety of those in the sex trade.²¹⁹ This illustrates that the PRA was not intended to moralise but instead to protect rights and health. Those who pushed for decriminalization in New Zealand chose not to engage in moral debates about sex work, arguing instead 'Parliament should not be in the business of legislating morals'. They focused on human rights and public health, and those arguments were strong enough to gain the support of some with a personal antipathy to prostitution.²²⁰

The PRA was formally reviewed by the Prostitution Law Review Committee in 2008.²²¹ The report concluded that the PRA had been effective in achieving its purpose and that the vast majority of people within the sex trade in New Zealand are 'better off' under the PRA than they had been previously.²²² The review found improved access to justice,²²³ increased ability to refuse clients²²⁴ and stronger relationships with police.²²⁵ However, despite these advances for those in the sex trade in New Zealand, they are still negotiating their lives within a cultural context imbued with social ambivalence and strong moral discourses toward the sex industry and those who are part of it.²²⁶

The framework in New Zealand is illustrative of a legislative and ideological shift from framing prostitution as a moral or criminal issue to framing it as a form of labour. It embodies a liberal feminist perspective which emphasises the individual agency and social inclusion of those in the sex trade,

²¹⁶ *ibid* 1.

²¹⁷ Stéphanie Wahab and Gillian Abel, 'The Prostitution Reform Act (2003) and Social Work in Aotearoa/New Zealand' (2016) 31(4) *Affilia: Journal of Women and Social Work* 418, 419.

²¹⁸ *ibid* 419.

²¹⁹ Prostitution Reform Act 2003, s 3.

²²⁰ Abel (n 212) 582.

²²¹ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (Ministry of Justice 2008).

²²² *ibid* 168.

²²³ *ibid* 160.

²²⁴ *ibid* 14.

²²⁵ *ibid* 121.

²²⁶ Wahab & Abel (n 218) 419.

setting in stark contrast to neo-abolitionist models. This approach was reflected in the campaigns refusal to legislate ‘morality’, instead focusing on enabling those in the sex trade to live and work with dignity, safety and legal protection.²²⁷

The PRA marked a significant shift in the regulation of the sex industry in New Zealand. Under this framework prostitution is regulated under the same legal and occupational health standards that govern every other form of labour. This includes obligations under the Health and Safety in Employment Act 1992,²²⁸ with the Department of Labour producing industry- specific guidelines in consultation with those working within the sex industry and brothel operators seeking to ensure safe working environments.²²⁹

Core sections of the Act were explicitly designed to protect those in the sex trade from exploitation. Sections 16 to 18 prohibit coercion or inducement to perform sexual services, affirm the right to refuse clients, and ensure that prostitutes cannot be compelled to work under threat or pressure.²³⁰ These provisions do not only apply to exploitative practices by employers but also to clients, and have been successfully invoked in court cases, signalling an increase in legal accountability and prostitutes’ access to justice.²³¹

The legislation also established a certification system for brothel operators,²³² granted police and occupational health inspectors’ access to brothels,²³³ and gave local territorial authorities limited powers to regulate the signage and location of brothels.²³⁴ While this led to some local attempts to restrict brothel operations to specific zones, such efforts were challenged legally when they conflicted with the rights of those in the sex industry to operate safely and equally.²³⁵

Significantly, the Act does not impose additional licensing systems on individuals who partake in prostitution. Small owner-operated brothers (SOOBs) of up to four people can operate without a manager, providing a legal route for independent workers to structure their businesses collaboratively.²³⁶ This flexibility was intended to dismantle the power imbalances typical of criminalized or legalized models by promoting alternative working arrangements centred on agency

²²⁷ PLRC, *Report on the Operation of the PRA* (n 223) 145.

²²⁸ *Health and Safety in Employment Act 1992* (NZ).

²²⁹ Abel et al (n 87) 77.

²³⁰ Prostitution Reform Act 2003 (NZ) 16,18.

²³¹ See for example *DML v Montgomery and Anor* [2014] NZHRRT 6.

²³² Prostitution Reform Act 2003 (NZ) 34-41.

²³³ Prostitution Reform Act 2003 (NZ) 24-33.

²³⁴ Prostitution Reform Act 2003 (NZ) 12-14.

²³⁵ See *JB International Ltd v Auckland City Council* [2006] NZHC 2380.

²³⁶ Prostitution Reform Act 2003 (NZ) s4(1).

and self-governance. As per the PLRC, *“the enactment of the PRA has empowered those in the sex industry by removing the taint of criminality from their occupation, and part of that empowerment is to take control of their employment relationships”*.²³⁷

However, the PRA has not been successful in entirely neutralising the effects of stigma or inequality within the industry. Many in the industry remain hesitant to pursue justice due to privacy concerns and the enduring moral judgement attached to their work.²³⁸ While the legislation enables them to challenge unfair practices, practical barriers often limit their full realisation of those rights.²³⁹

The legislation has been described as a ‘rights-based, harm minimisation model’ which seeks to treat prostitution as a legitimate form of labour rather than a moral or criminal issue. By shifting the focus from criminal suppression to labour protections and public health, the PRA sets a precedent for understanding and regulating sex work through the lens of dignity autonomy and safety.

The passing of the PRA represented a shift in policy attitude from a moralistic to a public health and human rights approach. The specific aims of the Act clearly reflected a harm minimisation approach and took into account the human rights of those in the sex trade.²⁴⁰ The purpose of the Act is not to endorse or morally sanction prostitution, but to address the issues that arise in the context of prostitution and to safeguard the human rights of prostitutes and protect them from exploitation.²⁴¹

Central to the reform was the recognition of the sale of sexual services as legitimate labour. As aforementioned, decriminalization under the PRA allowed those in the sex industry to operate under standard employment frameworks, offering protections denied under criminalization. This approach was informed by extensive research and advocacy groups like the New Zealand Prostitutes Collection (NZPC) who ensured the voices of those impacted shaped the legislation.²⁴²

The legislation means that those in the sex trade are now entitled to the same employment rights and subject to the same responsibilities- such as paying tax- as those working in other industries.²⁴³ The PRA reframes prostitution as a labour issue addressing rights to safe working conditions, freedom from coercion and legal redress. The philosophical core of the PRA thus lies in affirming sex workers’

²³⁷ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (n 223) 17.

²³⁸ *ibid* 152.

²³⁹ *ibid* 152.

²⁴⁰ Abel et al (n 87) 76.

²⁴¹ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (n 223)132.

²⁴² Wahab & Abel (n 218) 419.

²⁴³ Abel et al (n 87) 129.

autonomy and dignity through legal recognition, aiming to dismantle structural inequalities and support agency in the workplace.²⁴⁴

A key component of New Zealand's decriminalization model is the institutional support offered by the New Zealand Prostitutes' Collective (NZPC). NZPC is a peer led organisation ran by individuals in the sex trade for individuals in the sex trade. They played a crucial role in advocating for the PRA and in supporting those in the industry following its enactment. They provide support, information and advocacy services to those within prostitution across the country through community bases and outreach.²⁴⁵ Furthermore, the organisation has become a trusted intermediary between those in the sex industry and state institutions. NZPC's peer-based approach has been significant in reducing barriers to access, particularly with regard to trust and stigma, ensuring those in the industry are better informed and supported in realising their rights. It has also supported identity- specific groups like the Māori Action Group and ONTOP, a transgender led initiative, reflecting its inclusive ethos.²⁴⁶

In addition to peer support, institutional oversight shifted significantly following the introduction of the PRA. Under the Act, Medical Officers of Health, who are designated officers under the 1956 Health Act²⁴⁷ are given powers as 'inspectors of brothels', enabling public health authorities to actively monitor brothel conditions in accordance with occupational health and safety standards.²⁴⁸ This shift from criminal surveillance to workplace protections reinforces the idea that prostitution is legitimate labour and promotes protection of workers in the industry by focusing on conditions rather than criminality. NZPC is contracted to the Ministry of Health to advocate for the rights, health and well-being of those within the sex industry.²⁴⁹ This collaboration between health services and NZPC has sought to ensure human rights and safety of prostitutes are practically implemented.

It is important to note that the PRA does not include any formal exit strategies for those in the industry. However, some local programs have offered support for those within prostitution seeking to leave the industry. Furthermore, NZPC also provides more general support and advice to those in the industry (including help preparing a Curriculum Vitae), and act as brokers to other agencies who can assist further with alternative career options.²⁵⁰ However, many within NZPC emphasise that exit is not the priority for many in the sex industry, but instead the priority is ensuring the industry is safe, respectful

²⁴⁴ Wahab & Abel (n 218) 419.

²⁴⁵ Abel et al (n 87) 49.

²⁴⁶ *ibid* 49

²⁴⁷ Health Act 1956 (NZ).

²⁴⁸ Abel et al (n 87) 173.

²⁴⁹ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (n 223) 50.

²⁵⁰ *ibid* 82.

and free from stigma. As per an NZPC representative; *"it is offensive to talk about exiting- we don't need rescuing"*.²⁵¹

4.2 Analytical Framework: Dignity Based Evaluation

New Zealand's decriminalization framework is often referred to as a progressive and pragmatic approach to regulating the commercial sex industry. Advocates for the framework argue that it upholds the dignity of individuals involved in the sex trade by removing criminal penalties and promoting their ability to function within a legal system which recognises their rights and agency. It is often celebrated for prioritising harm reduction and safety. However, critics of the framework argue that the positive image of this model can obscure the continued existence of exploitation, inequality and marginalisation within the industry. A dignity-based analysis of New Zealand's legislation beyond symbolic framing evaluates whether in practice it promotes or undermines the lived dignity of those which it impacts.

This chapter will critically analyse the decriminalization model in New Zealand under Nussbaum's capability approach.²⁵² Under Nussbaum's theory human dignity requires more than the removal of criminal status. It demands the creation of genuine opportunities for individuals in a society to live with freedom, safety and self-respect. With regard to commercial sex, this requires analysing whether individuals engaged in the industry in New Zealand are empowered to make autonomous decisions, maintain bodily and emotional safety, build relationships free from stigma and exercise control over their working and personal environments.

The evaluation will be centred around five of Nussbaum's central capabilities; bodily integrity, affiliation, practical reason, bodily health and control over one's environment. These overlapping dimensions allow for a detailed analysis of whether decriminalization has created the conditions necessary for individuals in the industry to live with dignity in practice.

²⁵¹ *ibid* 70.

²⁵² Nussbaum (n 10).

In exploring these capabilities, this chapter will engage with a range of scholarship including Abel et al,²⁵³ Armstrong,²⁵⁴ Easterbrook- Smith,²⁵⁵ Weinhold et al²⁵⁶ and Farley.²⁵⁷ These perspectives will be applied to critically assess how dignity is enabled, limited or denied under the current legal framework. This assessment seeks to move beyond a simple analysis regarding whether the model is effective or not, instead looking more deeply into how the law shapes lived experiences. It seeks to understand whether New Zealand truly creates the conditions necessary for dignity under the current framework or merely recasts regulation in more palatable terms.

Bodily Integrity

Nussbaum's bodily integrity capability, as aforementioned, refers to the ability of individuals to move freely and be secure against violence, including the right to make decisions about their own body.²⁵⁸ New Zealand's Prostitution Reform Act 2003 (PRA) was introduced with the aim of enhancing the safety and bodily autonomy of those who sell sex in the state.²⁵⁹ Advocates for the framework believe that the removal of criminal sanctions has created opportunities for those who sell sex to protect their safety facilitating a greater freedom to refuse clients, negotiate condom use and report violence without fear of prosecution. Research indicates that many in the industry felt more empowered to assert boundaries after the implementation of decriminalization, particularly in indoor environments.²⁶⁰ For example, empirical data cited by Abel et al shows that comparisons from Christchurch in 1999 and 2006 showed a notable decline in those who felt unable to refuse clients dropping from 49.4% to 30.6%.²⁶¹ Findings of this nature are indicative of a measurable expansion of bodily autonomy within certain sectors following decriminalization.

However, the realisation of bodily integrity under decriminalization is arguably not experienced uniformly. While the framework has enabled some individuals to exercise greater control over their interactions whilst selling sexual services, others have been reported to still experience coercive

²⁵³ Abel et al (n 87).

²⁵⁴ Lynzi Armstrong, 'From Law Enforcement to Protection? Interactions between Migrant Sex Workers and Police in New Zealand's Decriminalised Sex Industry' (2017) 17 *Critical Criminology* 271.

²⁵⁵ Gwyn Easterbrook Smith, 'Stigma, Invisibility and Unattainable 'Choices' in Sex Work' (2022) 25(8) *Sexualities* 1006.

²⁵⁶ Claire Weinhold, Gillian Abel and Lee Thompson, ' "They Wouldn't Get Away With it at McDonalds": Decriminalisation, Work and Disciplinary Power in New Zealand Brothels' (2023) 30 *Gender, Work and Organization* 18.

²⁵⁷ *ibid* Farley (n 64).

²⁵⁸ Nussbaum (n 10) 33.

²⁵⁹ Prostitution Reform Act 2003, s 3 (NZ).

²⁶⁰ Abel et al (n 87) 224.

²⁶¹ *ibid* 224.

dynamics, particularly within managed indoor settings. In particular, managerial practices in brothels can introduce new forms of constraint which compromise the freedom of those who are prostituted to control their bodies. These include both subtle and overt pressures to accept clients, comply with standardised service expectations and submit to surveillance or disciplinary systems.²⁶² Such practices can weaken the capability of bodily integrity by inhibiting the ability of those selling sex to make autonomous decisions about physical encounters. Even with a legal framework intended to protect rights, the internal governance of commercial premises can reproduce power asymmetries which inhibit the full and meaningful exercise of bodily autonomy.

A further limitation in the realisation of bodily integrity under the PRA arises in how harm is interpreted within managed settings. Weinhold et al note that in certain establishments the experience of assault is framed as a matter of individual perception, with operators reframing client assault and violent offences as ‘problems’ that the sex seller had with a client.²⁶³ This idea of personal deficiencies is a means by which operators shift responsibility from themselves back to the prostituted individual. Boundaries, rather than being set by the prostituted individual themselves, are reframed as an individual protective strategy rather than a standard which the operators are expected to maintain.²⁶⁴ As such, the experience of assault is discursively produced as subject to interpretation, and the locus of control of the client does not rest with the operator but rather the prostitute themselves.²⁶⁵ This reframing positions harm as stemming from personal shortcoming rather than an institutional failure to protect. These practices compromise the capability for bodily integrity as they erode the security and freedom from violence that this capability requires.

Structural inequality also complicates this area. Those who are socially marginalised in New Zealand may face additional barriers to asserting bodily autonomy. This is particularly applicable with regard to migrants, as the PRA prohibits the sale of sexual services by migrants, tourists and those on working visas.²⁶⁶ This means they are not entitled to the protections provided to those in the sex industry under the PRA. As a result, they risk facing more exposure to informal coercion and are precluded from seeking help due to fear of legal repercussions. As a result, the ability of those who are not citizens of New Zealand to feel secure from violence and exercise meaningful control over their bodies, central to the capability of bodily integrity, is systematically undermined.

²⁶² Weinhold et al (n 257) 19, 25, 27.

²⁶³ *ibid* 30.

²⁶⁴ *ibid* 30.

²⁶⁵ *ibid* 30.

²⁶⁶ Prostitution Reform Act, s 19 (NZ).

Furthermore, critics of the framework such as Farley argue that it fails to address the deeper harms inherent to the commercial sex trade. She contends that even under legal conditions, legal sex businesses provide locations where bodily violations occur and cannot be mitigated with regulatory protections.²⁶⁷ Farley's position indicates that the commodification of sexual access, even under decriminalization frameworks, inherently undermines the secure and autonomous use of one's body. Thereby violating Nussbaum's conception of bodily integrity.

In summary, whilst New Zealand's framework has made significant progress with regard to recognising bodily integrity for those in the sex trade, particularly by permitting individuals to report abuse without criminalization, the reality remains complex. The law aims to provide a platform for exercising autonomy, but this is shaped by broader forces including economic need, employer power and social inequality. The capability for bodily integrity is therefore partially fulfilled: formal protections exist and have demonstrably improved outcomes for some in the industry, but structural and workplace conditions constrain its full realisation for others.

Affiliation

The capability of affiliation that Nussbaum outlines, involves the ability to live with others within society without shame, humiliation or stigma. It requires both opportunities for social interaction and the "*social bases of self-respect and non-humiliation*" in order for individuals to be treated as dignified equals.²⁶⁸ The PRA sought to advance the capability for affiliation by recognising those who sell sex in the state as equal citizens under the law, affirming their dignity, and enabling them to form respectful and non-coercive employment relationships.

Prior to the introduction of the PRA, those who sold sex in New Zealand operated under a quasi-criminal regime that subjected them to punitive laws around soliciting and brothel keeping. Prostitution was not explicitly prohibited but living off the earnings off prostitution was prohibited.²⁶⁹ This environment exacerbated social stigma, encouraged secrecy and discouraged reporting of violence, severely limiting the ability of those who were prostituted's to participate in society as equals.²⁷⁰ This criminalization directly undermined the capability for affiliation by fostering marginalisation and denying those in the industry's ability the legal and social protection due to other professions.

²⁶⁷ Farley (n 64) 1116.

²⁶⁸ Nussbaum (n 10) 34.

²⁶⁹ *Crimes Act 1961* (NZ), s148 (repealed).

²⁷⁰ Abel et al (n 87).

The introduction of decriminalization under the PRA was a significant shift which integrated the commercial sex trade into the framework of standard labour and health laws.²⁷¹ By this means the legislation affirmed those who sell sex as legitimate members of the labour market with equal entitlement to protection and dignity which are central pillars of the affiliation capability.

A key component of the PRA which illustrates this shift is the aforementioned legal provision for Small Owner- Operated Brothels (SOOBs), which permits up to four individuals to work collectively without requiring a formal manager or special licensing. This arrangement permits individuals in the sex trade to structure their businesses collaboratively, empowering them to take control of their own employment relationships.²⁷² This means of eliminating state imposed hierarchies and facilitating cooperative models actively dismantles the power imbalances typical in criminalized or legalized systems, aligning closely with Nussbaum's emphasis on mutual respect and non-subordination.

These legislative shifts promote the affiliation capability not solely through de-stigmatization and legal safeguards but also by offering those selling sex greater control over the terms of their own labour. Therefore, they are empowered to engage in meaningful social relationships within the industry and with broader institutions on a footing of equality.

However, limitations remain. Affiliation is not solely shaped by legal status but also by social and cultural conditions, particularly the presence or absence of stigma. The reduction of stigma towards the sex industry as a result of the PRA remains unevenly experienced.²⁷³ Acceptability is sometimes extended to only a small group of prostituted individuals while others, particularly street based workers and migrants who sell sex are routinely positioned as less acceptable.²⁷⁴ Migrants in the sex trade are excluded from the protections of the Act, a legal exclusion which reflects and reinforces their societal marginalisation.²⁷⁵ Similarly, in the wake of the PRA, public and political narratives have increasingly positioned indoor work as the acceptable norm, effectively marginalising street-based workers and emboldening calls to remove them from visible public spaces. This is illustrated by political efforts to restrict the location of street-based work, such as the private member's bills introduced between 2005 and 2015. This indicates that affiliation is conditioned by spatial visibility and acceptability under this framework.²⁷⁶ These limitations are echoed in public and media

²⁷¹ Armstrong (n 214) 369.

²⁷² *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform* (n 223) 17.

²⁷³ Easterbrook (n 256) 1007.

²⁷⁴ *ibid* 1007.

²⁷⁵ *ibid* 1007.

²⁷⁶ see *Manukau City Council (Control of Street Prostitution) Bill 2005* (6-1), *Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010* (197-1).

discourse where suggestions are often made that those who sell sex should change how and where they work in order to be seen as respectable, urging street-based sellers to move indoors or advocating for low volume agency models.²⁷⁷

Whilst the PRA undoubtedly makes great progress in legislative advancement affirming dignity, equality and protection for those who sell sex, the realisation of the affiliation capability remains fragmented. Legal reform alone cannot guarantee social inclusion if respect and recognition continue to be selectively granted. When affiliation is dependent on visibility, immigration models or conformity to preferred models of selling sex, the capability is fractured. Thus, while important strides have been made as a result of the framework, affiliation cannot be said to be fully achieved when the framework itself sustains new hierarchies and reasserts the marginalisation of the most vulnerable.

Practical Reason

Nussbaum's 'Practical Reason' capability is defined as the ability to form a conception of the good and to engage in critical reflection about the planning of one's life.²⁷⁸ The decriminalization framework introduced via the PRA seeks to fulfil this capability by affirming the moral agency of those who sell sex. It removed criminal penalties and integrated commercial sex into standard health and labour frameworks, offering workers legal recognition and empowering them to refuse clients, set conditions and manage their own businesses. These shifts mark a substantial departure from the punitive environment which preceded the Act, under which individuals were denied legal and moral standing and structurally prevented from exercising autonomous judgement with regard to their work or long-term goals.²⁷⁹

However, the aforementioned exclusion of migrants from the PRA and the criminalization of their involvement in the industry arguably undermines this capability as these individuals in society are unable to make autonomous decisions about their livelihood. Even more broadly, the legislation fails to offer any structural support for those who wish to exit the industry. While it affirms the right to remain, it does little to enable the capacity to leave. It fails to provide educational pathways, employment services or financial assistance which may make alternative futures viable. A study

²⁷⁷ Easterbrook (n 256) 1007.

²⁷⁸ Nussbaum (n 10) 34.

²⁷⁹ Under the Crimes Act 1961 (ss 147-149) and the Summary Offences Act 1981 (s 26), individuals involved in the sex trade were criminalised through provisions targeting brothel keeping, living off earnings and public soliciting, creating a punitive legal framework prior to the PRA.

conducted by Abel, Fitzgerald and Brunton indicates that entry into prostitution in New Zealand is typically driven by financial factors, with over 90% of participants citing income related reasons as their primary motivation.²⁸⁰ This indicates that for many entering the industry is less a freely chosen vocation and more a response to economic necessity. Furthermore, existing literature has suggested that substance use and experiences of sexual assault also may contribute to individuals entering sex work, often functioning as coping mechanisms in response to trauma and marginalisation.²⁸¹ In this regard, the PRA risks assuming choice where there may actually be constraint. This perspective challenges the decriminalization framework's assumptions of voluntary and autonomous participation. Where economic and social conditions of entry remain unaddressed, legal reform alone cannot guarantee that individuals are meaningfully free to shape their lives according to their values. Even amongst those who benefit from the safeguards of the Act, stigma and public perceptions may subtly shape what kind of participation is deemed acceptable. The moral valorisation of indoor or low volume work can obscure the agency of those working in more visible or informal arrangements.²⁸² Without addressing these broader conditions which inhibit real life alternatives or constrain life planning, the decriminalization framework risks offering autonomy only to those who are already in a position to exercise it. Therefore, although the PRA advances the capability of practical reason by removing legal barriers and affirming worker's autonomy, its impacts are unevenly experienced, and its potential is limited by the absence of broader of economic and social supports necessary to make real choice possible.

Control Over One's Environment

The next capability under Nussbaum's theory is 'Control Over One's Environment'. This capability encompasses both political and material dimensions.²⁸³ Materially, it concerns rights to work, own property and participate in economic life with dignity. Politically, it concerns participation in decision making and freedom of expression and association.

One key improvement under the PRA which is relevant to this capability is the recognition of Small Owner-Operated Brothels (SOOBS) where four or less individuals selling sex can work and where

²⁸⁰ Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (University of Otago 2007).

²⁸¹ Jan Jordan, *The Sex Industry in New Zealand: A Literature Review* (Ministry of Justice 2005) 26-28.

²⁸² Easterbrook (n 256) 1007.

²⁸³ Nussbaum (n 10) 34.

they each retain control of their own earnings.²⁸⁴ These establishments enable those selling sex to work in a discreet manner in accordance with the wishes of their clients.²⁸⁵ This offers a structure which supports independence over their income and working arrangements whilst avoiding some of the exploitative dynamics seen in larger or commercial brothels. This empowers those selling sex to retain economic self-direction and collectively shape their working environment, SOOBs promote the material dimension of control which Nussbaum identifies as essential to a dignified human life. Furthermore, the PRA has marked effect in safeguarding the rights of those selling sex to refuse client's and practices, chiefly by empowering them through removing the illegality of their work.²⁸⁶ This promotes the capability of control over one's environment by ensuring those in the sex trade can make autonomous choices about the conditions under which they engage in labour.

However, this autonomy is not uniformly realised. In larger commercial brothels, those who sell sex are often subjected to coercive managerial practices that subtly or overtly undermine workplace control. The use of disciplinary mechanisms by brothel operators has been reported such as coercive contracts, surveillance and informal punishment systems, to regulate worker behaviour in ways that mirror corporate control models.²⁸⁷ These dynamics, whilst not outside the confines of the law, can be repressive of worker autonomy and create environments in which resistance is difficult.²⁸⁸ For example, some workers recounted being pressured to accept clients or services against their preferences under the guise of professional obligations.²⁸⁹ As a result, the ability of individuals to shape and make decisions about their working conditions, a crucial element of control over one's environment, is significantly restricted, limiting the emancipatory potential that decriminalization was intended to achieve.

Under the decriminalization model, those who sell sex have achieved notable gains in political agency, particularly through collective efforts of the New Zealand Prostitutes' Collective (NZPC), which was instrumental in shaping the Prostitution Reform Act 2003.²⁹⁰ This engagement illustrates the kind of political participation central to Nussbaum's conception of the capability to control one's environment, whereby individuals are not only free to express their interests but also structurally included in shaping the policies which govern them. The NZPC continues to function as a representative body, advocating

²⁸⁴ PRA, s4(1).

²⁸⁵ Felicity Boyd, 'SOOBs in Christchurch: Go or Whoa?' (2010) 2(1) *Lincoln Planning Review* 20,22.

²⁸⁶ Abel et al (n 87) 114-115.

²⁸⁷ Weinhold et al (n 257) 29.

²⁸⁸ *ibid* 31.

²⁸⁹ *ibid* 29.

²⁹⁰ Abel et al (n 87) 52.

for rights, safety and recognition, a form of collective association which empowers those in the sex industry to engage with state acts and influence law and policy.

However, this political inclusion is unevenly realised. As aforementioned, migrants in the sex industry are excluded from the legal protections of the PRA. This exclusion undermines their ability to associate and advocate without fear of deportation or legal sanction, thereby limiting their full participation in civic life. Furthermore, the ongoing stigmatization of certain forms of selling sex, particularly street based work, is reflective of broader limitations in the realization of expressive freedom. Those who sell sex on the street have been subjected to stigmatization and harassment, highlighted by the attempts made to pass two private members bills which would have restricted where they could work.²⁹¹ These exclusions and forms of stigmatization constrain the ability of all individuals in the sex industry to meaningfully participate in decision making processes and to exercise their rights to association and expression, thereby undermining the full realization of the political dimension of control over one's environment.

Nussbaum's capability of control over one's environment in both its political and material dimensions is partially realised under New Zealand's decriminalization model. However, exclusions, such as that of migrant workers, and stigmatisation, particularly toward street-based work, continue to undermine both dimensions of this capability.

Bodily Health

Under Nussbaum's capability of Bodily Integrity, individuals must be able to move freely, be secure from violence, and exercise agency in reproductive and sexual matters.²⁹² New Zealand's decriminalization framework, enacted via the PRA, has made progress in advancing this capability by removing criminal penalties and formally recognizing the rights of people who sell sex to refuse services and clients. This legal protection has enabled greater bodily autonomy for those selling sex and has been credited with improving health and safety conditions across the industry.²⁹³ The removal of criminal status seeks to enable individuals in the sex industry to report violence without fear of prosecution, facilitating access to justice and protection. Together, these legal reforms contribute to the realisation of bodily integrity by affirming the right of individuals to make autonomous decisions about their bodies without coercion or criminal consequence.

²⁹¹ *Manukau City Council* (n 278).

²⁹² Nussbaum (n 10) 34.

²⁹³ Abel et al (n 87) 97.

However, the material reality of bodily integrity remains constrained by broader structural forces. While the PRA affirms bodily autonomy by decriminalizing the sale of sex, the absence of meaningful, state sponsored alternatives to the sex industry significantly limits the practical realisation of this capability. As aforementioned one of the primary driving forces into the sex industry in New Zealand is economic necessity, with other factors such as substance use and sexual assault also acting as driving factors.²⁹⁴ This suggests entry into the sex trade in New Zealand is often not symptomatic of genuine choice, and many either enter the trade or remain in it due to limited access to viable alternatives. In the absence of state sponsored transition programmes, welfare support or training opportunities embedded into the decriminalization model, the autonomy promised by legal reform remains incomplete. Therefore, whilst the PRA may affirm bodily autonomy in law, it falls short of enabling the full, non-coerced autonomy over one's body essential under Nussbaum's theory to live a life with dignity.

The PRA was designed to uphold bodily integrity by reducing the potential for violence against those selling sex. However, research conducted by Melissa Farley, draws on interviews with individuals selling sex and empirical data in New Zealand to document the ongoing health and psychological harms experienced under decriminalization.²⁹⁵ She cites a series of interviews conducted in which 83% of 303 New Zealand respondents experienced some degree of violence in prostitution including rape and sexual assault.²⁹⁶ This indicates that violence persists regardless of the legal setting. Many critics of the framework argue that it is not possible to protect someone from violence whilst they remain in the industry. For example, Hunter states *"it is not possible to protect the health of someone whose 'job' means they will get raped on average once a week"*.²⁹⁷

Furthermore, Farley's research indicates that the reproductive autonomy of those selling sex is undermined by unequal power dynamics in sexual transactions. Whilst the framework aims to support safer sex practices this is not often the reality of the situation. For example, Farley notes that whilst its regulation to wear a condom, its negotiable between parties on the side, revealing the pressures those selling sex face to compromise on basic sexual health protections.²⁹⁸ These dynamics impair the ability of those selling sex to exercise meaningful control over their reproductive health under the New Zealand framework, a core element of Nussbaum's capability.

²⁹⁴ Jordan (n 282) 1007.

²⁹⁵ Farley (n 64).

²⁹⁶ *ibid* 1101.

²⁹⁷ SK Hunter, 'Prostitution is Cruelty and Abuse to Women and Children' (1993) 1 *Mich J Gender & L* 1.

²⁹⁸ Farley (n 64) 1110.

New Zealand's framework under the PRA has advanced legal protections for bodily integrity, affirming autonomy and safety for those selling sex. However, the capability remains limited in practice due to a lack of viable exit strategies and ongoing exposure to violence. Research indicates that high rates of violence persist following decriminalization and power imbalances undermine reproductive autonomy, challenging the full realization of the bodily integrity capability.

4.3 Summary: The Laws Impact on Dignity

New Zealand's decriminalization model, as implemented via the PRA, represents a significant shift towards recognizing the dignity and autonomy of those who sell sex by removing criminal penalties and integrating them into standard legal and labour frameworks. When analysed through Nussbaum's capability lens, the model demonstrates important progress in expanding rights related to bodily integrity, practical reason, control over one's environment, affiliation and bodily health. It has empowered many to exercise greater autonomy and participate more fully in social and political life.

However, a more in-depth analysis reveals that the realisation of these capabilities remains uneven. Persistent structural inequalities, including the exclusion of migrants, ongoing stigma, coercive brothel practices, lack of exit pathways and continued exposure to violence, limit the laws emancipatory potential. The PRA's legal reforms create the conditions for dignity in principle, but without deeper socio-economic supports and more inclusive implementation, these conditions are not fully realised in practice. Therefore, while the framework implements a more rights based and harm reductive approach than punitive models, its ability to create the conditions for widespread realisation of substantive dignity is constrained by the broader social and institutional landscape in which it operates.

Chapter 5. Comparative Analysis

5.1 Capability by Capability Comparison

This chapter will seek to offer a comparative analysis of the Nordic Model and New Zealand's decriminalization framework using Nussbaum's capabilities approach as a lens to evaluate how each legal regime supports or constrains the dignity of those in the sex trade in each country. Whilst both frameworks seek to affirm the rights and welfare of individuals who sell sex, they represent opposing regulatory logics.

Rather than assessing these models solely in terms of effectiveness or moral legitimacy, this chapter will build on the preceding analysis to compare how the Nordic Model in Sweden and the Decriminalization framework in New Zealand support five key capabilities, as outlined by Nussbaum, central to a dignified life. By examining how dignity is structured, supported or undermined across these dimensions, this analysis seeks to highlight the complex tensions, compromises, exclusions and consequences which arise when the law engages in the regulation of commercial sex.

Bodily Integrity

As previously defined, Nussbaum's capability of bodily integrity concerns freedom of movement, protection from violence and the ability to make autonomous decisions about one's body.²⁹⁹ When comparing the Nordic Model in Sweden and New Zealand's decriminalization framework, each model affirms aspects of this capability whilst also undermining it in crucial aspects, often for the same populations they intend to protect.

The Nordic Model asserts bodily integrity primarily through its normative stance. The shifting of criminality to the purchaser of sexual services rather than the seller aims to affirm that individual's bodies and autonomy cannot be commodified, particularly in a context of structural gender inequality. This model reframes the sellers of sex as victims of patriarchal exploitation rather than as criminals, theoretically reinforcing the inviolability of bodily autonomy. In contrast, New Zealand's

²⁹⁹ Nussbaum (n 10) 33.

decriminalization model promotes the capability of bodily integrity through legal pragmatism. By removing criminal sanctions for selling sex and integrating the industry into standard labour and health regulations, the PRA enables those selling sex to refuse clients, negotiate conditions and report abuse, all of which are key aspects of practical bodily autonomy.

However, the protective intentions of both models arguably fall short when applied to certain marginalised groups within society. Under the Swedish framework, enforcement mechanisms often produce results which undermine a realisation of bodily integrity. Migrants, particularly those without secure immigration status, are routinely targeted for deportation rather than protected from exploitation.³⁰⁰ Third party laws which were intended to protect those in the trade from coercion have been weaponised in reality to criminalize those who offer safety and support, such as landlords or security staff.³⁰¹ This risks creating an environment of surveillance and fear, undermining the model's commitment to bodily autonomy. Similarly in New Zealand, while the law formally empowers those selling sex to control their working conditions, those employed in managed brothels often face workplace coercion, surveillance and pressure to meet client demands.³⁰² Power dynamics within the legal sex trade can mirror those in other precarious labour markets, raising questions about how freely bodily autonomy is really experienced under the PRA in reality.

A further area of divergence lies in how each framework handles commodification. Sweden's outright rejection of commodifying sex reflects an ethical commitment to preserving bodily integrity. However, this principle is unevenly applied in reality. Migrants in the sex industry are often excluded from protections or services, reinforcing their marginalisation. New Zealand, by contrast, treats the sale of sexual services as legitimate labour. Whilst this confers some legal protections, but critics argue that it entrenches the commodification of the body, normalising the idea that access can be bought, potentially undermining the ethical foundation of bodily integrity itself.³⁰³

In both frameworks, migrants are disproportionately excluded from protections. In Sweden, immigration enforcement undermines the state's symbolic commitment to bodily dignity. New Zealand's outright prohibition of migrants engaging in the sex trade leaves them without access to the very protections the PRA was designed to provide. Thus, in both cases, bodily integrity is

³⁰⁰ Vuolajärvi (n 162) 159.

³⁰¹ *ibid* 161.

³⁰² Weinhold et al (n 257) 30.

³⁰³ Farley (n 64) 1116.

unevenly distributed along the lines of citizenship, race and socio-economic status, highlighting the gap between the legal frameworks and the realities of those most impacted.

It is evident that both Sweden and New Zealand offer partial and contrasting contributions to the realisation of bodily integrity. Sweden offers a powerful normative stance against commodification but often fails to ensure institutional safety and inclusion. New Zealand delivers more tangible protections and workplace agency but embeds these with a commodified framework which may compromise the deeper ethical dimension of autonomy. A more holistic approach to bodily integrity would require an integration of Sweden's structural critique with New Zealand's practical safeguards, whilst addressing the shared exclusions which continue to marginalise migrant and precarious workers. Only by doing so can a regulatory model begin to realise the full scope of Nussbaum's capability.

Affiliation

Nussbaum's affiliation capability concerns the ability to live with others on terms of mutual respect, free from shame, humiliation and stigma. It requires both the formal protections and social conditions necessary for individuals to be recognised as moral equals.³⁰⁴ Both the Swedish and New Zealand frameworks aim to fulfil this capability through their respective models of governance, yet each does so through sharply divergent approaches, both of which succeed and fail in differing aspects.

In Sweden, the Nordic Model reframes prostituted individuals as victims rather than criminals, seeking to promote dignity by shifting the legal blame to buyers and challenge the commodification of women's bodies. This reframing intends to support the capability of affiliation by opposing exploitation and rejecting norms which have historically marginalised those who sell sex.³⁰⁵ In contrast, New Zealand's decriminalization model promotes affiliation not through symbolic protection, but through practical inclusion. By recognising commercial sex as legitimate labour under the PRA, it grants those selling sex formal recognition within health and labour systems, offering legal tools to establish respectful, non-coercive working relationships.³⁰⁶

³⁰⁴ Nussbaum (n 10) 34.

³⁰⁵ Coy (n 169) 1.

³⁰⁶ Armstrong (n 214) 369.

However, the effectiveness of each model in realising affiliation is limited by how it defines and enforces respect. In Sweden, affiliation is weakened by a rigid binary that casts prostituted individuals as either passive victims or deviant agents.³⁰⁷ This denies the complexity of lived experiences and reduces the moral agency of those in the sex trade. Furthermore, stigma remains deeply embedded in both policy and public discourse. State actors have even defended stigma as a valid deterrent to prostitution, suggesting that shame serves a broader moral purpose.³⁰⁸ This directly contradicts Nussbaum's perspective that freedom from humiliation is foundational to human dignity. Meanwhile, in New Zealand, the recognition of commercial sex as legitimate labour provides a more empowering basis for dignity in practice, particularly through structures such as SOOBs which facilitate cooperative working environments.³⁰⁹ However, affiliation remains uneven under this model also. Legal inclusion is often conditional with migrants being explicitly excluded from the industry by law and street-based workers continuing to face marginalisation and attempts at spatial exclusion.³¹⁰ These hierarchies of respect reflect cultural narratives that distinguish between 'acceptable' and 'unacceptable' forms of commercial sex, undermining the universalism central to the affiliation capability.

Importantly, both models fail to establish a culture of trust between those in the sex industry and state institutions. In Sweden, police and immigration authorities have been documented using the law to justify raids, deportation and surveillance particularly against migrant workers.³¹¹ This weaponisation erodes the social bases of self-respect and further isolates those who are already vulnerable. In New Zealand, while decriminalization theoretically allows for safer reporting and institutional engagement, many migrant workers are forced underground due to their exclusion from the law, facing similar risks of exploitation without recourse.³¹² Under both frameworks, affiliation is fractured not only by legal gaps but by inconsistent recognition of who is deserving of respect and protection.

When both models are analysed, they illuminate a core challenge of realising the affiliation capability; dignity cannot be realised solely by symbolic reframing or legal status. Sweden offers a normative commitment to opposing commodification and affirming structural injustice, but its enforcement mechanisms often perpetuate the very stigma it seeks to dismantle. New Zealand offers legal inclusion

³⁰⁷ Bindel (n 142) 54.

³⁰⁸ Government of Sweden, *Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008* (SOU 2010:49, Fritzes 2010).

³⁰⁹ *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform* (n 223) 17.

³¹⁰ Easterbrook (n 256) 1007.

³¹¹ Vuolajärvi (n 162) 159.

³¹² Easterbrook (n 256) 1007.

and workplace protections yet sustains new forms of exclusion through migration policy and moral hierarchies embedded in public discourse.

In order for Nussbaum's vision of affiliation to be fully realised, aspects of both models must be integrated and reimagined. The Swedish critique of commodification is a valuable ethical foundation but must be decoupled from punitive enforcement and stigmatising narratives. New Zealand's model lays important groundwork for inclusion but requires expansion in order to ensure all those selling sex are protected without conditioning dignity on conformity to dominant norms. Ultimately, fulfilling the capability of affiliation requires not solely legal reform but also cultural transformation including a rebuilding of institutional trust, dismantling hierarchies of respectability, and ensuring that all individuals are recognised as equal participants in the social and moral fabric of society.

Practical Reason

Nussbaum's capability of practical reason refers to the ability to form a conception of the good and reflect critically in planning one's life. Sweden's model, grounded in abolitionist logic, seeks to promote practical reason by offering exit pathways such as housing support, job training and social services.³¹³ These measures are intended to reduce dependency on the sex trade and create viable alternatives which in theory aligns with Nussbaum's emphasis on the need for substantive life options, not merely the removal of coercion. In contrast, New Zealand's decriminalization model enhances practical reason by affirming the agency of those who sell sex. By removing criminal penalties and integrating commercial sex into health and labour laws, the PRA affirms the right to remain in the industry on one's own terms. Workers are legally empowered to refuse clients, set conditions and manage businesses, restoring forms of autonomy which criminalization denied. On paper, this framework respects the individual's capacity to determine the value of their own labour and life direction.

However, each model ultimately narrows choice in distinct ways. In Sweden, practical reason is undermined by a singular view of commercial sex as exploitative. Whilst exit programmes exist, their effectiveness is uneven and those who choose to remain in the industry often report being stigmatised

³¹³ Hölmstrong and Skilbrei (n 123) 83.

or denied support.³¹⁴ The assumption that autonomy is only exercised through exit, fails to account for those who find value or strategic purpose in their work.

New Zealand's model, whilst more inclusive in form, fails to address the structural reasons why many enter the sex industry in the first place. The framework lacks exit supports such as education, housing or alternative employment services. Research shows that financial need, trauma and limited opportunities are central drivers of entry into the sex industry in New Zealand.³¹⁵ In this context, the law may misread constrained economic necessity as autonomous choice, offering autonomy only to those who are already positioned to exercise it.

It is evident that both models offer partial paths to a full realisation of practical reason. Sweden provides a strong normative rejection of exploitation but limits the agency of those who do not wish to exit the trade. New Zealand protects workplace autonomy but risks entrenching structural inequalities by failing to address the broader socio-economic constraints which shape choices. A fuller realisation of the capability would require a combination of Sweden's structural critique and provision of exit options with New Zealand's legal empowerment, while ensuring that real, viable alternatives are universally accessible. Without such integration, both frameworks fall short of enabling those in the industry to live reflectively and plan lives they have reason to value.

Control Over One's Environment

The capability of control over one's environment, in both its political and material dimensions, is realised unevenly in both the Swedish and New Zealand model. Each model extends certain freedoms whilst simultaneously imposing constraints, revealing how legal recognition alone is insufficient for achieving full control over one's life and conditions of work.

Sweden affirms aspects of material control by decriminalizing the sale of sex and offering exit supports such as social housing, job training and counselling. These measures illustrate a commitment to addressing the socio-economic conditions which drive individuals into the sex trade and, in principle, promote alternatives aligned with individual values. Similarly, New Zealand supports economic autonomy through the legislation of SOOBs which allow those selling sex to

³¹⁴ Hölmstrong and Skilbrei (n 123) 83.

³¹⁵ Abel et al (n 87).

collectively manage their earnings and working conditions without a third party manager.³¹⁶ In these ways both models create avenues for some to shape their material environments with greater freedom than under criminalized regimes.

However, the extent of this autonomy diverges sharply in practice. In Sweden, those who remain in the industry face restrictions which undermine their ability to exercise genuine control. Laws which prohibit brothel keeping, third party support or working alongside others make it illegal for those who sell sex to hire security, share premises, or organise collectively, all of which are safety strategies essential for workplace autonomy.³¹⁷ In contrast, while New Zealand's decriminalized framework allows for more collective organisation, commercial brothels have developed coercive management practices, including surveillance, contracts and informal punishment systems which limit worker's ability to resist unwanted conditions.³¹⁸ In both cases, material control is offered in form but constrained in function, particularly where economic necessity limits meaningful choice.

With regard to political control, New Zealand provides a clearer avenue for participation. The involvement of the NZPC in shaping the 2003 law demonstrates a degree of political inclusion rare in commercial sex governance.³¹⁹ The NZPC continues to advocate for the rights of those in the sex industry, ensuring some degree of collective representation. In Sweden, however, whilst the model purports to affirm dignity through buyer criminalization, it largely excludes the voices of those actually in the industry, particularly those who choose to remain in the industry, from policy development. Migrants in both systems face sharp political exclusions. As aforementioned, in Sweden immigration enforcement is frequently carried out under guise of enforcing the Sex Purchase Act, subjecting migrants to raids, deportation and denying them access to welfare services.³²⁰ In New Zealand, migrants are explicitly prohibited from engaging in the sex industry, meaning they have zero avenues to advocate for improved conditions without risking sanctions.

Stigma further constrains control in both contexts. In Sweden, those who do not conform to the victim narrative may face discrimination from services and public officials. In New Zealand, the legal recognition of commercial sex has not eliminated hierarchies of acceptability, with street-based workers continuing to face obstacles and local attempts to reduce their visibility. These symbolic

³¹⁶ Boyd (n 286) 114-115.

³¹⁷ Swedish Penal Code, ch 6 s 12.

³¹⁸ Weinhold (n 257) 29.

³¹⁹ Abel et al (n 87) 52.

³²⁰ Vuolajärvi (n 162) 152.

exclusions undermine not solely social recognition but also individuals in the sex trade's ability to express their interests and participate equally in shaping public space.

Together, these models demonstrate that formal protections alone are insufficient to ensure real control over one's environment. Sweden offers a structural critique but restricts workplace autonomy and excludes migrants from meaningful participation. New Zealand provides greater legal inclusion and political agency, but this is undercut by internal labour hierarchies and migrant exclusion. A fuller realisation of this capability would require integrating Sweden's commitment to structural justice with New Zealand's participatory and decentralised protections, while directly confronting the legal exclusions which persist within both.

Bodily Health

Both Sweden's Nordic Model and New Zealand's decriminalization framework claim to safeguard the bodily health of those who sell sex. However, when examined through the lens of Nussbaum's capability, encompassing health, reproductive autonomy, nourishment and shelter, each system reveals gaps between legal intent and lived reality.

Sweden's model aims to promote bodily health by reducing demand for prostitution and offering exit programs which include social housing, counselling and healthcare. These supports indicate a structural commitment to alleviating the physical harms and socio-economic vulnerabilities associated with the sex industry. Proponents submit that criminalizing buyers protects women's dignity and bodily autonomy by discouraging commodification and positioning prostitution as incompatible with gender justice due to the inherent violence within the trade. In this sense, the model seeks to promote bodily health through harm prevention and symbolic affirmation.³²¹

In contrast, New Zealand centres harm reduction and workplace safety. Decriminalization under the PRA allows those in the sex industry to report violence without fear of prosecution, legally refuse clients and access health services. These protections aim to facilitate bodily autonomy and safety within the industry rather than assuming exit as the desired outcome. Research has shown that these legal reforms have improved access to justice and medical care, at least for some in the industry.³²²

³²¹ Waltman (n 157) 455.

³²² Abel et al (n 87) 97.

However, in both jurisdictions, bodily health remains unequally realised. In Sweden, structural exclusions, particularly with regard to migrants, severely undermine access to health. Those without residency are ineligible for public healthcare or state funded STI testing and often avoid seeking medical attention due to fears of deportation or discrimination. The model's abolitionist framework has also led to resistance against harm reduction initiatives. Outreach workers report that condom distribution is discouraged or even opposed by officials who view it as legitimatising prostitution.³²³ As a result, some in the industry avoid carrying condoms for fear they may be used as evidence.³²⁴ These practices actively undermine the reproductive autonomy and public health, contradicting the model's protective claims.

New Zealand's framework avoids criminalization but does little to address the structural conditions that lead people into the sex industry. Economic necessity, substance abuse and histories of trauma remain key drivers of entry. In the absence of welfare, housing or transition supports, the legal freedom to remain in the industry is not always matched by real alternatives. Critics argue that this renders autonomy largely theoretical for many. Furthermore, research by Farley and others documents ongoing high levels of violence, including rape, suggesting that decriminalization alone does not eliminate risk.³²⁵ Power imbalances also compromise reproductive autonomy. Despite regulations, condom use has been reported to remain often negotiable, leaving many unable to consistently enforce basic health protections.³²⁶

Both models evidently fall short of a full realisation of Nussbaum's bodily health capability. Sweden restricts access to healthcare through enforcement driven practices, particularly for migrants, while New Zealand's more inclusive framework fails to adequately confront ongoing violence or ensure the economic security necessary to choose safer paths. A more holistic approach would require an integration of Sweden's structural supports and New Zealand's legal protections, whilst ensuring universal access to healthcare and reproductive autonomy regardless of migration status or socio-economic background.

5.2 Towards a Capabilities Orientated Model: Comparative Reflections

This final section will draw together the preceding analysis across the five capabilities; bodily integrity, bodily health, affiliation, practical reason and control over one's environment, to offer a holistic

³²³ NSW (n 25).

³²⁴ *ibid.*

³²⁵ Farley (n 64) 1101.

³²⁶ *ibid* 1110.

comparative reflection on the Swedish and New Zealand models. Analysed through the lens of Nussbaum's capability framework, it becomes evident that both legal regimes make meaningful contributions toward the advancement of human dignity, but neither delivers a fully adequate foundation for the realisation of justice as a capabilities-based freedom. Each model affirms certain aspects of the capabilities while simultaneously undermining or excluding others, particularly for the most structurally marginalised individuals within the sex industry.

A core tension emerging across all five capabilities is the disconnect between symbolic intent and material inclusion. Sweden's framework offers a strong normative stance by criminalizing buyers and framing the sex trade as a manifestation of structural gender equality. It seeks to assert the dignity of those who sell sex and oppose commodification. However, in reality, its abolitionist framing often leads to enforcement strategies which reproduce harm. Those who remain in the industry, particularly migrants, are subjected to surveillance, denied services and excluded from healthcare, undermining their bodily health, autonomy and institutional trust. Conversely, New Zealand's decriminalization model offers legal recognition, workplace protections and participatory policy making, promoting autonomy and material control over one's environment. Yet it remains insufficient. By excluding migrant workers from legal participation and failing to address the socioeconomic conditions which compel entry into the sex trade, it reproduces structural inequalities under the guise of agency.

A second recurring pattern is the conditional nature of dignity and inclusion in both models. In Sweden, dignity is extended selectively, tied to politics of exit which frame those who sell sex as victims needing rescue. Those who resist that narrative risk losing access to support or recognition. In New Zealand, while formal autonomy is affirmed, social stigma persists, particularly against street-based workers, and public discourse continues to police which forms of commercial sex are deemed respectable. Under both models, capabilities such as affiliation, practical reason and bodily integrity are unevenly distributed, granted or withheld based on legal status, spatial visibility and conformity to normative scripts.

Taken together, these findings indicate that a capabilities aligned approach to the regulation of prostitution cannot rely solely on either symbolic protection or labour inclusion. Instead, it requires a hybrid and transformative model, one which retains Sweden's commitment to addressing exploitation and systematic gender inequality, whilst also adopting New Zealand's legal protections and harm reduction ethos, and worker participation. Crucially, this model must go beyond both by centring migrant rights, ensuring universal access to healthcare and housing, dismantling stigma in all forms, and building institutions which are inclusive, participatory and grounded in trust.

Ultimately, what is required is not simply a more 'effective' policy, but a reimagining of the values that underpin law and governance. Fulfilling the promise of human dignity, as envisioned by Nussbaum's capabilities approach, demands legal frameworks which do not merely tolerate those who sell sex, but affirm them as equal participants in public life, entitled to the full range of freedoms which constitute a life worth valuing.

Chapter Six: Conclusion and Future Directions

The aim of this paper has been to evaluate two competing legal frameworks of regulating the sex trade; the Nordic Model in Sweden and the Decriminalization, through the lens of Martha Nussbaum's capabilities approach. By focusing on five interrelated capabilities: bodily integrity, bodily health, affiliation, practical reason and control over one's environment, the analysis has sought to move beyond reductive binaries which characterise discourse regarding the sex trade: choice versus coercion, victimhood versus empowerment, criminalization versus legalization. The capabilities approach has instead offered a normative framework grounded in human dignity, which prioritises what individuals are able to do and be within their specific social, political and material contexts.

The preceding chapters have illustrated that both Sweden and New Zealand contribute meaningfully but incompletely to the realisation of these central capabilities. Neither model provides a comprehensive or universal foundation for those who sell sex to live fully dignified lives with genuine freedom and equality. Rather, each framework tends to fulfill some aspects of Nussbaum's theory while simultaneously undermining others, often in predictable and patterned ways, particularly when it comes to the most marginalised, such as migrants and street-based workers.

Across the five capabilities applied numerous recurring tensions have emerged. First is the tension between symbolic affirmation and material inclusion. Sweden offers strong normative commitments to gender equality and dignity by criminalizing the purchase of sex and symbolically rejecting commodification. However, this commodification often coexists with punitive enforcement practices, especially with regard to migrants, which restrict access to healthcare, housing and institutional trust. In contrast, New Zealand affirms formal labour rights and workplace autonomy, promoting bodily integrity and control in practical terms. However, it does so within a framework which fails to acknowledge broader structural drivers of entry, such as poverty, trauma and substance use unaddressed. As a result, autonomy is affirmed more in law than in lived experience.

Secondly, both models are marked by conditional and selective recognition. In Sweden, respect and support are extended to those who conform to the narrative of exit and victimhood. Those who choose to remain in the industry, or who challenge the dominant abolitionist framing, are often excluded from support or viewed with suspicion. In New Zealand, inclusion is conditioned on legal status, spatial respectability and conformity to professional norms. Migrants remain entirely excluded from the protections of the PRA, and street-based workers are routinely stigmatised,

surveilled or legislated against. In both contexts, the promise of affiliation and political participation is fractured by status-based hierarchies of respect.

A third shared limitation is the failure to address structural constraints on life planning. Practical reason, as Nussbaum conceptualises it, requires more than legal permission. It demands material conditions under which individuals can reflect on their values and pursue meaningful life paths. Whilst Sweden provides some exit supports, its ideological rigidity limits supports for those who remain. New Zealand, whilst affirming autonomy to stay, offers little in the way of state sponsored transition programmes, education or economic assistance. Under both models, those who sell sex are often forced to navigate constrained choices within a system that still resists their full inclusion.

The critical contribution of this thesis is to show that a capabilities-based analysis reveals gaps which traditional legal or rights-based models tend to overlook. Legal status, whilst important does not equate to capability. Similarly, dignity cannot be guaranteed through symbolic gestures or market inclusion alone. By evaluating law and policy through the lens of what people are substantively able to be and do, the capabilities approach centres the lived realities of those who sell sex and prioritises equal respect over rhetorical protection. It surfaces the paradoxes of both frameworks; Sweden's feminist commitments which coexist with carceral logics, and New Zealand's legal reforms that leave deeper inequalities intact.

What emerges from this analysis is a need for a new framework for sex trade governance, one which integrates the strengths of both frameworks while rejecting their exclusions. A capabilities aligned model would combine Sweden's attention to structural injustice and exit support with New Zealand's legal recognition, harm reduction principles and participatory policy making. This model would also go further, it would extend protections and rights to all who sell sex, regardless of immigration status, work setting or identity. It would embed transition pathways as central components, not as optional supports for the 'deserving'. It would remove moral hierarchies that differentiate between acceptable and unacceptable forms of prostitution, and it would actively dismantle the stigma which continues to shape public discourse, policy and institutional interaction.

Equally, a capabilities aligned model would need to foreground institutional trust and meaningful political participation. This means not only recognising those who sell sex as legal subjects, but as political actors capable of shaping the laws and policies which impact their lives. It means resourcing and legitimising collectives, like the NZPC, whilst ensuring that those who sell sex of all identities are not excluded from civic life. In summary, it requires that those who sell sex be treated not as problem or victims to be managed but as citizens with full moral status and political agency.

This paper has necessarily been limited in scope. It has not addressed in detail the intersection of the sex industry with race, disability or indigeneity, each of which would reveal additional complexities within both regulatory models. It also has focused on two high income, liberal democracies. Further research should consider how capabilities-based frameworks might apply in postcolonial or Global South contexts, where different legal, economic and cultural forces shape the commercial sex trade. Finally, empirical work led by those who sell sex themselves remains essential to ensuring that legal scholarship does not speak for those whose life it examines.

Nonetheless, the findings here suggest that the legal regulation of prostitution is not only a matter of criminal law or labour policy. It is a reflection of how societies conceptualise freedom, dignity and equality. Neither Sweden's protective feminism nor New Zealand's liberal pragmatism fully realises the conditions under which those who sell sex can live lives they have reason to value. A just model would move beyond the logic of control, whether moral or market based, and toward a politics rooted in care, complexity and inclusion.

To fulfill the promise of dignity that Nussbaum's capabilities approach envisions, prostitution policy must refuse the false choice between victimhood and agency, between criminalization and commodification. It must ask, *what do those who sell sex require in order to fully realise dignity?* That question, ethical, political and profoundly human, is where justice begins.

Bibliography

Table of Legislation

1. Act Prohibiting the Purchase of Sexual Services (Lag om förbud mot köp av sexuella tjänster) (Sweden) SFS 1998:408.
2. Crimes Act 1961 (NZ).
3. Health Act 1956 (NZ).
4. *Health and Safety in Employment Act* 1992 (NZ).
5. *Manukau City Council (Control of Street Prostitution) Bill 2005* (6-1).
6. *Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010* (197-1).
7. *Prostitutes Protection Act* (Prostituirtenschutzgesetz, ProstSchG) 2017 (Germany).
8. Prostitution Reform Act 2003 (NZ).
9. Summary Offences Act 1981 (NZ).
10. Swedish Aliens Act (Utlänningslagen).
11. Swedish Penal Code (Brottsbalken).
12. Swedish Social Services Act (Socialtjänstlagen) 2001.
13. *Crimes Act* 1961 (NZ).

Treaties and Conventions

1. Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
2. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271.
3. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).
4. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
5. UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271
6. UN General Assembly, *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III).

Case Law

1. *Pretty v United Kingdom* (2002) 35 EHRR 1.

2. *Goodwin v United Kingdom* (2002) 35 EHRR 18.

Official Publications

1. Abel G, Fitzgerald L and Brunton C, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee* (University of Otago 2007).
2. Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016) 7-8.
3. Coy M, Pringle H and Tyler M, *The Swedish Sex Purchase Law: Evidence of its Impact* (Nordic Model Information Network, July 2016) <https://www.catwa.org.au/?q=node%2F72> accessed 12 May 2025.
4. European Commission, 'Sweden' (Migration and Home Affairs, 23 March 2022) https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/sweden_en accessed 7 April 2025.
5. European Parliament, 'Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and Its Impact on Gender Equality' [2014] OJ C285/9.
6. Global Commission on HIV and the Law, *Risks, Rights & Health* (UNDP 2012) 36-38.
7. Government Bill, *Kvinnofrid (prop. 1997/98:55- the Violence Against Women Act)*.
8. Jordan J, *The Sex Industry in New Zealand: A Literature Review* (Ministry of Justice 2005) 26-28.
9. Library of Parliament, *Prostitution: A Review of Legislation in Selected Countries* (Publication No 2022-21-E, 17 June 2022) https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202221E#ftn81 accessed 7 April 2025.
10. *National Task Force against Prostitution and Human Trafficking*, Swedish Gender Equality Agency, accessed April 10, 2025 <https://swedishgenderequalityagency.se/men-s-violence-against-women/prostitution-and-human-trafficking/> accessed 10 April 2025.
11. *Prostitution and Human Trafficking*, Swedish Equality Agency, <https://swedishgenderequalityagency.se/men-s-violence-against-women/prostitution-and-human-trafficking/> accessed April 10, 2025.
12. *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (Ministry of Justice 2008).
13. Resolution of 14 September 2023 on the Regulation of Prostitution in the EU: Its Cross-Border Implications and Impact on Gender Equality and Women's Rights' [2024] OJ C 117.
14. Resolution of 26 February 2014 on Sexual Exploitation and Prostitution and Its Impact on Gender Equality [2017] OJ C285/9.
15. SOU 1995:60, *Kvinnofrid: Slutbetankande av Kvinnovaldskommissionen* (Statens Offentliga Utredningar, 1995).

16. Swedish Gender Equality Agency, *National Referral Mechanism: A Support and Protection Process for Victims of Trafficking in Human Beings in Sweden*, 2nd edn (Swedish Gender Equality Agency 2019).
17. UNDP, *Sex Work and the Law in Asia and the Pacific* (UNDP 2012).
18. Vuoljärvi N, 'Governing in the Name of Caring- the Nordic Model of Prostitution and its Punitive Consequences for Migrants who Sell Sex' (2019) 16 *Sexuality Research and Social Policy* 151.

Books

1. Abel G, 'A Decade of Decriminalization: Sex Work "Down Under" But Not Underground' (2014) 14(5) *Criminology and Criminal Justice* 580.
2. Abel G, Fitzgerald L and Healy C (eds), *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalization* (Policy Press 2010).
3. Bindel J, *The Pimping of Prostitution: Abolishing the Sex Work Myth* (Palgrave Macmillan 2017).
4. C A Salmon, 'The World's Oldest Profession: Evolutionary Insights into Prostitution' in J Duntley and T K Shackelford (eds), *Evolutionary Forensic Psychology* (Oxford University Press 2008).
5. Chapkis W, *Live Sex Acts: Women Performing Erotic Labour* (Routledge 1997).
6. Connelly L, 'Debates on Prostitution: An Introduction to Feminist Politics and Their Influence upon International Policy and Practice' in Jacob F (ed), *Prostitution: A Companion of Mankind* (Peter Lang 2016).
7. Doezema J, *Sex Slaves and Discourse Matters: The Construction of Trafficking* (Bloomsbury Academic 2010).
8. Law J (ed), *A Dictionary of Law* (10th edn, Oxford University Press 2022).
9. Leigh C, 'Inventing Sex Work' in Nagle J (ed), *Whores and Other Feminists* (Routledge 1997).
10. MacKinnon C A, *Sex Equality* (3rd edn, Foundation Press 2016).
11. MacKinnon C A, *Toward a Feminist Theory of the State* (Harvard University Press 1989).
12. McCrudden C, *Understanding Human Dignity* (OUP 2014) 17.
13. Nussbaum M C, *Creating Capabilities: The Human Development Approach* (Belknap Press of Harvard University Press 2011).
14. Martha C Nussbaum, *Sex and Social Justice* (Oxford University Press 1999).
15. Sen A, 'Capability and Well-Being' in Nussbaum M C and Sen A (eds) *The Quality of Life* (Clarendon Press 1993).
16. Moran R, *Paid For: My Journey Through Prostitution* (2015, Gill & Macmillan).
17. Smith M and Mac J, *Revolting Prostitutes: The Fight for Sex Workers' Rights* (Verso 2018).
18. Weitzer R, *Sex for Sale: Prostitution, Pornography and the Sex Industry* (2nd edn, Routledge 2009).

Journals

1. Armstrong L, 'Decriminalisation of Sex Work in the Post-Truth Era? Strategic Storytelling in Neo-Abolitionist Accounts of the New Zealand Model' (2021) 21(3) *Criminology & Criminal Justice* 369.
2. Armstrong L, 'From Law Enforcement to Protection? Interactions between Migrant Sex Workers and Police in New Zealand's Decriminalised Sex Industry' (2017) 17 *Critical Criminology* 271.
3. Bernstein A, 'Working Sex Words' (2017) 24(2) *Michigan Journal of Gender and Law* 221.
4. Dworkin A, 'Prostitution and Male Supremacy' (1993) 1(1) *Michigan Journal of Gender and Law* 1.
5. Easterbrook Smith G, 'Stigma, Invisibility and Unattainable 'Choices' in Sex Work' (2022) 25(8) *Sexualities* 1006.
6. Ekberg G S, *Swedish Laws, Policies and Interventions and Trafficking in Human Beings* (2015).
7. Farley M, "'Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized" (2004) 10(10) *Violence Against Women* 1087.
8. Holmström C and Skilbrei ML, 'The Swedish Sex Purchase Act: Where Does it Stand?' (2017) 4(2) *Oslo Law Review* 82.
9. Hunter SK, 'Prostitution is Cruelty and Abuse to Women and Children' (1993) 1 *Mich J Gender & L* 1.
10. Jeffreys E, 'Sex Worker Politics and the Term 'Sex Work'' (2015) 14 *Research for Sex Work* 12.
11. Kingston S and Thomas T, 'The Police, Sex Work, and Innovation: Lessons from the Literature' (2021) 5 *Justice, Power and Resistance* 184.
12. Levy J and Jakobsen P, 'Sweden's Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Swedish Sex Workers' (2014) 14(5) *Criminology and Criminal Justice* 593.
13. Lux K, 'Work, Violence or Both? Framing the Sex Trade and Setting an Agenda for Justice' (2009) *Advocates' Forum* 1.
14. Mathieson A, Branam E and Noble A, 'Prostitution Policy: Legalization, Decriminalization and the Nordic Model' (2016) 14 *Seattle J Soc Just* 367.
15. McCrudden C, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 *EJIL* 655.
16. Månsson S A, 'The History and Rationale of Swedish Prostitution Policies' (2017) 2(4) *Dignity: A Journal of Sexual Exploitation and Violence* 8.
17. Sutherland K, 'Work, Sex and Sex-Work: Competing Feminist Discourses on the International Sex Trade' (2004) 42(1) *Osgoode Hall LJ* 139.
18. Ojilere A, 'Sex Work and Human Dignity: Perspectives from International Human Rights Law' (2019) 3(2) *Nigerian Human Rights Journal* 1.
19. Robeyns I, 'Selecting Capabilities for Quality of Life Measurement' (2005) 74 *Social Indicators Research* 191.

20. Thusi I, 'Organizing for the Decriminalization of Sex Work in South Africa' (2024) 148 *Radical History Review* 155.
21. Thusi I, 'Radical Feminist Harms on Sex Workers' (2019) 55(2) *Cal W L Rev* 439 <https://scholarlycommons.law.cwsl.edu/fs/242/> accessed 13 March 2025.
22. Wahab S and Abel G, 'The Prostitution Reform Act (2003) and Social Work in Aotearoa/New Zealand' (2016) 31(4) *Affilia: Journal of Women and Social Work* 418.
23. Waltman M, 'Sweden's Prohibition on Purchase of Sex: The Law's Reasons, Impact, and Potential' (2011) 34 *Women's Studies International Forum* 449.
24. Weinhold C, Abel G and Thompson L, ' "They Wouldn't Get Away With it at McDonalds": Decriminalisation, Work and Disciplinary Power in New Zealand Brothels' (2023) 30 *Gender, Work and Organization* 18.
25. Yacoub AR, 'Consensual Sex Work: An Overview of Sex Workers' Human Dignity in Law, Philosophy and Abrahamic Religions' (2019) 76 *Women's Studies International Forum* 102274.

Websites

1. Associazione Iroko, 'Abolitionist Model' (2025) <https://www.associazioneiroko.org/abolitionism/abolitionist-model/> accessed 10 March 2025.
2. Global Network of Sex Work Projects, *Guide to Legal Models: Decriminalisation vs. Legalisation* (NSWP 2021) 3 https://www.nswp.org/sites/default/files/guide_to_legal_models_english_prf04.pdf accessed 19 March 2025. .
3. Moran R, 'I Got into Prostitution as a Homeless Fifteen-Year- Old Girl on the Streets of Dublin' (Space International, 2015) [/www.spaceintl.org/voice/rachel-moran-2/](http://www.spaceintl.org/voice/rachel-moran-2/) accessed 10 April 2025.
4. "Our Work", Talita <https://en.talita.se/om-talita/vart-arbete> accessed 10 April, 2025.
5. Ripa Y, 'Prostitution (19th-21st centuries)' *Encyclopedie d'histoire numerique de l'Europe* [online] (22 June 2020) <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/prostitution-1800-today/prostitution-19th-21st-centuries#sommaire-abolitionism-a-movement-with-european-ambitions> accessed 10 March 2025.
6. Wahlberg K, Targeting the Sex Buyer: *The Swedish Example- Stopping Prostitution and Trafficking Where It All Begins* (Swedish Institute 2010) <https://documentation.lastradainternational.org/doc-center/2578/targeting-the-sex-buyer-the-swedish-example-stopping-prostitution-and-trafficking-where-it-all-begins>.
7. Dodillet P and Östergren S, 'The Swedish Sex Purchase Act: Claimed Success and Documented Effect' (Conference paper, Lund University, 2011). <https://portal.research.lu.se/en/publications/the-swedish-sex-purchase-act-claimed-success-and-documented-effect>

Reports

1. Mossman E, *International Approaches to Decriminalisation or Legalising Prostitution* (Ministry of Justice, 2007) 7.

Theses and Dissertations

1. Mesce G, 'Sex Work Decriminalization and Feminist Theory' (2020) *Senior Theses*, University of South Carolina, 34
https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1368&context=senior_theses accessed 20 March 2025.