

The concept of human dignity and its use in legal and political discourses on commercial sex

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This thesis is the result of the author's original research. It has been composed by the author and has not been previously submitted for examination which has led to the award of a degree.

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Abstract

Using post structural discourse analysis (Laclau and Mouffe 1985), this thesis explores the use of the concept of dignity in jurisprudence on commercial sex, as well as in the discourses produced by abolitionist activists and sex worker rights activists who campaign for (different) legal reforms in this area. Rao's (2011) taxonomy of dignity is deployed as a framework for the analysis of both textual sources and empirical data gathered through interviews with activists. Two principal forms of 'dignity talk' are identified: 'fundamentally incompatible' discourses, which argue that prostitution is always and inherently a violation of dignity; and 'dignity as workers' discourses, which propose that dignity is promoted through the social and legal recognition of commercial sex as a form of work. Where these discourses *converge* is in their emphasis on the 'intrinsic dignity' of people who sell sex as a way to highlight the potential harms that they face, even while the source of these harms are framed in radically different ways. Beyond this, there is clear *divergence*, with those who propagate 'fundamentally incompatible' discourses relying on a version of dignity that is principally designed to uphold communitarian norms, while those who use 'dignity as workers' discourses deploy a concept of dignity focused on social recognition. An awareness of the stigma faced by sex workers informs the analysis, and the connections between stigma, dignity and dehumanisation are explored. It is argued that the notion of dignity is strongly associated, in current times, with prevailing ideas of what it means to be a human being. Framing commercial sex, therefore, as a practice that violates dignity, represents it as 'beneath humanity', which may serve to reinforce stigma by positioning sex workers as dehumanised subjects. 'Dignity as workers' discourses, meanwhile, help to challenge stigma by representing sex workers as complex and agentic subjects, but these risk reifying existing economic structures, a situation which may perpetuate inequalities within the sex industry. The thesis concludes with thoughts on ways forward for using dignity talk' in discourses on sex work while avoiding the potentially harmful consequences identified.

Chapter 1 - Introducing the research

Main objective

The concept of dignity is frequently, yet enigmatically, invoked in legal and political discourses on commercial sex, where a range of actors use it without much elaboration on exactly what they mean by it. This thesis seeks to explore the use of dignity in a range of different discourses on commercial sex, focusing on aspects of formal legal discourse (principally, court decisions), as well as the political discourses used by activists who campaign to reform prostitution laws. This thesis has two main objectives. The first is focused on tracing how the concept of dignity is used in legal and political discourses on sex work, with attention paid to the ‘versions’ of dignity being used and how these frame commercial sex in different ways. Secondly, the thesis seeks to examine the potential effects of this rhetoric, particularly on the social and cultural representation of the people who sell sex. Given the high levels of pre-existing stigma and violence faced by sex workers, the thesis ultimately asks to what extent dignity based discourses help to advance, or hinder, sex workers’ social inclusion.

1.1 Background: why this research?

People use the term [dignity] in... [human rights] discourse for all sorts of reasons: it sounds good; it has great rhetorical power; everyone does it; and so on. They may be dimly aware of its more technical uses in moral philosophy and they may want to hook up too with its other uses in social advocacy. There may be an element of ‘semantic deference’ in most people’s uses of the term: most human rights advocates use it pretty unreflectively and they do so on the implicit assumption that somewhere, in some ivory tower, someone has taken on the task of figuring out exactly what ‘dignity’ means and what it can

contribute. (Waldron 2007: 234)

While the term 'dignity' makes frequent appearances in legal and political discourses on commercial sex, it retains a mysterious and enigmatic character. What I mean by that is that there is rarely any elaboration or detailed discussion on what exactly is meant by it. This is what Waldron identifies above when he talks about human rights advocates using the word "pretty unreflectively". The signifier 'dignity' is an extremely expansive idea that can hold within it a range of different meanings. It has a particular meaning in the context of international human rights law, where it signifies the inherent inner worth of all human beings, as per Article 1 of the Universal Declaration of Human Rights: "all human beings are born free and equal in dignity and rights". It does, though, have a range of other possible meanings and is, for example, frequently related to the idea of autonomy and the right to make personal decisions about one's life, including the right to 'die with dignity' (Shershow 2014). Dignity, in everyday language, however, is more closely associated with superficial aspects of a person's behaviour; and when we describe someone as carrying themselves with dignity or acting with dignity, this may convey, for example, their ability to control their raw emotions or their choice to dress and behave with modesty.

Dignity's flexibility and malleability, as a signifier generally, and as a legal concept particularly, was one of the factors that sparked my initial interest in this study. Being involved in the politics of sex work law reform, I became increasingly aware of the prevalence of dignity language in these political debates and how it was used to justify and assert a range of, sometimes conflicting, legal and policy goals. I began to notice that - despite, or perhaps because of, its elastic nature - dignity is a concept that carries great rhetorical power. Riley notes that "[b]ecause of its conclusory air ([an] appeal to dignity simply *feels* or appears decisive and definitive) it can be deployed as a normative vanishing point where debate has to end" (2010: 120; emphasis in the

original). I noticed that the use of what I shall refer to as ‘dignity talk’¹ in legal and political discourses on sex work had this “conclusory air” and began to wonder if this was the reason why it often appeared rather opaque. Were the legal and political actors who produce these discourses on prostitution relying on dignity simply because it “*feels...decisive and definitive*” (ibid.; emphasis in the original)?

Dignity’s rhetorical strength is partly related to its central role in the world’s system of international cooperation and human rights that was instituted after the Second World War. It was centred in the United Nations founding document,² as well as in the aforementioned Universal Declaration of Human Rights. The emphasis on dignity in these important post-war institutions was likely a direct response to the horrors of the war and the Holocaust (McCrudden 2008). This, however, was not the only reason for centring human dignity in the post-war international-rights-based order. It was also chosen as a key founding principle of these institutions and treaties precisely because of its malleability, with all the different international stakeholders able to project their own ideologies and worldviews onto it (McCrudden 2008; Shultziner 2007). While there is agreement, in the text of the international treaties, that dignity signifies an equal and inherent human worth, there is no agreement on how this is grounded (e.g. with a religious or secular basis) or how it should precisely be understood and implemented (e.g. to prioritise the promotion of individual rights or to uphold the interests of the community). While dignity’s importance, in our global-rights-based order, may help explain *why* it is so readily invoked in debates about contentious moral issues, like prostitution, it does not shed much light on *how* it is used in these discourses. While ‘dignity’ carries a particular meaning in international human rights

¹ I use the term ‘dignity talk’ throughout the thesis as a way to describe the use of dignity based language and discourses. Although I use the term ‘talk’ this is intended to encapsulate all discursive forms, including written text.

² The Preamble to the United Nations Charter states: “We the people of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”.

law, as signifying a universal and inherent human worth, I wanted to explore whether this extends to its use in legal and political discourses on commercial sex. Furthermore, I was intrigued to explore how dignity based discourses may impact on how sex workers are represented in the cultural imagination. The extent of existing stigma (Benoit et al. 2018) and the high levels of violence experienced by sex workers (Deering et al. 2014) makes this aspect of the thesis particularly important.

1.2 Dignity and commercial sex: setting the scene

The stigma and violence faced by sex workers is indicative of wider negative attitudes towards the commercialisation of sex and, by extension, the people who sell sex. O'Neill refers to the "abject status of the sex worker" as being a defining element of British legal and policy responses to prostitution since Victorian times (2010: 217). The word abject is defined in the Oxford Dictionaries,³ relating to a person or their behaviour, as "completely without pride or dignity" (n.d.) and I would argue that if a person sells sex, they are often perceived, in the public imagination, as having no dignity. The law echoes this and, in a number of legal instruments and judicial decisions, the practice of commercial sex is derided as being incompatible with human dignity. For example, it is declared that "prostitution...[is] incompatible with the dignity and worth of the human person" in the Preamble to the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Trafficking Convention). More recently, the Preamble to Canada's Protection of Communities and Exploited Persons Act 2014⁴ suggests that "discouraging prostitution" is "important to protect human dignity"; and a European

³ The Oxford Dictionaries are published by Oxford University Press. It is noted that "[t]he dictionary content in Oxford Dictionaries focuses on current English and includes modern meanings and uses of words." See <https://public.oed.com/about/the-oed-and-oxford-dictionaries/>, last accessed 31 May 2018.

⁴ This statute introduced a range of new prostitution-related regulation into Canadian law, including a criminal prohibition on the purchase of sex.

Parliament resolution, passed on 26th February 2014, describes prostitution as a “form of slavery incompatible with human dignity” (European Parliament 2014: para B).

When courts have grappled with the same subject, many have also concluded that commercial sex violates dignity. For example, the South African Constitutional Court in the *Jordan* case,⁵ which I will discuss in detail in Chapter 4, said that prostitution “devalue[d] the fundamental dignity of the human body”.⁶ The supreme or constitutional courts of India⁷, South Korea⁸, Colombia⁹ and Canada¹⁰ have also issued decisions in which they propose that commercial sex is incompatible, in some way or another, with the notion of human dignity. Other courts have, however, used the concept of human dignity to advance the rights of sex workers: for example, the South African Labour Appeal Court in the *Kylie*¹¹ case noted that sex workers were entitled to employment law protections based on the understanding that “they must be treated with dignity...by their employers”.¹²

The concept of dignity is also invoked by political activists who campaign to reform prostitution laws. In Victorian Britain, Josephine Butler, a feminist heavily involved in campaigning against the Contagious Diseases Acts,¹³ was recorded as saying that

⁵ *S v Jordan and others* [2002] ZACC 22.

⁶ *ibid.* at para 74.

⁷ *Budhadev Karmaskar v State of West Bengal* [2011] 2 S.C.R. 925; [2011] 9 S.C.R. 680; [2011] 10 S.C.R. 577; [2011] 11 S.C.R. 397; [2012] 7 S.C.R. 881.

⁸ Case on the Punishment of Commercial Sex Acts, Case No. 2013Hun-Ka2, available at: <http://english.court.go.kr/cckhome/eng/decisions/majordecisions/majorDetail.do>.

⁹ Case T-629-10, full text in Spanish available on the website of the Corte Constitucional of Colombia, <http://www.corteconstitucional.gov.co/relatoria/2010/t%2D629%2D10.htm>. See Women’s Link Worldwide 2010 for English language summary.

¹⁰ Reference re ss. 193 & 195.1(1)(c) of Criminal Code (Canada), (the Prostitution Reference), [1990] 1 S.C.R. 1123.

¹¹ *‘Kylie’ v CCMA and others* 2010 (4) SA 383 (LAC).

¹² *Ibid.* at para 26.

¹³ The Contagious Diseases Acts passed in 1864, 1866 and 1869 by the UK Parliament “were designed to protect the health of military men by subjecting any woman whom the special Morals Police identified as a prostitute to a ‘surgical examination,’ which involved crude instruments for special vaginal

through rehabilitation efforts (she ran a refuge for women from her home), prostitutes could be “brought back to womanly dignity and virtue” (Bell 1994: 62). Second-wave feminist campaigners who advocate for the abolition of prostitution also rely on the concept of dignity in framing their political discourses. Abolitionists argue that criminalising the purchase of sex will reduce demand for prostitution, leading to its eventual eradication, and the assertion that it fundamentally violates dignity is used as a way to support this demand. For example, Kathleen Barry, a prominent abolitionist campaigner, argues that prostitution “is [a form of] sexual exploitation and it violates women’s human rights to dignity and equality” (1995: 24). The influential European Women’s Lobby, a Europe-wide abolitionist feminist NGO, suggests that “refusing prostitution is about setting a standard of human dignity for all women and girls around the world” (EWL 2011).

Dignity also finds its way into the rhetoric pursued by sex worker rights (SWR) activists, who resist much of the abolitionist rhetoric, and court decisions, that situate prostitution as a violation of dignity. Instead, they argue that the criminal laws against sex work, and the consequent discrimination and stigma that sex workers’ face, pose a threat to their dignity and they demand that sex work be decriminalised. For example, the sex worker organisation Empower, based in Thailand, argues that “it is the neglect, isolation and criminalization of sex workers that is ‘incompatible with the dignity and worth of the human being’” (2016: 62-63). From a similar perspective, the North American SWR group Prostitutes of New York (PONY) maintain that sex workers “want their rights and dignity as sex workers protected and respected” (2005).

examinations by often cruel doctors. The coarse brutality of doctors, men who had only recently taken over the work of midwives, and the arbitrary police identification of women as prostitutes, combined with Victorian morality to create an outrage among women against such examination” (Barry 1995: 93).

While this demonstrates the widespread use of dignity in legal and political discourses on sex work, it also shows how the concept can be used by different actors to advocate radically different perspectives on prostitution and to pursue diverse campaigns for law reform. In seeking to understand *how* the concept is used, I aim to trace its use in different aspects of legal and political discourse on sex work, with attention paid to the versions of dignity deployed and how these construct particular perspectives of commercial sex. Furthermore, I seek to explore the effects that these particular discursive constructions of dignity and commercial sex may have on the social and cultural representation of sex workers. The overarching research question, therefore, is:

How is the concept of 'dignity' used in legal and political discourses on commercial sex and what impact might it have on the cultural representation of people who sell sex?

This particular research question straddles two distinct fields of academic work and I see it as making a contribution to the multi-disciplinary literatures on both human dignity and sex work. The vast and diverse sex work literature cuts across a range of disciplines, from more abstract theoretical debates on the rights and wrongs of prostitution (Ericsson 1980; Overall 1992, 1994; Pateman 1983; Shrage 1994a), to rich empirical work that builds a picture of the lived realities of sex workers in a wide range of different contexts (Abel et al. 2007; Agustin 2007; Bernstein 2007; Brents et al. 2009; Dewey 2011; Kempadoo 1999; Kulick 1998; Mai 2011, 2013; O'Connell Davidson 1998; O'Neill 2001; Phoenix 1999; Sanders 2005; Sanders et al. 2017), to socio-legal work exploring the impacts of laws and regulations on the sex industry (Brooks-Gordon 2006; Hubbard et al. 2007, 2008; Jahnsen and Wagenaar eds. 2018; Kotiswaran 2011; Munro and Della Giusta eds. 2008; Phoenix ed. 2009; Scoular 2010, 2015; Skilbrei and Holmström 2016; Sullivan 2010; Weitzer 2012; Wagenaar 2017).

The plethora of studies on sex work is mirrored in the vast and expansive literature on human dignity, which has particularly flourished since the development of post-WWII international human rights law. Much of the existing literature is focused on mapping how the concept is used in different legal contexts (Dupré 2009, 2012; Feldman 1999, 2000; McCrudden 2008; Meltzer Henry 2011; Neal 2012a; Rao 2011; Shultziner and Carmi 2014), exploring its historical development (for recent examples, see Donnelly 2014 and Sensen 2011), and assessing its value as a legal and ethical principle (Bagaric and Allen 2006; Macklin 2003; Neal 2012b; O’Mahony 2012a, 2012b; Riley 2010; Kidd White 2012). Given that the parameters of this project are delineated very specifically to focus on the connections between dignity and sex work, it is essential to review the existing literature that engages with this precise intersection.

1.3 Dignity *and* sex work: a review of the existing literature

German philosopher Norbert Campagna published a German-language book in 2005, entitled *Prostitution. A philosophical examination* (Prostitution. Eine philosophische Untersuchung), in which he studies dignity and prostitution. I am unable to read this work but the author has written a short, English-language chapter in the *Cambridge Handbook of Human Dignity*, on the same subject (Campagna 2014). In this chapter (and presumably in his wider study), Campagna aims to interrogate the supposition that prostitution is incompatible with human dignity through the Kantian tradition, which he says, “is predominant today...in continental Europe” (ibid.: 457). A detailed analysis of Kant’s perspectives on human sexuality and commercial sex is not possible

here, except to say that Kant sees prostitution as fundamentally incompatible with human dignity.¹⁴ Campagna, however, ultimately rejects Kant's view:

There is no compelling reason to think that a person making use of a prostitute for his sexual gratification necessarily stops respecting her as the person she is, a person worthy of respect which one may not treat as one wishes and whom one is bound to by moral as well as legal duties...There is no contradiction in saying: 'I pay you for the sexual act and I respect you as a human being'. (ibid.: 459)

Campagna concludes his short book chapter, by summarising the crux of the legal and political debates that are at the centre of this thesis, noting that:

...at a more fundamental level, two opposite views confront each other: on the one hand, the view that prostitution must disappear as it is fundamentally incompatible with human dignity. And, on the other hand, the view that only *forced* prostitution must disappear. (ibid.: 459 - 460; emphasis in the original)

This, he further notes, leads to debate over whether laws should be "aimed at criminalizing the buying of sexual services...or...giving more rights to prostitutes, thus officially recognizing prostitution" (ibid.: 459).

Shepherd (2015), in an unpublished doctoral thesis, also approaches the topic of prostitution and dignity from a normative perspective, asking the question: "Does prostitution violate human dignity?" In his thesis, Shepherd seeks "to apply human

¹⁴ In fact, Kant views all sexual contact between humans as posing a threat to human dignity because of the propensity for sexual partners to instrumentalise each other, with monogamous marriage presented as the 'solution' to this risk (see Nussbaum 1995 and Papadaki 2007).

dignity as an objective form of normative yardstick to the prostitution encounter” (ibid.: 18); and, to do so, he constructs a model of dignity, grounded in the dignity literature and in international human rights law that he labels “IPA dignity”. “IPA” refers to three core elements, which are that dignity is inherent and inalienable, that it makes individuals personally inviolable, and, finally, that it grounds autonomy. Having selected a particular framing of dignity for the purposes of his analysis, Shepherd then identifies the Gender and Male Violence model of prostitution as the most suitable for his study (ibid.: 20). He describes this as the “sexual-domination” approach, which is “embedded in radical feminist theory” (ibid.: 157), noting that for the purposes of his thesis, “interpretations of what prostitution is, and how it operates are informed specifically and exclusively by literature which conforms to the ideals of this model” (ibid.: 25).¹⁵ The results of Shepherd’s normative analysis leads him to the conclusion that prostitution does indeed violate dignity “by objectifying...sex workers and dehumanizing them”, noting also that their “bodily integrity was invariably violated” (ibid.: 183).

The Gender and Male Violence model that Shepherd relies on in his study is advanced by radical feminist writers such as Mackinnon (1993, 2000, 2011), Dworkin (1993), Barry (1979, 1995) and Jeffreys (2009). While all of these writings advance the view that prostitution is a paradigmatic form of male dominance and gender inequality, only some of the authors choose to engage with the subject of dignity, with Kathleen Barry’s work being notable for its frequent use of ‘dignity talk’ (1995). Barry concludes, as mentioned briefly above, that prostitution violates human dignity - for example, noting that “objectifying a human being, reducing her to a commodity to purchase...violates the person’s human dignity and obliterates her human rights” (2013). This is the same

¹⁵ He does, however, go on to note that he does not assume, as the GMV model tends to articulate, that sex workers are victims, and he also proposes to examine the “pro-sex work” position to consider “how human dignity might be supported by prostitution, in the element of autonomy as dignity” (Shepherd 2015: 160).

conclusion reached by Shepherd; and the view that prostitution violates dignity appears to be grounded in the perception that those who sell sex are objectified by those who buy sex. A deeper analysis of Barry's use of the concept of dignity, alongside other abolitionist writers and activists, will be conducted in Chapter 5 but, for now, it is important to recognise that dignity is used in her writings (and those of her colleagues) to advance a particular normative perspective on prostitution.

Beyond the work discussed above that is focused on normative analyses of dignity and commercial sex, there is very little else published on this precise intersection. As evidence, however, of the importance of my thesis, it is notable that in much of the dignity literature, the 'issue' of prostitution is frequently referenced (normally very briefly) as an illustration of the complexities inherent in the concept of dignity and its practical application in law. For example, some writers mention prostitution when they look at the conflicts between the use of dignity as representing individual autonomy versus concerns about the dignity of the community (Meltzer Henry 2011: 222; Rao 2011: 228-229; Rosen 2012: 69). Meltzer Henry, for examples, notes that "[i]n a community that believes prostitution is an affront to women's collective dignity, it is irrelevant that individual women find the practice empowering or view it as an exercise of their liberty as dignity" (2011: 222).

Hennette-Vauchez (2011) uses the example of prostitution, and the South African Constitutional Court case of *Jordan*,¹⁶ to demonstrate how the human dignity principle can be used to construct obligations, not just rights. She notes, for example, that in this case (and others), dignity is used to construct obligations towards oneself, in the

¹⁶ Supra note 5. The *Jordan* case was a constitutional challenge in which it was argued that the criminalisation of prostitution was unconstitutional and breached a number of the plaintiffs' rights guaranteed under the constitution, including the rights to privacy, dignity and gender equality. The claim on dignity grounds was rejected and the Court, instead, held that participation in prostitution itself was the root of any dignity violation felt by sex workers. See para 74.

same way that the ancient concept of *dignitas*, invested in particular social ranks, created obligations for the bearer of these particular roles. Dignity is now invested in humanity and it is this that the judges sought to protect in the *Jordan* case. As Hennette-Vauchez says, “it is not the dignity...of prostitutes (or prostitutes’ clients)...that judges have claimed to be protecting. Rather, it is human dignity as such, an (*sic*) abstract and completely objectivized” (ibid.: 38).

Waldron engages with Hennette-Vauchez’s work and summarises it as reflecting a concern that there has been “a realignment of [dignity] with forces of conservative moralism and paternalism” (2011: 1132), which is perhaps based on her own “clear convictions about how cases like...the prostitution case ought to come out” (ibid.: 1133). He challenges this position and goes on to argue for a commitment to foundational values, like dignity, as a way to grapple with difficult moral issues, noting that “the prostitution case” (I take this as a reference to the *Jordan* case) is “fraught with moral difficulty” and that concepts like dignity “help us think them through” (ibid.).

The *Jordan* case has received further academic attention, with Libby Adler (2008) analysing this and other cases from the USA, Germany and South Africa, in which human dignity was considered alongside the legality of sexual practices - principally, sodomy and prostitution. Adler is less concerned with theorising the use of the concept of dignity in general terms, as Hennette-Vauchez does and, instead, focuses on how dignity is used by judges specifically in their findings related to human sexuality. She finds in these cases that sex, in and of itself, is viewed by the courts as entirely compatible with human dignity so long as it occurs in a context of relatedness. The threat to human dignity, according to these cases, “is the dissociation of the sexual act from the intimate relationship in which it might occur” (ibid.: 18). Adler notes, therefore, that in terms of prostitution, as considered in the *Jordan* case, that “[i]t is

the *sale* of sex that causes the indignity” from the perspective of the court (ibid.: 24; emphasis in the original).

This finding - that selling sex violates the human dignity of those who do it - is criticised by South African scholars for its failure to apply an understanding of dignity in line with the South African constitution (Barrett 2005; Meyerson 2004) and, more generally, for presenting “a very sanitised, pastoral picture of sex” (Fritz 2004: 235). McCrudden also makes brief reference to the *Jordan* case in his expansive article on the judicial interpretation of human dignity, arguing that the interpretation of dignity by the South African Constitutional Court is “ambiguous and context-dependent” (2008: 706). He notes that “a strongly anti-paternalist approach is adopted” in cases related to gay rights but their decision in *Jordan* “seems out of keeping with their earlier strongly autonomy-based approach in the gay rights cases” (ibid.:706). These cases, along with others related to dignity and commercial sex, will be explored in Chapter 4.

Based on my exploration of the existing literature, then, I believe that this thesis is the first study to analyse a collection of caselaw on dignity and sex work beyond the *Jordan* case - as well as exploring how the concept is used in wider legal and political discourses on commercial sex. Indeed, while the concept of dignity features in several normative theories on prostitution, no study has, as yet, sought to analyse *how* it is used to make these normative arguments and what role ‘dignity talk’ plays in constructing various understandings of the nature of commercial sex.

1.4 Original contribution

As noted above, this thesis straddles the multi-disciplinary literatures on both sex work and human dignity, and represents an original contribution to both. I aim to supplement the theoretical literature on dignity by offering a detailed case study of

exactly how the concept is used in a particular empirical context. This helps illuminate theorising on the meanings and uses of 'dignity' by exploring how different legal and political actors actually engage with it. Given, as previously mentioned, that prostitution is frequently invoked in the dignity literature as an example of an issue that encapsulates the challenges and complexities of the concept, it is a highly suitable case study for empirical analysis. This project mirrors that undertaken by other scholars who have studied the use of the concept in different legal and political contexts - for example, Shershow's (2014) study of how the language of dignity is used in debates about euthanasia, and Siegel's work (2012) on the concept's place in legal debates over abortion and same-sex marriage.

In terms of the sex work literature, meanwhile, there are several examples of studies that seek to explore how various discourses have been, and are, used to support and justify different legal and policy interventions in the field. This is the first, however, to focus exclusively on dignity-based discourses. Scoular, for example, looks at the "changing representations" of prostitution in different historical contexts, noting that it has moved from being seen as "an issue of sin, to...a question of public health, to more recent portrayals as the epitome of gendered violence and as an issue of sex workers' rights" (2015: 3). She explores these different discourses in her study of how the law contributes to the shaping of "the subjects, spaces and forms of power in sex work" (ibid.: 2). Doezema (2010) examines recent political discourses surrounding the trafficking of women and the impact of these discourses on legal and political responses to trafficking and sex work. She does not attempt to contrast the political representations of the "trafficking victim" with the "'reality' of prostitutes' lives" but instead explores how certain discourses "become dominant" and "whose knowledge is accepted and whose sidelined" (ibid.: 9). Her study, like mine, examines the effects of discourses in structuring the political space in which debates on prostitution (and additionally, in her study, on trafficking) take place.

There are several other studies in the sex work literature that take this methodological approach in studying how different discourses shape both attitudes to, as well as laws and policies on, sex work. Kulick (2005) turns his attention to a very specific geographical and legal context in his exploration of the discourses on sexuality, and particularly the sexuality of male sex buyers, that predominated in Sweden in the run up to their adoption of laws criminalising the purchase of sex in 1999. The work of US-sex-worker-rights organisation COYOTE (Call Off Your Old Tired Ethics) is studied by Jenness, who examines how they attempted to reframe understandings of prostitution “from its historical association with sin, crime, and illicit sex” and instead to place it “firmly in the discourse of work, choice and civil rights” (1990: 403). Lowman explores “discourses of disposal”, which he describes as “media descriptions of the ongoing attempts of politicians, police, and resident’s groups to ‘get rid’ of street prostitutes from residential areas”, suggesting that these contributed to an increase in the murders of street-based sex workers in Vancouver in the late 1980s and early 1990s (2000: 988).

My work in this thesis seeks to contribute to this larger body of work that attempts to explain how and why different discourses on prostitution proliferate and the productive effects of these in shaping the legal and political space in which reforms to sex work laws are both proposed and resisted. While I will not attempt to draw any concrete, causal links like those proposed by Lowman, I will explore how dignity-related sex work discourses contribute to the construction of different perspectives of commercial sex and of various subject positions, as well as legal and political possibilities, for people who sell sex. Given that my study aims to explore the productive effects of dignity-based sex work discourses in shaping understandings of sex work and sex workers, it is important, at the outset, to explain my views on the nature of prostitution and to introduce the reader to some key related themes.

1.5 Prostitution: some key themes

1.5.1 *Beyond an essentialist perspective*

Writers like Mackinnon (1993, 2011), Dworkin (1993), Jeffreys (2009) and Barry (1995) contend that prostitution is the embodiment of patriarchal society and representative of the oppression of women. In these writings, prostitution is portrayed as a fundamentally abusive and violent practice; and empirical studies, like those carried out by Farley (2004), suggest that participation in prostitution leads to the development of severe mental health conditions, such as Post Traumatic Stress Disorder. The perspective of these radical feminist writers and researchers represents an essentialist view on prostitution, in that they propose one grand, unifying theory to explain the phenomenon of commercial sex: that it is the epitome of gender inequality. One of the main critiques of this approach, however, is that it fails to acknowledge the diverse, complex and contradictory ways in which commercial sex is practised, and experienced, by different groups of people in a variety of social settings.

Shrage, relying on studies of prostitution in different cultural contexts, asks us to “acknowledge the fiction of treating prostitution as an isolable phenomenon possessing a single transcultural meaning” (1994b: 94). She dismisses essentialist perspectives on prostitution and argues for an interpretive account of commercial sex, noting that “...interpretive accounts of human practices and institutions do not treat them as the inevitable expressions of transcultural forces, but as artefacts created and transformed in different historical and cultural settings” (ibid.: 99). For example, Overall’s (1992) account of prostitution as *intrinsically* racist, sexist and classist is critiqued, with Shrage noting that, while this may be true in Western society, this analysis is culturally specific and it does not mean that commercial sex *per se* is *always*

racist, sexist and classist (1994b: 93). She references Luise White's work (1990) on prostitution in colonial Nairobi and notes that the women selling sex there were predominantly from the same class background as the men buying - in this, providing just one example of a cultural context that contradicts the perspective that "class prejudice...[is] intrinsic to prostitution" (Farley 2006: 109).

I endorse Shrage's call for an interpretive account of commercial sex, rejecting the essentialist theories of radical feminism and instead contending (a point which I would argue is evidenced by the empirical literature) that commercial sex has no inherent or intrinsic character and is practised, and experienced, differently in a wide range of different contexts. My perspective on the nature of commercial sex, as a complex and multi-faceted phenomenon, grounds my entire approach to this thesis, given that I seek to explore how 'dignity talk' shapes understandings of commercial sex. Zatz argues for the possibility that the "prostitution encounter" be "imagined as a bifurcated event" (1997: 295) where "the prostitute can experience *it* as a banal physical exercise and the client can experience *it* as having sexual attention lavished on him" (ibid.: 296; emphasis in the original). This is an important insight given the plethora of legal and political discourses that attempt to paint a picture of what *really* is going on in prostitution. I embark on this study with an appreciation that there can never be one essentialist theory that accurately captures the experiences of all those who sell sex. Rejecting any essentialist position on commercial sex is made easy when one studies the variety of empirical studies into sex work, which paint a complex picture of diverse backgrounds, varying routes into sex work, and a multiplicity of experiences of selling sex (see, for e.g., Bernstein 2007; Brents et al. 2009; Dewey 2011; Kempadoo 1999; Kotiswaran 2011; Kulick 1998; Mai 2011, 2013; O'Connell Davidson 1998; O'Neill 2001; Phoenix 1999; Sanders 2005; Sanders et al. 2017). While the realities of exchanging sex for money can vary significantly depending on social and

cultural context, one of the core themes that continually emerges in empirical studies is the experience of *stigma* faced by those who sell sex.

1.5.2 Stigma

Stigma appears to affect sex workers across gender, racial, class and cultural lines, although its impact, of course, may be different for differently situated sex workers (Benoit et al. 2018). Stigma is a key theme that is central to the element of this thesis that seeks to explore how dignity-based sex work discourses affect the social and cultural representation of sex workers. These dignity-related discourses are not projected into a vacuum but are layered on top of already existing cultural representations, including the stigmatisation of sex workers as a social group. Goffman, the founder of sociological theorising on stigma, defined it as “an attribute that is deeply discrediting” (1963: 13) and that has the effect of reducing an individual “from a whole and usual person to a tainted, discounted one” (ibid.:12). Since Goffman’s original theorising in the 1960s, there has been a wealth of social scientific research on stigma, developing more comprehensive theoretical understandings of the phenomenon (Hatzenbuehler et al. 2013; Link and Hatzenbuehler 2016; Link and Phelan 2001, 2014; Pescosolido et al. 2008).

In a recent intervention in the literature on stigma and sex work, Weitzer argues that stigma is “omnipresent in sexual commerce” and research “offers abundant evidence of [its] harmful consequences”, making it “one of the most important problems in sex work” (2017: 1). The “abundant evidence” that Weitzer makes reference to is explored in a recent article by Benoit et al. (2018), in which the authors conduct a wide-ranging review of the existing literature on “prostitution stigma”. They explore the causes of prostitution stigma, relying on a framework developed by Pescosolido et al. (2008), noting that it is enacted at all levels of society, with laws, regulations and social

policies, the media, health care and justice systems, the public at large and sex workers themselves all playing a role in the perpetuation of stigma against sex workers (Benoit et al. 2018.: 461). Crucially, they contextualise the experiences of stigma faced by sex workers in terms of its concrete harms, noting that “there is now enough accumulated evidence to warrant inclusion of prostitution stigma as a fundamental determinant of social inequality for sex workers” (ibid.: 460).

Stigma is an important theme for the analysis that follows, as it creates a particular “material-rhetorical context” (Hesford 2004: 108) into which the dignity-based discourses that are explored in this thesis are projected. The connections between ‘dignity talk’ and stigma will be examined in detail in Chapter 7, where I will explore whether these dignity-based discourses help to reinforce or challenge the stigma faced by sex workers. Benoit et al. note that, at the individual level, stigma is managed by sex workers - for example, through “information management techniques” - but also that “[s]ome sex workers actively reframe and attempt to resist occupational stigma by engaging in collective action” (2018: 467).

1.5.3 Collective action: legal and political activism on commercial sex

Collective action is another important theme for this thesis because one of its major focuses is to explore how ‘dignity talk’ is used by legal and political campaigners engaged in activism to reform sex work laws. Activist work on prostitution/sex work law and policy is extremely polarised. There are two broad movements actively campaigning for reform of the laws on commercial sex, and both have a presence at the global and regional levels and in a range of countries across the world. For the purposes of this study, I will describe these two movements as the *abolitionist movement* and the *sex worker rights (SWR) movement*. Both of these movements

campaign against the criminalisation of people who sell sex but they present radically different ideas for how the law should be reformed.

The abolitionist movement is informed, to a large extent, by the analysis of prostitution advanced by radical feminist thinkers (Barry 1995; Dworkin 1993; Jeffreys 2009; Mackinnon 1993, 2011). As discussed above, this analysis sees prostitution as illustrative of the unequal and gendered power relations under patriarchy and defines commercial sex as, always and inherently, a form of exploitation and violence against women. Weitzer refers to this as the “oppression paradigm” (2009: 214). While the contemporary abolitionist movement is grounded in a radical feminist analysis of prostitution, I note that there are several other interests at stake in attempts to eradicate commercial sex. Objections to the sex industry can also be grounded in moral concerns about ‘illicit sex’ and damage to the social fabric of communities (Östergren 2017; Scoular 2015), and, indeed, abolitionist feminists are often criticised for working with evangelical Christians who also oppose prostitution (e.g. Meredith 2013). I dispute the assertion that abolitionist feminists are motivated primarily by moral objections to prostitution (more on this in Chapter 5), but I do accept that their goals are aligned with other political actors (e.g. organised religions) who may also seek the eradication of commercial sex. While there are a range of perspectives and interests that fall under the banner of abolitionism, I maintain that the contemporary abolitionist movement is heavily influenced by radical feminist analyses, including in respect of its use of ‘dignity talk’, and this is, therefore, the main focus of my exploration.

Abolitionist campaigners generally advocate reform of the prostitution laws by calling for the introduction of the Swedish, or Nordic, model, which is said to involve the complete decriminalisation of the seller of sex and instead criminalises the buyer (Nordic Model Now n.d.). This perspective sees the buying of sex as a pathology and a

form of abuse, and criminalising the purchase of sex is proposed as a way to deter men (the discourses are heavily gendered) from buying sex. A great deal of literature has been produced discussing this legal model, which currently exists in Sweden, Norway, Iceland, France, Canada, Northern Ireland and the Republic of Ireland, arguing for and against its effectiveness (Eckberg 2004, 2008; Coy et al. 2016; Danna 2012; Holmström and Skilbrei 2017; Levy 2014; Levy and Jakobsson 2014; Scoular 2004; Skilbrei and Holmström 2016).

While the SWR movement also fights against the criminalisation of people who sell sex, they oppose attempts to introduce the Nordic model, believing that there are a range of unintended consequences for sex workers (Levy 2014; Levy and Jakobsson 2014). Instead, the SWR movement campaigns for all parties in a commercial sex transaction (including clients, managers and third parties¹⁷) to be decriminalised (NSWP 2014). The movement represents a worldwide collection of organisations founded and run by people who sell sex and their allies, and it unites sex workers from widely divergent cultural backgrounds and with a variety of experiences of selling sex. It aims to draw attention to the human rights abuses suffered by sex workers as a result of criminalisation, and calls for the protection of sex workers from violence - that is, violence at the hands of clients, but also from state actors, such as the police. SWR activists attempt to dislocate the prevalent meanings given to prostitution as a form of violence and/or a deviant practice (Jenness 1990; Chateauvert 2014). Instead, they resist this characterisation and call for the normalisation of commercial sex, the removal of laws that criminalise sex work, and the introduction of legal protections for sex workers.

¹⁷ The term 'third parties' refers to anyone who is involved in or facilitates a commercial transaction who is not the client or sex worker, e.g. agents, brothel owners, maids, taxi drivers, security guards.

There is, however, some uncertainty on exactly what kind of legal protections are required for sex workers, and the Global Network of Sex Work Projects (NSWP) - a worldwide umbrella organisation for SWR groups - has as its core value, “opposition to all forms of criminalisation and other legal oppression of sex work” (n.d.). While framing the core value as opposition to criminalisation and legal oppression may seem to avoid the endorsing of any one particular legal model or framework as a replacement for criminalisation, SWR campaigners most often frame their demands, as mentioned above, as seeking the ‘decriminalisation’ of sex work (NSWP 2015).

Östregen (2017) observes, however, that there is a distinct lack of clarity, in the academic literature, and often in activist circles, about what precise legal provisions should be used to regulate sex work once the criminal laws have been removed and sex work has been decriminalised. NSWP opposes excessive or onerous regulation of the sex industry (NSWP 2014), which is sometimes referred to as ‘legalisation’, but, in practice, the boundary between these two legal frameworks (decriminalisation and legalisation) can be unclear. Östregen proposes a new framework for describing and evaluating sex work legal models based on whether they are “repressive, restrictive, or integrative” (2017). A full exploration of this framework is not possible here, and this new approach has not yet taken hold in wider discourse on sex work law reform. Therefore, in my discussion of SWR discourse in Chapter 6, frequent reference is made to ‘decriminalisation’. I interpret this term to mean the removal of criminal laws against sex work, with any regulation of the sex industry, thereafter, designed to offer legal protections to sex workers rather than exert excessive controls on the operation of the sex industry. The terms used to describe different sex work legal frameworks is just one aspect of the language used in discourses around commercial sex that warrant clarification.

1.6 A note on language

There is significant debate and conflict over language among the legal and political actors involved in campaigning for the reform of prostitution laws. This dispute extends across three levels: the terms used to describe the *practice* of commercial sex; the terms used to describe the *people* who sell sex; and the terms used to describe the *social movements* that campaign on the issue. In this thesis, I use the terms ‘commercial sex’, ‘sex work’ and ‘prostitution’ interchangeably to describe the practice of exchanging sex for some form of consideration, normally money. I recognise that ‘sex work’ is a broad term that covers a range of sexual labour, from prostitution, to stripping, to webcamming. My thesis, however, is focused specifically on the practice of prostitution, so when I use the term ‘sex work’, I use it specifically to describe the exchanging of physical sexual services for money or other form of consideration. If I make reference to another form of sex work that is not prostitution, I will use a term that specifically describes that alternative form.

The debate over what term to use to describe the people who exchange sex for money is extremely politically charged. I reject the term ‘prostitute’ because of its stigmatising connotations; it is a word, as sex worker and activist Carol Leigh describes, that “contain[s] the history of centuries of slurs” (1997: 229).¹⁸ In response to the negative connotations of ‘prostitute’ and other words used to describe women selling sex, Leigh coined the term sex worker, which, she says “acknowledges the work we do rather than defines us by our status” (ibid.: 230). I choose to base my descriptions of people who sell sex around the notion of ‘sex work’, and use, accordingly, the term ‘sex worker’. I do this because it is the term preferred by the majority of organisations

¹⁸ While I reject the use of the term ‘prostitute’ I do, as noted above, use the term ‘prostitution’ to describe the exchanging of sex for money. Given that the word ‘prostitution’ describes a practice rather than being a label that attaches to the people who sell sex, I believe that it does not stigmatise in the same way as the term ‘prostitute’.

across the world, created and run by people who sell sex (NSWP 2018: 2). I share Sullivan's perspective, however, that the use of the term sex work does not "imply a free choice by individuals to work, or not, in the sex industry" as "most paid work, including sex work, involves varying degrees of coercion, exploitation, resistance, and agency" (2010: 87-88). Meanwhile, I use the term 'prostitute' on occasion only to reflect its use in original textual sources e.g. caselaw. I also frequently use other, neutral terms, such as 'people who sell sex' or 'people involved in prostitution/sex work'.

While abolitionist feminists agree that the term 'prostitute' is stigmatising and harmful to women who sell sex, they entirely reject the term 'sex worker' because it "endorse[s] the idea that sex is labour for women and leisure for men" (Ditum 2014). In the abolitionist feminist analysis, as noted above, prostitution is a form of abuse and can never be regarded as a form of labour. Mackinnon calls it the "oldest *oppression*" (2011: 273; emphasis added) and argues that "women in prostitution are observed to be prostituted through choices precluded, options restricted, possibilities denied" (ibid.: 274; emphasis in the original). The preferred term, therefore, of abolitionist feminists to describe a woman who sell sex is 'prostituted woman'. I reject this term because of its imposition of a wholly passive and victim-centred identity on women who sell sex, which I would argue, does not capture the complexity and diversity of those involved in commercial sex.

In terms of the language used to describe the different political movements that campaign for law reform, I use the terms that each movement uses to self-define. I, therefore, use the term 'sex worker rights movement' (abbreviated to SWR movement) to describe the movement that campaigns for the decriminalisation of sex work and for access to legal and labour rights for sex workers. Similarly, I use the terms 'abolitionist movement' or 'abolitionist feminist movement' to describe those who campaign for

the abolition of prostitution, through the decriminalisation of people who sell sex and the criminalisation of buyers. Having provided an introduction to the topic of study and the existing literature, as well as an exploration of key themes like stigma and political activism on commercial sex, I will now conclude with an outline of the structure of the thesis and a summary of the chapters that follow.

1.7 Thesis structure

Chapter 2 sets out my methodological approach to this study and the theoretical frameworks on which I base my analysis. As noted above, my study departs from previous normative evaluations of dignity and commercial sex, and instead attention is focused at the level of legal and political discourse in exploring how ‘dignity talk’ is used to advance, uphold and challenge these normative perspectives on prostitution. This study is, therefore, a discourse analysis, as I seek to explore the use of dignity *as a discursive tool* by different legal and political actors involved in debates about sex work. I explain in this chapter how my approach to the thesis evolved and why I have chosen to conduct a discourse analysis rather than my own normative assessment of whether prostitution violates the notion of human dignity. Within the broader field of discourse analysis, I have selected Laclau and Mouffe’s Discourse Theory (1985) as the theoretical underpinning for the study and I explain here why their framework is an appropriate fit for my research question. Having provided the reader with an outline of the theoretical basis for the study, I continue in Chapter 2 to detail the precise research methods I have used and explain how I have approached the empirical aspects of the study, including the criteria I have used for selecting textual sources, how I have identified and approached research participants, and how interviews have been conducted and the data subsequently analysed. I conclude the methodology chapter with a brief exploration of researcher positioning, introducing Haraway’s concept of

'situated knowledges' (1988), and outline my own positionality in relation to the research topic.

Before embarking on the discourse analysis proper, I use Chapter 3 to provide a more thorough introduction to the concept of dignity, beyond the necessarily brief commentary above. One of my aims in this chapter is to demonstrate that 'dignity' is a complex signifier with a range of different meanings attached to it. I provide a brief overview of the notion of dignity in historical contexts to illustrate its changing and contingent character, before setting out a useful taxonomy of dignity that was developed by the American academic, Neomi Rao (2011), based on her study of the use of the concept in jurisprudence. This taxonomy, which identifies three principle usages of dignity in jurisprudence – 'intrinsic dignity', 'substantive conceptions' and 'dignity as recognition' - will be applied throughout the thesis, and I describe each of them in some detail. I conclude the chapter by exploring some of the debates that take place in the legal theory literature concerning dignity's worth as a coherent and useful legal principle. It is argued by some that dignity should be eschewed from legal and ethical discourse because of its contingent elastic nature and its failure to reach "basic rule of law standards" (O'Mahony 2012b: 586). I find these arguments unconvincing and align myself with others who argue that dignity's openness and flexibility renders it perfectly suited to its use in dealing with contested and controversial legal issues (Neal 2012b; Kidd White 2012). I propose that empirically grounded studies, like this one, help to advance understandings of dignity, not by attempting to narrow its definition but by building a picture of exactly how it is used, with all its contradictions and complexities.

I move on, in Chapters 4 to 6, to conduct the core discourse analysis, with each chapter analysing a different aspect of legal and political discourse on sex work. Chapter 4 examines caselaw where judges have made pronouncements on the intersections between dignity and sex work, and here I analyse caselaw from diverse jurisdictions,

including the Canadian Supreme Court, South Africa's Constitutional Court and its Labour Appeal Court, the Indian Supreme Court, the Colombian Constitutional Court, the South Korean Constitutional Court, and the New Zealand Human Rights Tribunal, as well as a first-instance Magistrates' Court in Tel Aviv. I divide the cases into two distinct categories and analyse the judges' use of 'dignity' in accordance with Rao's taxonomy. The first category of cases is those that find prostitution to be incompatible with human dignity, and I note that these arguments are often grounded in an understanding of human sexuality that views it as something to be experienced within the context of relational intimacy (Adler 2008). The second category represents those cases that use the concept of dignity to advance the rights of sex workers, most often by extending labour rights protection to people who sell sex. I explore how the different usages of dignity can lead to quite different legal outcomes for sex workers in these cases.

Chapters 5 and 6 shift the focus from formal legal discourse to an analysis of political discourses, primarily in the form of text and talk emanating from political activists. In these chapters, I analyse a range of textual sources as well as the transcripts of interviews that I conducted with activists from both political movements. Chapter 5 focuses on the abolitionist movement, and I begin by observing that 'dignity talk' is widely and consistently adopted in abolitionist campaigns; I trace this back to the work of Kathleen Barry, who was key in framing prostitution as a human rights issue in the late 1980s and early 1990s. I demonstrate the wide reach of the abolitionist perspective, which views prostitution as incompatible with dignity, noting that it has been successfully enshrined in law in Canada, and was adopted by the European Parliament in a resolution on prostitution passed in 2014. Having traced the development of dignity-based discourses in the abolitionist movement, I move on to look more closely at which versions of dignity activists deploy, using Rao's taxonomy and drawing substantially on the interview data.

Chapter 6 moves to an analysis of how dignity is deployed in SWR discourses, where it is used much less consistently than by abolitionists, with SWR activists often prompted to use 'dignity talk' as a way to respond to abolitionist usage of the term. Given the sporadic use of the concept in SWR discourse, I begin Chapter 6 by exploring why activists may choose to embrace, or reject, dignity-based discourses, through analysis of the interview data. Having explored the reasons why there is inconsistent use of 'dignity talk' in SWR discourses, I go on to explore precisely how it *is* used, noting that the call for sex workers to be recognised as legitimate workers is emphasised as being a key source of human dignity.

Chapter 7, the final substantive chapter of the thesis, examines the potential effects of the various dignity-based discourses explored in my research on the social and cultural representation of sex workers. I set this chapter within the already existing stigma faced by sex workers and look at what subject positions are constructed for people who sell sex through the different discourses. I particularly explore the connections between dignity and dehumanisation, arguing that dignity is a key indicator of contemporary understandings of the human. I take this insight and apply it to the different uses of 'dignity talk' identified in Chapters 4 to 6. I divide the discourses explored in the thesis into two broad categories: 'fundamentally incompatible' discourses, which frame prostitution as always and inherently a violation of human dignity; and 'dignity as workers' discourses, which identify work, and recognition as legitimate workers, as a key source of dignity for people who sell sex. I conclude that the 'fundamentally incompatible' discourses run the risk of constructing 'dehumanised' subject positions for people who sell sex, in their representation of sex work as a practice that is 'beneath humanity', and thereby also run the risk of reinforcing existing stigma. 'Dignity as workers' discourses, on the contrary, help to resist stigma by challenging the representation of sex workers as abject victims, instead framing them

as more complex and agentic subjects. At the same time, however, 'dignity as workers' discourses run the risk of reifying free market economics and of failing to appreciate the variety of gendered, raced and classed positions that different sex workers occupy, and thereby may perpetuate existing inequalities in the sex industry. I discuss these tensions and identify ways in which SWR activists may be able to overcome them in their use of 'dignity as workers' discourses.

Taking all of these insights on board, I end the thesis, in Chapter 8, with a chapter summary and overview of the key themes and main findings. I conclude by providing some thoughts on possible ways forward, regarding how to engage with 'dignity talk' in discourses about sex work while avoiding the harmful consequences discussed in Chapter 7.

Chapter 2 - Research methodology

Chapter overview

This chapter provides an outline of the theoretical underpinnings of the thesis as well as discussion of the precise research methods chosen. It begins with some reflections on the research question and how this evolved during the course of the PhD. Moving from a research question that was situated at the normative level to a focus on how the concept of dignity is used discursively led me to select discourse analysis as the primary methodology. Laclau and Mouffe's Discourse Theory (1985) is the specific form of discourse analysis used in this thesis and I provide a summary of the key tenets of their approach, paying particular attention to their perspective on the formation of subject positions. I go on to provide the reader with an outline of the precise research methods used in the project, discussing how I identified and selected textual sources for the discourse analysis as well as the rationale for including qualitative interviews. I describe my sampling strategy as well as the practical details of how I recruited and interviewed participants. The chapter concludes with some thoughts on reflexivity and researcher positioning. I outline my background as a sex worker rights activist and explore the tensions that can exist between being an academic and an activist.

2.1 Introduction

When I began this project, I sought to answer the question, "Is there dignity in selling sex?". As the research progressed and I studied the academic literatures on human dignity and sex work, as well as exploring potential methodological frameworks, it became increasingly clear that this research question was inadequate in a number of ways. I will demonstrate in Chapter 3 that the concept of human dignity is, in reality, understood and conceptualised in a range of different ways, which presents the first difficulty in asking, "Is there dignity in selling sex?". Generating a response to this

question would necessitate an interrogation of what precisely is meant by ‘dignity’, and, ultimately, this would require the selection of a particular conception of dignity, which could then be applied to the empirical context of commercial sex.

The second stage of answering the question of whether selling sex, as a general practice, is compatible or not with dignity would require a significant degree of theoretical abstraction with regard to the actual experience of selling sex. It became clear to me, however, that the existing empirical research on sex work, which is extensive, has established that the buying and selling of sexual services is organised and experienced differently according to the social, economic and cultural context in which it occurs (see Chapter 1, Section 1.5.1). To consider the question of whether commercial sex, as an abstract phenomenon, is compatible with (a specific conceptualisation of) dignity thus requires a degree of essentialism that ignores the existing research on the diversity of sex working contexts. The danger of a research question of this nature, which invites a binary response, is that the thesis would simply become a reworking of the already exhausted theoretical debates on prostitution. I could write a robust theoretical piece on why prostitution does not violate (a specific conceptualisation of) dignity and someone else could write a similarly robust thesis arguing the exact opposite. Agustin contends that theoretical enquiries about whether prostitution “can ever be work or must be considered violence against women” do little more than perpetuate a debate that is “intensely meaningful to some but highly repressive to many others” (2007: 1). It is irrelevant, in my view, whether the theoretical enquiry is framed in terms of whether prostitution is a form of work or violence, or whether it violates dignity, because, it inevitably leads to the same protracted theoretical debate on the rights and wrongs of commercial sex.

I approach this research study with one basic assumption about commercial sex, which is that it is undertaken and experienced in diverse ways, as evidenced by existing

empirical research on the subject. Accepting this makes an inquiry into whether prostitution is inherently dignity-violating (or enhancing) problematic, as any inquiry couched in these terms assumes that prostitution can be proved or disproved to be inherently anything, an assumption which I dispute. Indeed, the rejection of such an assumption is a key insight of post-structural theory, which is the overarching theoretical framework for my study.

One of the principal insights of post-structuralism is that human existence is multi-faceted, diverse and contradictory so that it is impossible to create or identify any unifying theory to explain all aspects of social life (Sarup 1989). Post-structuralism sits within a social constructivist paradigm in the sense that it rejects the idea of an objective universal reality that is capable of being found or discovered using the scientific approach (Burr 2003). Researchers working with post-structuralism are alert to the contingent nature of language – words only make sense in reference to other words – and its constructive power (ibid.). The existence or not of an observable, objective, material reality is a controversial and contested issue, and, in approaching this study, I do not believe it is necessary for me to make a definitive ontological claim either way. Instead, I rely more strongly on the post-structural insight that even if such an objective reality does exist, it is always mediated through language. This means we are never capable of perceiving reality in its pure or authentic form as we are trapped in the system of language and cannot step outside of this to describe the ‘true’ nature of the world. These post-structural insights on language and knowledge have inspired me, then, to approach this study in a different way.

2.2 Reframing the research question

Agustin, frustrated by the impasse reached in the theoretical debates on prostitution, proposes a post-structural epistemology, which she calls a “framework for the cultural

study of commercial sex” (2007: 1). In this framework, researchers are encouraged to conduct local empirical studies into the meanings and experiences of commercial sex transactions in varying cultural contexts (ibid.). Agustin’s insights were key in my coming to appreciate the limitations of my initial research question. Applying her framework to the spirit of the initial research question “Is there dignity in selling sex?” would require a reframing of the question to focus empirically on a particular sex working context. For example, the question could be framed in the following ways – “Do independent indoor escorts working in the UK experience commercial sex as a dignified activity?” or “How do street-based sex workers in Glasgow feel about their dignity?” or “How does selling sex impact on the dignity of male sex workers based in London?”. In each of these instances, the focus is shifted from an abstract, theoretical analysis of sex work and dignity, to an empirical study in specific, local contexts.

Conducting an empirical study of how sex workers feel about, and conceptualise dignity, in a specific sex-working context certainly could have been an interesting study to pursue. In a way, an empirical study of this nature could be seen as a way to ‘test’ the different claims made by judges, politicians and activists on the relationship between dignity and sex work. An analysis of whether a particular sex-working context is dignity-violating or dignity-promoting (or both) would likely involve an exploration of issues like ‘objectification’, ‘autonomy’ and ‘bodily integrity’, as evidenced from the normative studies on dignity and prostitution conducted by Shepherd (2015) and Campagna (2014) discussed in Chapter 1. These themes are also already extensively discussed in the existing sex work literature and there is a great deal of empirical work that has explored sex workers’ relationships to their bodies, their sense of self, and their psychological health (See e.g. Bernstein 2007; Brents et al. 2009; Kontula 2008; Romans et al. 2001; Sanders 2005; Vanwesenbeeck 2005). While there may not yet be an empirical study that couches these questions using the language of dignity, it is likely that the conclusion reached would be largely the same, which is that a sex

worker's feelings and reflections on their dignity are dependent on the individual's biography, personality and the circumstances in which they sell sex. Hence, while adding layers and complexity to existing empirical research may well constitute an important and worthwhile project, I was concerned that the insights thus produced may not necessarily represent an original contribution to knowledge.

After reading around different methodologies and theoretical approaches, I became drawn to discourse analysis and my focus shifted towards asking how the concept of dignity is used as a discursive tool to frame understandings of the commercial sex encounter and those who participate in it. I became keen to explore the role of dignity language in influencing and framing legal, policy and activist discourses on sex work. Ultimately, I am now concerned with the *how* and *what* of 'dignity talk' in discourses on commercial sex - how is it used and what impact does it have? In terms of impact, as already mentioned, I am especially focused on how the use of dignity language influences the cultural representation of people involved in sex work. Of course, we cannot 'know' exactly what impact a dignity-based discourse may have in a multiple and complex world, but I can explore how it is used by particular legal and political actors, in particular contexts, and what the effects of this may be (Scouler 2015). The reformulated research question then has become:

How is the concept of 'dignity' used in legal and political discourses on commercial sex and what impact might it have on the cultural representation of people who sell sex?

A research question of this kind is ideally suited to a discourse analysis as this research method is focused on analysing not just how different discourses are used by particular actors in specific contexts but also the productive effects of such discourses.

2.3 Discourse analysis

Much has been written about the 'linguistic turn' in the humanities and social sciences in which attention shifted to a "realisation that language is at least partly constitutive of the world, rather than merely a mirror of it" (Sjölander 2011: 13). This means that research activities, rather than being focused purely on observing and analysing at the level of material reality, can shift focus to analysing the discourses that give birth to our reality. Discourse analysis is an overarching research methodology that contains within it a number of different approaches and methods (Glynos et al. 2009).

Glynos et al. note that in classifying the different approaches to discourse analysis, it is helpful to delineate them according to the "three dimensions" of "ontology, focus and purpose" (2009: 5). Ontology refers to underlying assumptions about reality and the nature of being, and includes consideration of issues such as "the nature of subjectivity and agency" (ibid.). Focus, meanwhile, pertains to "the level of the analysis linked to the objects of study" - for example, is the analysis done on "a single interaction or text, a whole practice, or a regime of practices" (ibid.). Finally, purpose, for Glynos et al., is concerned with the "central motivation animating the research", whether this be a study that is explicitly critical or more explanatory by nature (ibid.: 6).

Given that my research question seeks not just to explain how 'dignity talk' is used in discourses about commercial sex but also to critically evaluate its use, in terms of how it may ultimately affect the people who sell sex, I decided to adopt a discourse analytical method that was critical in nature. Two of the predominant approaches to discourse analysis that are critically oriented in purpose are Critical Discourse Analysis (CDA), advanced by writers such as Fairclough (1989, 1992, 1995) and Wodak (1989 [ed.], 2001a, 2001b), and Discourse Theory (DT), first conceptualised by Laclau and Mouffe (1985). Both of these "highly influential traditions within the discourse

analytical field” share a critical orientation and purpose with “strong commitments...to democracy, politics and social change” (Sjölander 2011: 16). They also share a very similar focus in terms of how the actual analysis of text is conducted and in a roundtable discussion with proponents of both approaches it was acknowledged that the differences between CDA and DT in this respect were minor (ibid.: 35). Where these methodologies do differ, however, is in some of their ontological presuppositions.

This difference is grounded in varying perspectives on the extent of the discursive. CDA scholars tend to accept the existence of the discursive and non-discursive, evidenced, for example, in Fairclough’s model for analysing a communicative event in which he retains a distinction between discourse (the text itself and discursive practices like text production) with “the surrounding wider ‘non-discursive’ context, which he labels *sociocultural practice*” (ibid.: 23; emphasis in the original). This creates a dialectical relationship within CDA in which discourse is socially constitutive but also itself constrained and shaped by social contexts (Fairclough 1992: 64). DT proponents, on the other hand, reject any distinction between the discursive and non-discursive, holding more strongly to the poststructuralist notion that discourse is “the level of constitution of *any* objectivity” (Laclau and Bhaskar 1998: 13 as quoted in Sjölander 2011: 35; emphasis added).

This perspective that everything is discursive leads to a “strong emphasis on...radical contingency in meaning” in DT, which sets it apart from CDA (ibid.: 27). An embrace of radical contingency in meaning corresponds to my underlying perspective on commercial sex, as I articulated above, which is that it has no inherent, or intrinsic nature, beyond the meanings that we, as humans, have assigned to it over time (Bell 1994; Scoular 2015). DT better reflects my own ontological and epistemological leanings and is the reason why I ultimately chose this approach for my thesis.

2.4 Laclau and Mouffe's Discourse Theory

Laclau and Mouffe's seminal work *Hegemony and Socialist Strategy*, published in 1985, is the foundation text for what is now known as Discourse Theory.¹⁹ Their theorising developed from the "crisis of Marxism", which describes a growing awareness of the complexity of social relations and a rejection of the classical Marxist position that a person's class position is the ultimate fixer of their identity. Society is conceptualised in Marxist theory "as...two totally encompassing camps locked in a decisive struggle, the workers versus the capitalists" (Smith 1998: 20). Not only do class and economics structure a subject's identity in classical Marxism but it is further argued that this class identity leads them to embrace particular political demands - the worker is said to have an "'authentic' interest in the revolutionary overthrow of capitalism, while her bourgeois counterpart is supposed to have an 'authentic' interest in the perpetuation of capitalist exploitation" (A. M. Smith 1998: 44). If, as classical Marxism posits, economic and class relations are fixed in capitalist systems, then the political sphere becomes simply a place for the "*representation of interests*" (Laclau and Mouffe 1985: 45; emphasis in the original). For Laclau and Mouffe, this perspective is highly reductive and instead their theories emphasise the "fragmentation of the different positions of social agents" (ibid.: 12).

2.4.1 *The openness of the social*

This fragmentation exists, Laclau and Mouffe argue, because of the openness of the social - "there is no sutured space peculiar to 'society', since the social itself has no essence" (Laclau and Mouffe 1985: 82). Their approach is based on "anti-foundationalist epistemological and ontological presuppositions" (A. M. Smith 1998:

¹⁹ This approach is also known as Political Discourse Theory or the Essex School of Discourse Analysis.

43), and a complete rejection of essentialism is a central tenet of their theory. They argue that there is no such thing as an objective reality existing outside of discourse, at least no objective reality that we, as human beings, are able to access given that “we are always internal to a world of signifying practices and objects” (Howard and Stavrakakis 2000: 7). This does not, however, deny that real events occur and that objects have a material reality but simply that material reality is mediated via discourse.

Saussurean linguistics reminds us that language is a system of “differences, with no positive terms”, in the sense that the meanings of different signifiers rely entirely on their relations to other signifiers (Torfing 1999: 87). If we accept, which I do, that there is no “transcendental signified” (Laclau and Mouffe 1985: 98) which acts as the grounding and foundation for our linguistic system then “the domain and the play of signification extends infinitely” (ibid.). This means that discourse, and the social, which is constructed within discourse, will always be open and contingent. Although the contingent nature of discourse and the unfixity of all social identity is a central tenet of Laclau and Mouffe’s DT, they also accept that meaning can, and must, be partially fixed in discursive structures. Without the possibility to partially fix meaning there would be no functioning discursive structure at all: “The impossibility of an ultimate fixity of meaning implies that there have to be partial fixations – otherwise, the very flow of differences would be impossible. Even in order to differ, to subvert meaning, there has to be *a* meaning” (Laclau and Mouffe 1985: 98; emphasis in the original).

An appreciation of the contingency of discourse, and the openness of the social world that it constructs, is one of the central insights of DT that has informed my approach to this thesis. In Chapter 3, I will illustrate this contingency with an exploration of the different ways in which the term dignity has been used throughout history, and to this day. The different ways in which the word dignity is used (and understood) means

that, when it is deployed in discourses related to commercial sex, the practice of exchanging sex for money is constructed or framed in equally contingent ways. This becomes clear in Chapters 5 and 6 when I discuss how the concept of dignity is used by different political actors to frame prostitution in radically different ways.

In fact, I believe that it is only at the level of discourse that the physical acts that occur between people involved in a commercial sex transaction are given any meaning, including the idea that they are incompatible with human dignity. That is not to say that the acts are not real physical and emotional experiences for the participants, or indeed, that commercial sex has no impact on human dignity. Nor does it mean that material conditions are entirely irrelevant because, of course, these are absolutely central to how different individuals experience selling sex. Instead, what I propose is that the *articulation* of the experiences people have in exchanging sex for money and the meanings given to them, including how they affect dignity, are political, discursive processes. To be clear, my interest is not in the discourse between those directly involved in a commercial sex transaction (i.e. sex worker and client) although I recognise that this frames *their* understanding of commercial sex. Instead, my focus is on the legal and political discourses that attempt to hegemonise particular social and cultural understandings of commercial sex.

2.4.2 Hegemony

Hegemony is a key concept in DT and Laclau and Mouffe use this to theorise the emergence and pursuance of different political demands, building on the writings of Gramsci. Gramsci viewed political action not as an implementation or representation of fixed class identities but that political subjects are instead “complex ‘collective wills’” that are formed as a “result of the politico-ideological articulation of dispersed and fragmented forces” (Laclau and Mouffe 1985: 58). These ‘collective wills’ arise and are

formed by concrete political action rather than simply existing as a result of class identification.²⁰ The term hegemony, therefore, reflects the idea that it is only through political (and legal) action that certain discourses come to dominate in opposition to the belief that these take hold because of “pre-discursive objective interests” (A. M. Smith 1998: 44).

In this study, I seek to explore how ‘dignity talk’ is used by varying legal and political forces in their attempts to hegemonise their particular perspectives on prostitution. To do so, I will analyse how the concept of dignity is articulated in different discourses, namely, judicial-decision making (Chapter 4), abolitionist feminism (Chapter 5) and sex worker rights (SWR) activism (Chapter 6). While it is clear that the articulation of the term ‘dignity’, in each of these different discourses, creates very different ‘discursive ensembles’ (particularly when considered in interplay with the articulation of other signifiers, e.g., ‘objectification’ and ‘work’), I will argue that what is particularly important is that, as a signifier, ‘dignity’ plays an *equally* crucial and formative role *across* these divergent and often quite polarised discourses. I will, therefore, explore in the thesis to what extent the word dignity acts as an ‘empty signifier’ (Laclau 1994, 1996) in discourses on commercial sex. The ‘emptiness’ of the signifier does not denote a dearth of meaning, but rather points to its ability to have different meanings and connotations projected onto it in order to satisfy different hegemonic political objectives (Howard and Stavrakakis 2000: 9-10).

²⁰ Laclau and Mouffe, however, identify a remaining “inner essentialist core” to Gramsci’s work because, even though he describes the possibility for organic political alliances and ‘collective wills’ to form, he argues that these ultimately coalesce around class positions. This return to the defining position of class struggle has the effect of “setting a limit to the deconstructive logic of hegemony”, whereas, for Laclau and Mouffe, political struggles for hegemony are multiple, contingent and without any limit or fixed identity – “unfixity has become the condition of every social identity” (Laclau and Mouffe 1985: 76).

2.4.3 Hegemony and the politics of prostitution

DT provides a helpful framework for analysing discourses on commercial sex because it emphasises the fact that the various discursive representations of sex work are politically constitutive rather than simple descriptions of the reality of *all* prostitution. The insights that ground Laclau and Mouffe's theory on hegemony, while born out of a critique of classical Marxism, can equally be applied to much of the existing theorising around prostitution. While radical feminism, for example, also proclaims itself post-Marxist (Mackinnon 1983: 639), and critiques Marxism because of its failure to fully theorise gender relations and gender inequalities, it can also be accused of its own version of essentialism and reductionism, as I discussed in Chapter 1. While Marxism focused on class and economics as the principal structuring force in people's lives, radical feminism could be accused of replacing this with gender and sexuality, which are posited then as the ultimate oppressive forces for women. As Mackinnon said, "sexuality is to feminism, what work is to Marxism" (1982: 515). In the view of radical feminists all women *should* have a concrete political and material interest in the eradication of prostitution, purely based on their gender.

This perspective, however, fails to reflect the multiplicity and complexity of social relations, where a person's gender is but one of many factors that determine their position in social hierarchies - with class, race, nationality, age and sexual orientation, among others, also having a significant effect in structuring a person's political priorities. The SWR movement challenges the radical feminist perspective by arguing that selling sex is a form of work. The possibility for people who sell sex to adopt a worker identity has arisen as a result of concerted political action by the SWR movement, which has its own hegemonic project to have selling sex recognised as a form of work rather than something that is intrinsically deviant or abusive. Identifying as a worker, however, is just one of many 'subject positions' that people who sell sex

may want to claim.

2.4.4 *The subject*

Unlike Marxism, which suggested that identities were structured along class lines, with class identification swamping all other aspects of a person's identity, DT argues, instead, that people hold multiple, contingent and fragmented subject positions. Laclau and Mouffe critique the notion "of the subject as an agent both rational and transparent to itself" (Laclau and Mouffe 1985: 101) and their preferred descriptive term "subject positions" articulates the possibility that a person can hold multiple identities, which are constituted within discourse. In this respect, "discourse is prior to identity formation" (ibid.: 56). Given, then, that subject positions emerge within discourse, which has an "open character", they "cannot be totally fixed in a closed system of difference" (Laclau and Mouffe 1985: 102).

This does not, however, mean that people are "free to select their interpretative subject positions from an infinite *a la carte* menu of possibilities" (A. M. Smith 1998: 64). Instead, it is acknowledged that discursive interventions themselves are constrained by the prevailing historical and cultural conditions. Smith uses the term 'structural position' to acknowledge the fact that "an individual is structurally positioned within hierarchical social, cultural, political and economic systems...that are prior to her will" (ibid.: 56). At the same time, however, there is always the possibility, through political action and hegemonic struggle, for new identities or subject positions to emerge. Prior to the political actions of activist Carol Leigh (see Chapter 1, section 1.6), for example, the possibility of claiming the subject position of 'sex worker' was not so readily available to people who sell sex. This emphasis, in DT, on discursive contingency and the openness of the social (and the subject) is, however, critiqued, as relativist.

2.4.5 Relativist critique

It is argued that DT's social constructionist view of reality means that all political outcomes, whether totalitarianism or radical democracy, have equal validity (Townshend 2004). The relativist critique, I would argue, rests on the assumption (hope) that there is an underlying foundation or structure to material reality, such that there is available some form of transcendent source for any particular philosophical or political theory. Adopting a radical social constructionist perspective, as Laclau and Mouffe do, means rescinding any belief in the existence of such a foundation.

That is not to say, then, that everything is equally valid but, simply, that we must conduct evaluations within particular, constructed, regimes of 'truth'. Adopting a methodology that rejects 'objectivity' does "not mean that we are confined to total nihilism", because "even if we cannot decide algorithmically about many things...we can reason about the *verisimilitude* of the available alternatives" (Laclau and Mouffe 1987: 102; emphasis in the original). For Mouffe, this means that "it is always possible to distinguish between the just and the unjust, the legitimate and the illegitimate, but this can only be done from within a given tradition, with the help of standards that this tradition provides" (1993: 15 as quoted in A. M. Smith 1998: 104). In this thesis, my analysis of dignity related sex work discourses will be evaluated through the lens of the stigma and social exclusion faced by people who sell sex. I discussed the extent of sex work stigma in Chapter 1 and in the analysis that follows I will evaluate the use of 'dignity talk' in sex work discourses based on the impact it may have on reinforcing or challenging this stigma.

Overall, I seek to explore in this thesis how dignity-based sex work discourses (political and judicial interventions) impact both the legal and policy environment for sex

workers (structural positioning) and the different identities (subject positions) that are made available or are given the potential to emerge. DT provides me with the tools I need to conduct this analysis as it provides a framework within which the openness and contingency of social reality is acknowledged and the consequent constitutive power of political and legal intervention is theorised.

2.5 'Doing' discourse theory - research methods

While DT arose from a methodological and epistemological challenge to mainstream social science, and as such there are a great number of texts exploring its theoretical underpinnings, there are very few that focus on method - in other words, how to 'do' DT and apply it within empirical contexts. Howarth (2005) refers to this as a "methodological deficit", which he has attempted to (partially) address. There are a number of important overarching points that Howarth makes about the practice of Discourse Theory that are pertinent to my study. The first is that "discourse theorists oppose the balkanization and reification of methodology" (ibid.: 317). As Discourse Theorists reject the notion of objective reality existing outside of language, the idea that research methods are simply a "free-standing and neutral set of rules and techniques" (ibid.) that, when applied, lead to the discovery of 'truth' must also be rejected. DT is said to be a "*problem-driven* approach" to research rather than one that is driven purely by methods or theory (Glynos et al. 2009: 10; emphasis in the original). Howarth notes that, "the problem-driven approach...begins with a set of pressing political and ethical problems in the present, before seeking to analyse the historical and structural conditions which gave rise to them, while furnishing the means for their critique and transgression" (ibid.).

My rationale for pursuing this study was a growing awareness of the prevalence of the term 'dignity' in discourses on sex work, aligned with a frequent failure to explain or

elucidate exactly what it meant. It was obvious that dignity-based arguments were being advanced by legal and political actors pursuing radically different objectives, and I was keen to describe the various uses of 'dignity' in sex work discourses and to understand the motivations for structuring arguments around the concept and what this was intended to achieve. The ultimate 'problem' that I hope to address in this study is to explore the consequences of adopting a dignity-based discourse as part of advocacy work on sex work/prostitution, and to warn against potential dangers and unintended consequences.

While DT questions the ontological and epistemological assumptions of many mainstream research traditions, studies which adopt this approach are still "subject to the usual burdens of reliable evidence, objectivity and internal consistency consonant with the prevalent regimes of truth" (Howarth 2005: 328). In other words, discourse theorists must still explain and justify why particular methods have been chosen, make an attempt to verify findings from a range of different sources, and include a degree of researcher reflexivity.

Hansen and Sørensen recommend a "multi-data method" when applying discourse theory in an empirical context, which I have followed and, as a result, this thesis analyses both text-based sources and qualitative interview data (2005: 102). It is important to stress the difference between multi-methods and multi-*data* methods. I am using the latter – my method is discourse analysis but using multiple sources of data i.e. text and interviews. One of the key rationales for adopting a multi-data method was that this provided me with a more expansive and richer set of material on which to conduct my analysis. As just mentioned, part of my motivation for pursuing this study was an awareness that, despite the frequency with which dignity was invoked in written texts on sex work, there was very limited elaboration on what precisely the author meant by the term. As a result, I decided to conduct qualitative

interviews with people active in legal and political campaigning on sex work to gain greater insights into their use of the concept and to explore, in more detail, the rationales for using dignity based discourses. While I am able to interpret the discursive effects of the use of the word dignity in written texts on commercial sex, the qualitative interviews provided me with data on activists' intentions as well as their interpretations of the 'dignity talk' used by their political opponents, and how these different discourses interact with, and shape, each other.

In addition to providing a richer data set, adopting a multi-data method overcomes the respective shortcomings of relying *only* on textual sources or qualitative interviews in conducting a discourse analysis. It is noted that there are a range of shortcomings in undertaking analysis purely with textual sources, including the fact that "the level of detail in written material is often not very high" and that they "have a formalized nature that delimits the informal and more spontaneous expressions of existing discourses" (Hansen and Sørensen 2005: 99). On the other hand, relying purely on qualitative interviewing has its own limitations, which Hansen and Sørensen summarise as "the old problem of concluding from what was said what was done" (ibid.: 100). What they point to here is a concern that interview participants "lie in order to please or tease the researcher" (ibid.). This connects to the other key advantage of adopting a multi-data method, in that, it provides the researcher with the opportunity to cross-check or validate interview data. Howarth talks about the propensity of interview participants, giving the example of members of protest movements, to engage in "retrospective rationalisations", where participants "articulate well-rehearsed storylines that conform to the 'official versions' of the movement or oppositional group" (Howarth 2005: 338). He proposes, therefore, that in gathering data from a range of sources researchers are able to conduct a degree of comparison/validation which would be precluded in relying only on textual sources or qualitative interviews (ibid.: 339).

2.5.1 Selection of text-based sources

As stated earlier, my research question seeks to explore how the concept of human dignity is used in *legal* and *political* discourses on sex work. These ‘types’ of discourse are deeply inter-connected with law being one of the political tools used by both governmental authorities and non-governmental groups in their attempts to shape and influence society. At the same time, the structures of law are used to regulate and exert some control over the conduct of politics. In this way, there is a clear dialectical relationship between the two realms of legal discourse and political discourse and any clear delineation is largely artificial. Nevertheless, it is helpful for me to set out what I mean/how I define each of these different elements.

In analysing legal discourse, my focus is on jurisprudence where lawyers and judges have used the concept of human dignity in cases relating to sex work - most commonly in constitutional challenges to sex work laws heard by higher courts. Legal discourse also incorporates formal legal instruments, one example being the 1949 Trafficking Convention, which addresses prostitution and dignity. Political discourses, meanwhile, are perhaps more dispersed, emanating from a range of different actors. Some political discourse analysed in the thesis is produced by governments and those holding formal governmental/state/supra-state power. Examples include official government reports, motions and resolutions passed by national parliaments, state institutions, and supra-national bodies/parliaments (e.g. the European Parliament). What distinguishes this type of discourse from legal discourse is the fact that it is not legally binding and does not have a formal legal effect. Political discourse also includes text and talk emanating from non-governmental actors, including civil society, NGOs, and campaigning and activist organisations. Activist discourse is a major focus of this study given the significant role that campaigners have in creating, responding to, and

resisting a variety of different perspectives on sex work/prostitution and I dedicate Chapters 5 and 6 to an analysis of their use of 'dignity talk'.

The principal criteria I adopted for selecting which textual sources to analyse as part of my discourse analysis was simply that the document engaged with the subject of dignity and sex work/prostitution. Historically, the vast majority of the textual sources were produced, beginning in the late 1980s/early 1990s, when activism on sex work/prostitution was gathering apace globally, up to the present day. In today's digital age, campaigners and activists (as well as courts and governments) have a significant online presence, and I gathered the majority of my textual sources from websites and internet sources. Here, I searched for documents making reference to 'dignity and prostitution/sex work' in a number of ways.

First of all, I set up a Google Alert so I was notified of information appearing online making reference to both dignity and sex work/prostitution. This most often alerted me to news reports and helped me, for example, to identify some of the recent caselaw I analyse in Chapter 4. However, in order to identify documents, particularly at the level of political activist discourse, that engage with the topic of dignity in greater detail, I had to undertake more proactive searching through the websites of identified organisations. I started by focussing on organisations involved at a global level in campaigning on sex work/prostitution. I identified the Global Network of Sex Work Projects (NSWP), as the key international organisation in the SWR movement, and the Coalition Against Trafficking in Women (CATW) and Prostitution Research and Education (PRE), as organisations leading the abolitionist movement worldwide. All three websites have a vast number of articles, statements, reports and resources archived. I searched the websites for the term 'dignity'. The website search on CATW and PRE produced a range of documents of relevance. The results of the search of the NSWP website were less useful, with the documents identified making scant and

limited reference to dignity. In case there were relevant documents on the NSWPP website not picked up by the search, I also opened each document tagged as relating to 'Law, Policy and Human Rights' and searched within the document for references to 'dignity'. This strategy produced a breadth of more relevant results.

I also visited the websites of organisations involved in campaigning at a national level to identify additional texts that engaged with the concept of dignity. I explored the websites of organisations based locally, in the UK and Ireland²¹, but also widened my search to include organisations based in Canada²², South Africa²³, New Zealand²⁴, and India.²⁵ I searched within all these websites for documents containing the word 'dignity'. Beyond the UK and Ireland, I chose these specific countries because of my awareness that their courts had issued decisions (see section 2.5.2 below), which addressed dignity in prostitution. I thought it was likely that this had translated into general sex work discourses, leading to a higher number of relevant documents within these country-specific websites. Another consideration in the selection of said websites was the availability of resources in English. Even though significant legal decisions had also been issued in Colombia and South Korea, I did not actively seek out textual sources from these countries because of the lack of content available in English. While I sought to find sources from these country-specific websites, it is important to

²¹ English Collective of Prostitutes (www.prostitutescollective.net); Nordic Model Now (www.nordicmodelnow.org) Ruhama (www.ruhama.ie); Sex Workers Alliance Ireland (www.sexworkersallianceireland.org); SCOT-PEP (www.scot-pep.org.uk); UK Network of Sex Work Projects (www.uknswp.org)

²² Chez Stella (www.chezstella.org); Defend Dignity (www.defenddignity.ca); Maggie's Toronto Sex Workers Action Project (www.maggiestoronto.ca); PACE Society (www.pace-society.org); POWER (Prostitutes of Ottawa-Gatineau Work Education and Resist) (www.powerottawa.ca); REED (Resist Exploitation Embrace Dignity) (www.embracedignity.org);

²³ Coalition to End Sexual Exploitation South Africa (CESESA) (www.cesesa.org.za); Sex Workers Education and Advocacy Taskforce (SWEAT) (www.sweat.org.za); Embrace Dignity (www.embracedignity.org.za)

²⁴ New Zealand Prostitutes Collective (www.nzpc.org.nz)

²⁵ Durbar Mahila Samanwaya Committee (DMSC) (www.durbar.org); Sampada Gramin Mahila Sanstha (SANGRAM) (www.sangram.org); Aapne Aap (www.aapneap.org); National Network of Sex Workers (www.nnswindia.org)

note that my textual analysis is not restricted to material originating from these countries; rather, a document was included for analysis based on whether it engaged with the concept of dignity rather than its country of origin. I did not seek out a particular number of documents but sought to achieve representation of both abolitionist and SWR perspectives in the final selection, which I achieved. Appendix D provides a breakdown of the activist/political texts analysed, which shows that out of 45 textual sources in total, 25 were written from the abolitionist perspective and 20 from a SWR position.

2.5.2 Caselaw analysis

In Chapter 4, I will present an analysis of a number of judicial decisions in which the dignity of commercial sex was explored. These cases come from a diverse range of countries, including, South Africa²⁶, India²⁷, New Zealand²⁸, Canada²⁹, South Korea³⁰, Colombia³¹ and Israel.³² I have conducted my analysis of the decisions based on the complete, original judgments, where these were available and in English. This was possible for the cases emanating from South Africa, India, New Zealand, South Korea and Canada. The Israeli decision that I discuss in Chapter 4, was issued by a court of first instance, and I have been unable to obtain a copy of any written judgement. My

²⁶ S v Jordan and others [2002] ZACC 22; Kylie' v CCMA and others 2010 (4) SA 383 (LAC).

²⁷ Budhadev Karmaskar v State of West Bengal [2011] 2 S.C.R. 925; [2011] 9 S.C.R. 680; [2011] 10 S.C.R. 577; [2011] 11 S.C.R. 397; [2012] 7 S.C.R. 881 (India).

²⁸ DML v Montgomery and M&T Enterprises Ltd 2014 NZHRRT 6.

²⁹ Reference re ss. 193 & 195.1(1)(c) of Criminal Code (Canada), (the Prostitution Reference), [1990] 1 S.C.R. 1123; Canada (Attorney General) v. Bedford [2013] 3 SCR 1101; Canada (Attorney General) v. Bedford 2012 ONCA 186; Bedford v. Canada, 2010 ONSC 4264.

³⁰ Case on the Punishment of Commercial Sex Acts, Case No. 2013Hun-Ka2, available at: <http://english.court.go.kr/cckhome/eng/decisions/majordecisions/majorDetail.do>.

³¹ Case T-629-10, full text in Spanish available on the website of the Corte Constitucional of Colombia, <http://www.corteconstitucional.gov.co/relatoria/2010/t%2D629%2D10.htm>. See Women's Link Worldwide 2010 for English language summary.

³² See Pulwer 2016.

discussion of this case is, therefore, based on English language news reports published around the time the decision was issued.

I obtained a copy of the Colombian decision, called Case T-629-10,³³ in Spanish, which runs to approximately 130 pages and so full translation of the judgment would have been expensive and beyond my means. I was, however, able to locate a detailed English language summary of the decision on the website of an international human rights NGO called Women's Link Worldwide.³⁴ On their website they have a Gender Justice Observatory, which is an archive of significant legal decisions (analytical summaries and the full judgments) that impact on gender issues, including a summary of the case T-629-10 (Women's Link Worldwide 2010).

In addition to the English language summary from Women's Link Worldwide, I also had relevant sections of the judgment professionally translated into English. A simple text search for the term *dignidad*, the Spanish word for dignity, shows that the term appears 70 times in the text of the judgment on 44 different pages. I put the paragraphs where the term appeared through Google Translate and based on the translations provided I decided which paragraphs were worth having translated professionally. I was particularly keen to translate comments from the Court on how they conceptualised dignity and also the key points that had been identified in the Women's Link Worldwide summary. Translations were undertaken by a professional legal translator.³⁵

³³ Supra note 31.

³⁴ Women's Link Worldwide is a bilingual Spanish/English organization with offices in Bogota and Madrid that focuses on gender equality, placing a strong emphasis on law and legal activism. See www.womenslinkworldwide.org

³⁵ See the website of Rob Lunn, legal translation, available at <http://legalspaintrans.com/rob-lunn-legal-trans/>

2.5.3 Qualitative interviews

As noted above, and in line with Hansen and Sørensen's plea to adopt a "multi-data method" (2005: 102) in discourse analytical work, I decided to supplement the textual analysis with qualitative interviewing. Given that my research question is centred around how the concept of dignity is used in discourses on sex work, I decided that I wanted to speak with those who play an active role in creating these discourses. While I analyse both judicial decisions as well as activist discourses in the thesis, I decided to focus the qualitative interviewing on activists exclusively rather than also include the judicial actors involved in the cases discussed in Chapter 4.

Interviews with judges, especially those still sitting, would be extremely difficult to obtain and would present complex issues around confidentiality and anonymity given the likely focus in the interviews on individual cases. I also decided against conducting interviews with the plaintiffs and/or lawyers involved in the cases for similar reasons. First, the pool of potential participants is extremely limited and access would be difficult (almost impossible) given that the plaintiffs in many of the cases are anonymised in the judgments. Secondly, such interviews would present comparable issues around confidentiality and anonymity to those potentially conducted with judicial actors, given the focus on specific judicial decisions. Given, then, these issues, coupled with the fact that a major focus of the thesis is precisely on how legal and political *activists* on sex work use 'dignity talk', I decided to limit qualitative interviewing to those directly involved in this activism.

The activist movements seeking to reform prostitution laws are global movements: organisations work at the global level (e.g. Global Network of Sex Work Projects, Global Alliance against Trafficking in Women, Coalition Against Trafficking in Women), the regional level (e.g. International Committee on the Rights of Sex Workers in Europe,

European Women's Lobby, African Sex Worker's Alliance), and at the local and national levels in countries across the world. Given the international nature of the debates on commercial sex and the activist movements that engage in these debates, I felt it was important to bring a global perspective to the study and interview activists from various countries across the world. While my selection of text-based sources was not restricted to material emanating from specific countries or regions, it was important with the qualitative interviews to be more focused in terms of my recruitment of participants. In this sense, I pursued a purposeful sampling method (Mason 2002, Patton 2002).

Purposive sampling is where "the researcher actively selects the most productive sample to answer the research question" (Marshall 1996: 523). In other words, participants are selected based on their ability to provide useful and relevant data, which Patton refers to as "information- rich cases" (2002: 230). There are several sub-categories of purposive sampling and my sampling method is best described as "intensity sampling" (ibid.: 234). "Intensity sampling" is a method whereby the sample is designed to include potential participants who are able to "strongly represent the phenomena of interest" (Ritchie et al. 2003: 79). In other words, intensity sampling is designed to attract interviewees likely to have particularly rich knowledge and experience of the subject of the research. It was important, for me, to use intensity sampling to ensure that the participants I interviewed had some understanding of the use of 'dignity' in sex work discourses, either through their own use of it, or as a result of its use in legal decisions or political campaigning that took place in their locality. I wanted to ensure that I interviewed participants who could (potentially) give me relevant and detailed data relating to the core subject of the thesis.

In addition to using intensity sampling, I was keen to ensure diversity in the sample so it could also be described as a "heterogeneous sample" where "there is a deliberate

strategy to include phenomena which vary widely from each other” (Ritchie et al. 2003: 79). As I discussed in Chapter 1, the activist movements campaigning on sex work law reform are polarised and it was important to ensure representation in the sample of those holding different legal and political perspectives on commercial sex. The overall study population, therefore, is people active in legal and political activism on sex work, representing both abolitionist and SWR perspectives. In designing the sample for the qualitative interviews, I identified five sub-groups within this wider group of potential participants, based on their geographical location.

- Designing the sample

First, I decided not to conduct interviews with activists based in the UK because of my close involvement in sex work activism there (more below) and I was concerned that: i) abolitionist activists may be aware of me and my involvement in SWR activism³⁶ and that meant they would either refuse to be interviewed and/or it would be difficult to build a relationship of trust conducive to interviewing; and ii) I was too close to those in the UK SWR movement as a friend and colleague to conduct interviews with the necessary level of detachment. I decided to focus recruitment, therefore, on five delineated groups of activists.

The first of these concerned abolitionist and SWR activist organisations working at the global level; there are a number of global organisations who operate as umbrella membership organisations, which have a powerful and influential role in advocating and campaigning at the global level - for example, at the United Nations. I felt it was important to get this overarching global perspective before narrowing down to regional and local areas. In terms of a regional focus, I was especially keen to explore how

³⁶ Through writing that I have published as an activist or through my being quoted in the media on issues related to sex work.

'dignity' was used in a European context, given that there is an increasing focus on deploying this concept, especially in abolitionist campaigns (see Chapter 5) in Europe. Therefore, European (except UK) activists was the next group I sought to target. Outside of the more general global and European perspective, I decided to focus additional recruitment on three individual countries, all of which represent interesting and relevant case studies on how the term dignity is used in discourses on commercial sex. The three countries I identified were New Zealand, Canada and South Africa. My principal rationale for selecting these countries for case studies is that in each of them the concept of dignity has featured in high-profile court decisions involving sex work and/or 'dignity talk' is a significant feature of local or national activist discourse on sex work.

To elaborate further, New Zealand was specifically chosen because of the recent decision in the *Montgomery*³⁷ case in which a woman working in a brothel won a case of sexual harassment against the brothel manager and was compensated for humiliation, *loss of dignity*, and injury to feelings (see Chapter 4). In addition, as one of the few countries in the world where sex work is decriminalised, it provides useful comparative insights into how the concept of dignity is used in contexts where sex work is recognised as a form of work and not a criminal activity.

Meanwhile, in Canada, the concept of dignity has been invoked in prior jurisprudence of the Supreme Court, in the *Prostitution Reference* case,³⁸ and, to a lesser extent, in the recent case of *Bedford*.³⁹ 'Dignity talk' is also a strong feature of the activist movement in Canada. Two of the main abolitionist organisations in Canada, Defend Dignity and REED (Resist Exploitation Embrace Dignity), use the term dignity in their

³⁷ Supra note 28.

³⁸ Supra note 29.

³⁹ Ibid.

organisational name. Furthermore, two of the Canadian SWR organisations mention the word dignity in their mission statement or objectives; for example, Maggie's Toronto Sex Workers Action Project says its mission is "to assist sex workers to live and work with safety and dignity" (n.d.), while Stella, a Montreal-based sex worker organisation, has as its tagline "living and working in safety and dignity" (n.d.).

Finally, in South Africa, the concept of dignity is a key constitutional value and as such is frequently used in many aspects of political and legal activism, including that related to commercial sex. Furthermore, like in Canada, one of the major abolitionist organisations (Embrace Dignity) uses the concept as part of their organisational identity. The constitutional right to dignity was also explored in the context of prostitution by the Constitutional Court in the case of *Jordan*⁴⁰ and in the more recent decision of the Labour Appeals Court in the *Kylie* case.⁴¹

- Recruitment methods

In terms of recruitment methods, I adopted three main strategies. First, I used my existing contacts within the SWR activist community and identified people I knew in the movement in each of the five sub-groups explained above and made contact with them by email. Secondly, I used direct cold contact (by email) to reach out to organisations with which I had no pre-existing relationship or contact. Thirdly, I used a snowballing method, where some of the existing participants connected me with other potential interviewees. This was particularly effective in securing interviews with abolitionist campaigners as I had very limited pre-existing contacts amongst this group of participants.

⁴⁰ Supra note 26.

⁴¹ Ibid.

The initial email contact was slightly different based on whether I was emailing someone in the SWR movement that I knew or whether I was making cold contact with organisations with which I had had no previous contact. The email to prior contacts were more informal than those to people/organisations that were unknown to me. However, I endeavoured in both situations to provide participants with exactly the same level of information about the project. In my initial email seeking an interview, I introduced the subject of the research very briefly by saying “my PhD is looking at the concept of ‘human dignity’ and how this is used in legal debates about commercial sex.” I went on to say that I was keen to speak with them (if emailing an individual) or someone from their organization “to explore the connections between dignity and prostitution/sex work and how the concept features in their advocacy work.” I alternated my usage of the terms prostitution and sex work, in the emails, depending on which type of organisation I was contacting and was more likely to use the term ‘prostitution’ in contact with abolitionist groups and ‘sex work’ in contact with SWR groups. I did this simply to use the language that each respective group preferred and to avoid the risk of alienating potential participants from the very first contact.

I emphasised in every email that interviews would take around 30 minutes and that ethical approval had been granted for the study by the University of Strathclyde. I attached the participant information sheet (see Appendix A) to every email seeking an interview and I also provided the interview schedule in advance (see Appendix B). I chose to send the interview schedule in advance as a way to build trust with potential participants and I wanted to reassure them that I would not be trying to ‘catch them out’ with surprise questions during the interview. Given the polarisation in the political movements on sex work/prostitution, activist groups are often mistrustful towards researchers and they are cautious not to participate in research that may be grounded in an analysis of the commercial sex exchange that differs from their own. When I was asked (rarely) by potential interviewees about my perspective on dignity and

commercial sex, I replied that the thesis was not an attempt to reach a normative view on the subject and my view was that there were a range of different perspectives on the issue. I explained that, instead, my research sought to understand how groups use the concept of dignity in their campaigning work.

- Profile of participants

I made contact with four organisations working at the global level (abolitionist, anti-trafficking and sex worker rights), from which I was able to secure an interview with one of these organisations – an anti-trafficking organisation that adopts a rights-based approach to the issue of prostitution. One organisation formally declined an interview and the two others did not respond to my emails.

Given my ‘insider’ status as a member of the SWR movement in Europe, I used pre-existing contacts to secure two interviews with SWR activists, one from Germany and the other from the Netherlands. I made contact with several abolitionist organisations working in Europe, including one organisation that works at a pan-European level on women’s rights with an extremely active abolitionist campaign. This organisation failed to reply to any of the several emails I sent requesting an interview. I made contact with an association of women’s organisations in Sweden and asked for advice on which specific groups in the country were active on the issue of prostitution. I received a reply with the names and email addresses of two organisations to contact. One of these organisations replied and I was told that my request was being passed to the Board of Directors but I never received a further reply despite several follow-ups. The other organisation failed to reply to any of my emails. I made contact with another abolitionist organisation in the Republic of Ireland and they, initially, expressed interest in taking part in the research. After a number of emails back and forth (in an attempt to set a date and time), the organisation pulled out on the grounds that they “recently

made the decision to only part-take in interviews and research that is strategic to our work with the women we support.” At the European level, therefore, despite several attempts, I was unable to secure any interviews with abolitionist organisations.

In Canada, I made cold contact with all the abolitionist organisations that I was able to locate online that operated in a Canadian context. One of the organisations responded and a member of staff was willing to be interviewed. This interviewee, then, connected me up with people she worked with in other organisations and, thus, I was able to secure interviews with two further abolitionist campaigners in Canada. Separately, I used my pre-existing contacts to secure three interviews with SWR activists in Canada.

In South Africa, I secured two interviews with SWR organisations after my attendance at a conference in Cape Town.⁴² I was also introduced to a prominent abolitionist organisation through a university contact (a fellow student at my university) and an interview was subsequently secured. Finally, I made cold contact with other abolitionist organisations in South Africa and secured one interview by this method.

I was awarded a grant from the COST Prospol Action (Comparing European Prostitution Policies: Understanding Scales and Cultures of Governance) to undertake a short research trip to New Zealand in May 2015. The title of my research study in New Zealand was “Sex workers’ dignity in a decriminalized sex industry”. I spent three weeks in New Zealand, which was invaluable in meeting and recruiting participants for the study. During my three-week study trip to New Zealand, I was fortunate to meet and interview three SWR activists as well as two academics involved in the study of the sex industry in New Zealand. I also made cold contact, via email, with two active

⁴² In October 2015, I was invited to attend a conference in Cape Town, South Africa, on tackling violence against sex workers in Southern Africa, through my involvement, as a then Board Member, with the UK charity National Ugly Mugs.

abolitionists. After an initially favourable response from one (the other did not respond to any emails) my subsequent correspondence attempting to fix a date and time for the interview went unanswered.

New Zealand was the only context in which I interviewed academics in addition to activists. I chose to do this because academic knowledge on the sex industry in New Zealand forms an important element of political activism on sex work, given it is one of the few countries in the world to have decriminalised sex work. I discuss below, in greater detail, the delineation (or lack thereof) between academics and activists and while the academics I spoke to in New Zealand were not directly affiliated to an activist organisation, their discourses (rooted in their academic research) play a significant part in the construction of activist text and talk.

- Balance in the sample

Table 1 shows that I was unable to achieve a balanced sample for the interviews, with equal numbers of participants who identified as SWR activists and those who identified as abolitionists. I interviewed five people who advocate from an abolitionist perspective and 13 who are aligned with the arguments made by the SWR movement. Within the different geographical contexts, however, there were examples of greater balance, with equal numbers of interview participants representing the different political interests being interviewed in the South African and Canadian contexts.

Table 1 - list of interview participants

Number	Country	Political Stance	Descriptor
1	Canada	SW Rights	SWR Activist A (Canada)
2	Canada	SW Rights	SWR Activist B (Canada)
3	Canada	SW Rights	SWR Activist C (Canada)

4	Canada	Abolitionist	Abolitionist Activist A (Canada)
5	Canada	Abolitionist	Abolitionist Activist B (Canada)
6	Canada	Abolitionist	Abolitionist Activist C (Canada)
7	South Africa	SW Rights	SWR Activist D (South Africa)
8	South Africa	SW Rights	SWR Activist E (South Africa)
9	South Africa	Abolitionist	Abolitionist Activist D (South Africa)
10	South Africa	Abolitionist	Abolitionist Activist E (South Africa)
11	New Zealand	SW Rights	SWR Activist F (New Zealand)
12	New Zealand	SW Rights	SWR Activist G (New Zealand)
13	New Zealand	SW Rights	SWR Activist H (New Zealand)
14	New Zealand	Academic (supports decriminalisation)	Academic A (New Zealand)
15	New Zealand	Academic (supports decriminalisation)	Academic B (New Zealand)
16	Europe (Netherlands)	SW Rights	SWR Activist J (Germany)
17	Europe (Germany)	SW Rights	SWR Activist K (Netherlands)

18	Global	Anti-trafficking organisation (supports decriminalisation)	Staff Member, anti-trafficking organisation (Global)
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Attempts were made to obtain a more balanced sample in respect of the other contexts studied, as described above, and I repeatedly emailed abolitionist organisations, in Europe and New Zealand, as well as organisations working at the global level, seeking interviews. I do not know exactly why my attempts to secure interviews with more abolitionist organisations were unsuccessful. It could simply be that these organisations do not engage in any cold contact from researchers or it could be that the framing of my research did not spark their interest.

While I did achieve a diverse sample, I acknowledge that it was not completely balanced in terms of equal numbers of abolitionist and SWR campaigners. I do not believe, however, that this is detrimental to the overall thesis as the interviews are just one data source with the analysis of textual sources having equal importance. In fact, the breakdown of textual sources analysed (see Appendix D) shows that greater balance was achieved in this respect, with marginally more documents from the abolitionist perspective. This could redress some of the imbalance in the qualitative interview sample. At the same time, I accept that a potential limitation of the research is the reduced diversity of abolitionist voices coming through from the interviews compared to the SWR activists.

- Conducting the interviews

Given that my participants were based in all corners of the world, I conducted the majority of interviews over Skype, or telephone where internet access was limited for the interviewee. My interviews with New Zealand based activists, however, were done face-to-face during my research trip and I conducted the interview with the German activist face-to-face during a trip to Berlin. One of the Canadian SWR activists I had identified as a potential participant was in New Zealand at the same time as I was and so I also interviewed her face-to-face. The research setting for face-to-face interviews were almost always in the office of the interviewee except for the Canadian activist in New Zealand, which took place in a coffee shop. The neutral setting of a coffee shop, I found, not very conducive to interviewing given the extent of background noise and distraction and I preferred the private space of an office for face-to-face interviews. I found this aided concentration, made it easier to establish rapport and meant the interview felt more relaxed and at ease. Building rapport over Skype or telephone was more challenging. Some Skype interviews were done with video calling, others just voice, but video calling was my preference as it made it easier to build a connection and to pick up on any non-verbal cues from participants. The one challenge of Skype (and telephone) interviewing was the risk of poor connections, which meant that some words/sentences were not picked up by the recording device. This was, however, minimal and I did not encounter this as a major problem during the transcription and data analysis phase.

All interviews were conducted using the same interview schedule and followed a semi-structured format. While I was familiar, by this stage in the PhD, with many of the themes associated with the concept of dignity, I chose to make my interview questions as open as possible so as not to lead participants or unintentionally plant ideas in their mind. I did not make specific reference in any of the interviews to any of the

discourses I had analysed in the textual sources⁴³ and was keen not to restrict the interview to particular themes that I had identified but, rather, to draw out the themes that the interviewees saw as important. The interview schedule was relatively short with just thirteen questions. I began all interviews simply by asking participants to explain to me what role they had in their respective organisations and to tell me a bit about their involvement in activism on sex work/prostitution. This provided a gentle opening to the interviews and also helped me learn more about their backgrounds and experiences in activism.

The remainder of the interview was designed to provoke thinking and discussion on the topic of dignity itself and, as mentioned above, I chose to use simple open questions. For example, I asked “What does the concept of ‘dignity’ or ‘human dignity’ mean to you as an individual/activist/policy-maker?” and “What do you see as the benefits and/or risks of using the concept of ‘dignity’ or ‘human dignity’ in political campaigns on commercial sex?”. I asked, among others, questions about their understanding of their political opponents’ use of dignity and what they saw as the legal measures that would best protect or promote the dignity of people selling sex. A copy of the interview schedule is available at Appendix B.

Interviews were always conducted one-on-one and they tended to take between 30 minutes to an hour. I reminded interviewees at the start of the interview that the interview was confidential and asked them to give their verbal consent to participate based on the participant information sheet and consent form, which I sent by email in advance of the interview (copies contained in Appendix A). Consent was, therefore, recorded verbally for the participants I interviewed remotely and consent forms were physically signed for all the interviewees that I met face-to-face. Furthermore, I

⁴³ Although at the end of interviews I did present some of the judicial findings to interviewees and asked for their reactions.

checked with participants at the end of the interview that they were happy with how I planned to anonymise them in the thesis. Face-to-face and telephone interviews were recorded on a recording device and then downloaded to a password protected computer with the original recordings then deleted. Interviews conducted via Skype were recorded directly onto a password protected computer. After transcription, recordings were deleted and the anonymised transcripts were stored in a password protected computer. The transcripts will be stored securely for 5 years after submission of the thesis and then destroyed.

- Coding

I had read a range of textual sources prior to conducting the interviews and so had already begun to develop a coding framework based on this work. Given that I did not have to analyse a large number of interviews and the interview transcripts themselves were relatively short, from 6 pages for the shortest to 22 pages for the longest (average of 10.6 pages), I did not find it necessary to use a computer program, such as NVivo, for coding of the interview data. Instead, I manually coded both the textual sources and the interview data and as I read through the data I added new codes until I reached saturation point. I used one coding tree for both the textual sources and the interview data as the themes were so similar and relevant across both sets of data. A full list of the nodes used in the analysis is included at Appendix C. Having outlined the methods used to collect my data, I want to conclude this chapter with a discussion of researcher positioning, which, according to post-structural methodologies, impacts how we analyse our data.

2.6 Researcher positioning

Post-structural epistemologies recognise that researchers are positioned within particular historical and social contexts and cannot step outside of this to become 'the neutral observer' (Burr 2003; Guba and Lincoln 1994; Sarup 1989). If reality is socially constructed, then the researcher does not simply objectively observe and report phenomena but is an active participant in the construction and constitution of research outputs. 'Positioning the researcher' simply refers to the practice of acknowledging, in the research outputs, elements of the researcher's background, views and experiences that are of relevance to the research project. Feminist research methodology is one field in which debates and discussions over positioning have been central (Fine 1994a, 1994b; Harding 1987; Haraway 1988; Lather 1994; Patai 1994). While Discourse Theory is not a feminist methodology *per se*, it similarly emphasises the importance of positioning the researcher (Sjölander 2011: 32), making the debates on this subject within post-structural feminism of relevance to my thesis.

2.6.1 Feminist epistemologies and positioning

Harding, one of the principal proponents in feminist research for explicit positioning of the researcher, believes strongly that a researcher's background, including their class, race, culture and gender, and the related beliefs and assumptions that they hold should be "placed within the frame of the picture that she/he attempts to paint" (1987: 9). She notes that researchers are always interpreting data through their own unique perspective, "not as an invisible, anonymous voice of authority, but as a real, historical individual with concrete, specific desires and interests" (1987: 9). Fine (1994) and Lather (1994) agree and are highly critical of traditional notions of 'objectivity' and 'neutrality' in social scientific research. Fine notes that researchers are "human inventors" of research questions, "co-participants in our interviews" and "shapers of the very contexts we study" (1994: 14).

Haraway, similarly, challenges the notion of objectivity that has been heralded by “the imagined ‘they’ ...of masculinist scientist and philosophers” (1988: 575) and suggests that the dilemma or problem for feminist research is:

... how to have *simultaneously* an account of radical historical contingency for all knowledge claims and knowing subjects, a critical practice for recognising our own ‘semiotic technologies’ for making meanings, *and* a no-nonsense commitment to faithful accounts of a ‘real’ world, one that can be partially shared and that is friendly to earthwide projects of finite freedom, adequate material abundance, modest meaning in suffering, and limited happiness. (ibid.: 579; emphasis in the original)

Haraway’s solution to this ‘problem’ is to introduce the concept of “situated knowledges”, which accepts the fact that all knowledge claims must be, and always will be, partial perspectives formed from “limited location” and “specific embodiment” rather than a “false vision promising transcendence” (ibid.: 582 – 583). What Haraway argues for is a “politics and epistemologies of location, positioning and situating, where partiality and not universality is the condition of being heard to make rational knowledge claims” (1988: 589).

Not everyone agrees with this perspective and Patai, for example, is deeply sceptical of the value of such “individualistic self-reflexive shenanigans” (1994: 62) noting that the “fetish of questioning oneself and one’s standpoint until they yield neatly to the categories of our theorizing cannot overcome the messiness of reality. We do not escape from the consequences of our positions by talking about them endlessly” (ibid.: 70). Pillow suggests that the notion that researcher reflexivity makes research more

valid⁴⁴ invokes “the Cartesian belief in a unified, essential self that is capable of being reflected on and is knowable” (Pillow 2003: 181). If we accept the post-structural insight, however, of the subject “as multiple, as unknowable, as shifting” (ibid.: 180) then this applies as equally to researchers as it does to research participants and she questions their ability to engage in a simple and transparent process of self-reflection. This criticism does not mean that researchers should not engage in reflexivity but just that they should do so without the illusion that this somehow renders their research more valid or closer to ‘truth’.

I do not want to “wad[e] in the morass of [my] own positioning...” (Patai 1994: 64) nor do I want my thesis to “collapse under the weight of the confessional tale” (Pillow 2003: 182) but I do see value in providing the reader with some biographical and personal information that is relevant to the specific topic of this research. I do so not in any attempt to “overcome the messiness of reality” (Patai 1994: 70) or to attempt to make my research more valid *per se* but simply to provide the reader with a sense of the “situated knowledges” (Haraway 1988) of this project.

2.6.2 My positioning

I developed some political awareness of issues related to sex work when I spent some time living and working in Vancouver, Canada, in 2011/12. I worked for a period as the Support Program Manager for an organisation called YouthCO HIV & Hep C Society and was responsible for organising drop-ins and other support activities for youth (under-30s) living with HIV and/or Hep C. The members of YouthCO who participated in support activities included street-involved youth, some of whom had experience of

⁴⁴ According to Harding, a degree of reflexivity and transparency on the part of the researcher ensures that the research is “free (or, at least, more free) of distortion from the unexamined beliefs and behaviours of social scientists themselves” (1987: 9).

selling sex. During my time in Vancouver, I also began attending a monthly ‘Sex Workers and Friends’ potluck dinner. This was an informal, mostly social but softly political, gathering of local sex workers and allies.

It was on my return to Scotland, in January 2013, that my interest in sex worker rights activism grew. There were proposals before the Scottish Parliament at this time to criminalise the purchase of sex and this prompted me to get more actively involved. I joined two local sex worker activist groups, Sex Worker Open University (now SWARM: Sex Worker Advocacy and Resistance Movement) and SCOT-PEP, and I have been an active volunteer in the UK SWR movement ever since. I have been a Board Member with SCOT-PEP since April 2014 and served as Co-Chair of the Board from November 2014 to November 2016. I played an active role in a campaign to introduce legislation before the Scottish Parliament to decriminalise prostitution in Scotland in 2015.⁴⁵ My involvement in SWR activism, and contact with many sex workers over the years, has necessarily shaped my political perspective on sex work and I embarked on this research project having already established myself as a sex worker rights activist. This has led to significant reflection, on my part, of the fine line that can exist between being an activist and an academic.

2.6.3 Activist/Academic

For some, walking such a line between being a political activist and an academic is problematic. Patai (1994), for example, defends strongly the notion of intellectual independence and is highly critical of the dissolving of boundaries between political action and research. She, instead, calls for a “calm, reflective stance that sees some

⁴⁵ See website of the Scottish Parliament on the proposed Prostitution Law Reform (Scotland) Bill, available at <http://www.parliament.scot/parliamentarybusiness/Bills/91949.aspx>, last accessed 31 May 2018.

strength in the effort (however difficult to achieve) to set biases aside” (ibid.:62) and suggests that academics interested in being political should simply stop research and “move directly into political action” (1994: 68). Patai’s arguments on the separation between academia and political activism do not convince me, especially when I consider them in light of my own biography. As I discussed above, I became involved in SWR activism *before* embarking on this PhD and so I see myself not as an academic who frames his work as ‘political’ but as a political activist who was keen to embark on an intellectually rigorous research project.

Of course, that perspective may not satisfy all those who see clear demarcating lines between activism and academia. Canadian criminologist, Chris Bruckert, a sex worker rights activist (and also a former sex worker), writes that “being an activist renders [her] a suspect scholar whose commitment to research rigour is open to question” (2014: 310). This perspective on academic ‘bias’ was also invoked by Justice Susan Himel of the Superior Court of Ontario, in the Canadian case of *Bedford*⁴⁶ (which eventually reached the Supreme Court, see Chapter 4); Himel assigned less weight to evidence presented by those academics who she perceived as being advocates.⁴⁷ John Lowman, another Canadian criminologist, and one of the academics called as an expert witness by the plaintiffs in the Bedford case, described being questioned by government lawyers and how his credibility was challenged because of the perception that he was an activist and therefore biased (2014).⁴⁸ He notes, based on his

⁴⁶ Supra note 29.

⁴⁷ Justice Himel stated: “In reviewing the extensive record presented, I was struck by the fact that many of those proffered as experts to provide international evidence to this court had entered the realm of advocacy and had given evidence in a manner that was designed to persuade rather than assist the court...While it is natural for persons immersed in a field of study to begin to take positions as a result of their research over time, where these witnesses act primarily as advocates, their opinions are of lesser value to the court.” (Bedford v Canada 2010 ONSC 4264 at para 182)

⁴⁸ The very same criticism was levelled against abolitionist academics/activists, with Melissa Farley being particularly criticised by Justice Himel in her findings: “I find the evidence of Dr. Melissa Farley to be problematic. Although Dr. Farley has conducted a great deal of research on prostitution, her advocacy appears to have permeated her opinions.” (Bedford v Canada 2010 ONSC 4264 at para 353)

experience with this case that “[a]cademics should think twice before hitching their wagon to an activist organisation in the area in which they conduct their research” (ibid.: 26).

I have reflected continually on the fine line I walk between being an academic and an activist and I am sure these reflections will never be fully resolved. I think it is important to make clear that I did not embark on this study as an activist project but as a research endeavour, and I do not view this thesis as a campaigning tool. Despite the cautions issued by Lowman, however, there is no way I can decouple my activism and my academic work - although I am now aware of the potential for my research to be met with suspicion or accusations of bias because of my particular biography and involvement in activism. Ultimately, however, I agree that, as much as some may want to cling to the possibility of an “independent academy” (Patai 1994: 70), this is nothing but an “illusion” (Fine 1994: 31).

I, therefore, situate my work in the “troubling stew of theory, politics, research, and activism” (ibid.) and reject the idea that there is a clear demarcation between these fields. Instead, I would position myself as an activist who seeks to pursue an intellectually rigorous study on a topic of personal and political importance. I operate from the perspective of “passionate detachment” (Kuhn 1982: 3- 18 as quoted in Haraway 1988: 585) which Fine sums up as the state where “the researcher is clearly positioned (passionate) within the domain of a political question or stance, representing a space within which inquiry is pried open, inviting intellectual surprises to flourish (detachment)” (1994: 23).

Approaching the study with ‘passionate detachment’ has indeed led to the flourishing of intellectual surprises for me, and my focus and intent has shifted considerably

throughout the research process. When I first began work on this thesis, before I had developed a more nuanced sense of epistemology, I was focused mostly on interrogating (and to be honest, trying to debunk) the perspective that commercial sex constituted a violation of dignity. These arguments did not resonate with my own experiences in sex work activism and my contact with sex workers; and in the first year of the study, my work was focused on critiquing these normative arguments. As I read more around post-structural discourse analysis, and my research question shifted to an exploration of what the concept of dignity might do when used in sex work discourses rather than attempting a normative analysis of the arguments advanced around 'dignity', this enabled me to approach the project with a greater sense of perspective and intellectual detachment.

This intellectual detachment has led to some significant personal and political insights for me. Perhaps the most personally significant aspect of this research endeavour has been conducting interviews with abolitionist activists. As an activist who works for SWR organisations, the only contact I had with abolitionist activists, prior to this study, was antagonistic, where debates, either in discussion or in text, were focused around normative arguments. Conducting interviews with abolitionists provided an entirely new way of relating, and, while the normative disagreements may remain, I have a much greater insight into their perspective and a respect for the fact that their work - like mine and that of my colleagues in the SWR movement - is borne from a care for people who sell sex and a desire to ease suffering and improve lives.

2.7 Conclusion

In this chapter I have set out the theoretical framework, Laclau and Mouffe's Discourse Theory (1985), that underpins my approach to the thesis. DT is a post-structural methodology that is rooted in an understanding of the openness of the social and the

contingency of discourse. It provides a framework, therefore, for analysing the role that dignity related sex work discourses may have in shaping attitudes towards commercial sex and those who undertake it. It is an approach to research that fits with my intention to look beyond normative arguments on dignity and sex work. I have explained how I selected and gathered the data that forms the basis of the discourse analysis, as well as some reflections on my positioning as a researcher, to enable the reader to understand the “situated knowledges” (Haraway 1988) of this project. Before going on to conduct the analysis of different legal and political discourses on dignity and commercial sex, I want to begin by providing the reader with a more comprehensive introduction to the concept of dignity, the core theme of the entire thesis.

Chapter 3 - Setting the scene: the concept of human dignity

Chapter overview

In this chapter, I introduce the reader to the concept of human dignity and set the scene for the discourse analysis that follows in subsequent chapters. I demonstrate the contingency of the meaning of dignity, exploring how the concept has evolved through different historical contexts. Particular attention is paid to how contemporary usages in human rights law and discourse, retain and/or reject elements of dignity's history. Most notably, in order to facilitate the analysis of dignity-related sex work discourses, I present a useful taxonomy of dignity, based on the work of Neomi Rao (2011), which will be applied throughout the thesis. Rao's taxonomy outlines three principal ways in which dignity is used, and understood, by courts, which I discuss in detail. I conclude by engaging with certain critiques of dignity, which maintain that it is not a useful or workable legal or ethical principle. I explain how my thesis engages with, and responds, to these criticisms.

3.1 Introduction

The notion of dignity has a long and chequered history within a range of different fields of study and practice. Since the concept was invoked as a central feature of contemporary international human rights law, there has emerged a vast academic literature exploring its roots, meanings and uses. The concept has attracted the attention of philosophers (Pinker 2008; Rosen 2012; Sensen 2011; Shershow 2014), lawyers (Barroso 2012; Feldman 1999, 2000; Hennette-Vauchez 2011; Meltzer Henry 2011; McCrudden 2008; Neal 2012a, 2012b, 2014; O'Mahony 2012a, 2012b; Riley 2010; Waldron 2007, 2011, 2013; Kidd White 2012), medical and bio-ethicists (Andorno 2013; Ashcroft 2005; Beyleveld and Brownsword 1998; Brownsword and Beyleveld 2001; Macklin 2003), and theologians (Iglesias 2001). In this chapter, it is my intention to

introduce the idea of dignity through an exploration of three main themes that will set the scene for the analysis of dignity-related sex work discourse that follows. I want to demonstrate, at the outset of the thesis, that the meanings assigned to the concept of dignity are highly contingent and contested. In the first part of this chapter, then, I will present a brief history of dignity in Western philosophy to provide evidence of its contingency and to explore some of the key moments where its meaning has been ‘partially-fixed’⁴⁹ in different historical time periods. I am particularly interested in exploring the connections (or lack thereof) between traditional paradigms of dignity, which are hierarchical, status-based and focused on how human beings *should* behave, with the contemporary understanding underpinning human rights discourse, which constructs dignity as a universal, inherent and inalienable human quality.

Having demonstrated the contingency of dignity in historical terms, I will go on to explore its use in contemporary jurisprudence, where contingency remains a persistent theme. Perhaps precisely because of the concept’s contingent and elastic nature, much work has been done to survey the different meanings and versions of dignity that predominate in jurisprudence, and I will set out a useful taxonomy of dignity based on the work of Neomi Rao (2011). Rao analyses the use of the concept in constitutional law (mostly in the US but also in other jurisdictions) and outlines three predominant meanings that are given to the term ‘dignity’ in judicial decisions. She identifies ‘intrinsic dignity’, ‘substantive conceptions of dignity’, and ‘dignity as recognition’ as the three principal ways in which dignity is expressed and understood legally. I will explore each of these categories in turn, remaining alert to the fact that “the boundaries between these types of dignity are not impermeable, and constitutional courts will often use ‘dignity’ in overlapping ways” (ibid.: 189).

⁴⁹ See discussion of Laclau and Mouffe’s theory on partial fixations in Chapter 2, section 2.4.1.

The chapter will conclude with a look at some of the criticisms that are levied against the concept of dignity as a legal and ethical principle, which, indeed, mostly focus on its indeterminacy in meaning and its elastic nature. For example, it is argued that dignity is “vacuous” (Bagaric and Allen 2006), “a squishy, subjective notion” (Pinker 2008) and functions “merely as a mirror onto which each person projects his or her own values” (Barroso 2012: 332). While it is my intention in this thesis to interrogate the use of dignity as a discursive tool in sex work discourses, which includes criticisms of how it is used and the consequences of such usage, I reject those critiques of dignity’s usefulness and value that are based on its indeterminacy, concluding that none of these objections stands up within the theoretical framework of Discourse Theory.

3.2 A historical account of dignity

There is no better way to demonstrate the elasticity of dignity than by examining the meanings that have been given to the concept, at different historical junctures, and how this has influenced its continuing use in contemporary discourses, particularly in the development of international human rights law after the Second World War.

3.2.1 Starting point: dignity in post-war human rights and constitutional law

There is little doubt that the concept of dignity is the cornerstone of international human rights law. The Preamble to the Universal Declaration of Human Rights (UDHR) refers to the “inherent dignity...of all members of the human family” as “the foundation of freedom, justice and peace in the world”.⁵⁰ Article 1 goes on to proclaim that “all human beings are born free and equal in dignity and rights”.⁵¹ One of the

⁵⁰ Universal Declaration of Human Rights, available at <http://www.un.org/en/universal-declaration-human-rights/>, last accessed 14 June 2018.

⁵¹ Ibid.

foundational aims of the United Nations (UN) was “to reaffirm faith...in the dignity and worth of the human person”, according to the Preamble of its founding charter.⁵²

Dignity is further invoked, and in similar terms, in the preambles to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵³

The concept also appears in a number of important regional human rights instruments. For example, Article 5 of the African Charter on Human and People’s Rights refers to “the dignity inherent in a human being”⁵⁴; the American Declaration on the Rights and Duties of Man adopts identical language to the UDHR, which it pre-dates by a matter of months, when it states in the Preamble that “all men are born free and equal, in dignity and in rights”.⁵⁵ The ASEAN (Association of Southeast Asian Nations) Human Rights Declaration uses the very same phrase in its General Principles,⁵⁶ and the Arab Charter on Human Rights refers to the “Arab nations’ belief in human dignity” in its Preamble.⁵⁷ While dignity is not invoked in the text of the European Convention on Human Rights, it is a feature of the European Union’s Charter of Fundamental Rights, which states in Article 1 that “human dignity is inviolable. It must be respected and protected”.⁵⁸

⁵² UN Charter, available at <http://www.un.org/en/sections/un-charter/un-charter-full-text/>, last accessed 14 June 2018.

⁵³ The Preambles to both of these Covenants state that the rights contained within them “derive from the inherent dignity of the human person”.

⁵⁴ African Charter on Human and People’s Rights, available at <http://www.achpr.org/instruments/achpr/>, last accessed 14 June 2018.

⁵⁵ American Declaration on the Rights and Duties of Man, available at <https://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> , last accessed 14 June 2018.

⁵⁶ General Principle 1, ASEAN Human Rights Declaration, available at http://www.asean.org/wp-content/uploads/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf , last accessed 14 June 2018.

⁵⁷ Arab Charter on Human Rights, available at <http://www.humanrights.se/wp-content/uploads/2012/01/Arab-Charter-on-Human-Rights.pdf> , last accessed 14 June 2018.

⁵⁸ Charter of Fundamental Rights of the European Union, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf , last accessed 14 June 2018.

The concept of dignity is also invoked in many national constitutions across the world, including those of Finland, Brazil, Belgium, Bulgaria, Angola, Peru and Hungary (Bagaric and Allen 2006: 262). The German Basic Law of 1949 states that “the dignity of man⁵⁹ shall be inviolable. To respect and protect it shall be the duty of all state authority”⁶⁰; and the South African constitution proclaims that the country is founded on “[h]uman dignity, the achievement of equality and the advancement of human rights”.⁶¹ The use of the concept of dignity in national constitutions has been a feature of the world’s post-war context, with Shultziner and Carmi noting that “only five countries used the term in their constitutions before 1945. At the close of 2012, there were 162 countries that did so” (2014: 461). They go on to note that this represents 84% of the world’s sovereign countries, which establishes, I would argue, a global embrace of the concept.

Dignity’s prominence in international and national legal texts has led Shultziner and Rabinovici to argue that it is “a central, if not *the* central, concept in legal systems the world over” (2012: 105; emphasis in the original). This is an important point to recognise because dignity’s prominence in human rights and constitutional law and discourse, I will argue later in the thesis, is one of the reasons why it is invoked so readily by advocates and campaigners who push for reform of sex work laws. However, despite the consistency with which dignity *appears* in contemporary (post-war) rights-based legal instruments worldwide, there is much less consistency in how it is applied in practice, in terms of the meanings that are given to the concept by courts, and the

⁵⁹ There are several examples in this chapter, mostly from historical sources, where the masculine form is used in place of a more inclusive reference to people of all genders, e.g. the ‘dignity of man’ in the quote above. Given the frequency of these examples I will not identify every instance in the text but acknowledge, and reject, the gendered language used and interpret these references as being inclusive of all of humanity.

⁶⁰ Basic Law for the Federal Republic of Germany, English translation, available at <https://www.btg-bestellservice.de/pdf/80201000.pdf>, last accessed 14 June 2018.

⁶¹ Article 1, Constitution of the Republic of South Africa 1996, available at <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>, last accessed 14 June 2018.

outcomes that its practical application produces on a range of legal issues, including in cases related to sex work.

The meanings that are given to the concept of dignity in contemporary jurisprudence will be explored in more detail later in this chapter, but it is perhaps not surprising that interpretations of dignity are so wide and varied given that its conceptual malleability was one of the very reasons it was chosen by the drafters of the post-war human rights documents (McCrudden 2008; Shultziner 2007). McCrudden (2008) provides a detailed historical account of the drafting of the Universal Declaration of Human Rights and the United Nations Charter. He contends that human dignity provides “a theoretical basis for the human rights movement in the absence of any other basis for consensus” (ibid.: 677). Bringing together such a disparate collection of ideologies and worldviews to create the UN required a concept that was sufficiently flexible so as to appeal to all the varying cultures, religions and ideologies of the world. Shultziner calls this “symbolic representation”:

There is a major advantage to this approach, for the abstention from a *philosophical* decision regarding the source and cause for rights and duties paves the way for a *political* consent concerning the specific rights and duties that *ought* to be legislated and enforced in *practice* without waiving or compromising basic principles of belief. Thus, different parties that take part in a constitutive act can conceive human dignity as representing their particular set of values and worldview. In other words, human dignity is used as a linguistic symbol that can represent different outlooks, thereby justifying concrete political agreement on a seemingly shared ground. (2007: 77 – 78; emphases in original)

While Shultziner refers to ‘symbolic representation’, McCrudden communicates the same perspective in his use of the term ‘placeholder’ to describe dignity’s function in

the drafting of the UDHR (2008: 675). McCrudden notes that 'placeholder' does not imply that "dignity has no content at all" but instead that it "carrie[s] an enormous amount of content, but different content for different people" (ibid.: 678). McCrudden and Shultziner both express here the equivalence of the concept of dignity with, what in Laclau's terminology (1994), would be known as an 'empty signifier', a signifier that is capable of holding within it a variety of different (and sometimes antagonistic) meanings.

Despite the fact that human dignity appears to have been used as a 'linguistic symbol' (or empty signifier) in these important international human rights documents, onto which different countries and cultures could project their own ideologies and worldviews, it remains the case that dignity within human rights law does have a certain core meaning. This partial fixity of meaning is that dignity represents some kind of inherent human worth that is intrinsic and inalienable, as suggested by the wording of human rights treaties (O'Mahony 2012a). This, however, is not what dignity has always meant, and, throughout history, numerous different meanings have been attached to the concept in different historical time periods. Some scholars argue that the contemporary dignity of post-war human rights discourse bears no resemblance to its historical usages, while others posit direct conceptual linkages between the traditional and contemporary paradigms. Exploring the concept of dignity in a historical context, and its evolution to the 'version' that predominates in human rights law today, aids understanding of the potential ways in which dignity may be utilised and understood by the different legal and political actors who are involved in the sex work debates.

3.2.2 Contemporary dignity: a break with the past or an evolution

Sensen makes the quite bold claim that “if one wants to use the *contemporary* conception of dignity, one cannot refer to the history of philosophy for support of this conception” (2011: 85; emphasis in the original). He describes the contemporary idea of dignity, advanced in the international human rights documents, as an “inherent value property” (ibid.: 83). In these documents, there is no qualifier, or condition attached, to the claim that all human beings possess dignity – they are said to have dignity by virtue of being human. The historical version of dignity, or the *traditional* paradigm, however, is “grounded in the possession of certain capacities” (ibid.) - for example, the human capacity to reason. In order to evaluate Sensen’s claim that the *traditional* and *contemporary paradigms* are so distinct, it is crucial to look in more detail at the concept of dignity in a historical context.

- Roman times - Cicero

In Roman law, *dignitas*, effectively meaning ‘status’, is conferred upon individuals primarily by virtue of their holding certain public offices (McCrudden 2008; Sensen 2011). A person’s external social role is what endows them with dignity, making *dignitas* a concept that is conditional, unequal and hierarchical. Cicero is said to be the first to take the unequal and hierarchical notion of *dignitas* and universalise this as inhering equally in all human beings (Sensen 2011; McCrudden 2008). In a frequently quoted passage from *De Officiis*, Cicero writes:

But it is essential to every inquiry about duty that we keep before our eyes how far superior man is by nature to cattle and other beasts: they have no thought except sensual pleasure and this they are impelled by every instinct to seek: but man’s mind is nurtured by study and meditation....From this we see that sensual pleasure is quite unworthy of the dignity of man and that we ought to despise it and cast it from us....And if we only bear in mind the superiority and dignity

(excellētia et dignitas) of our nature, we shall realize how wrong it is to abandon ourselves to excess and to live in luxury and voluptuousness and how right it is to live in thrift, self-denial, simplicity and sobriety. (1913: 1.105)

Excerpts from this passage are frequently quoted in the academic literature on dignity and it is argued that this is the seed of the contemporary notion that human beings have “a certain worth by virtue of being human” (McCrudden 2008: 657). Cicero’s notion of dignity, however, continues to rely on notions of hierarchy given that it emphasises the superiority of the human being within the natural order. The superiority of the human being, according to Cicero, is grounded in its rational nature, its mind, which is “nurtured by study and meditation”, in contrast to the base and apparently undignified satisfaction of “sensual pleasure” (1913: 1.105). Cicero’s words, while expressing some sense of a universal “dignity of man”, also, however, convey a dignity that is conditional and “hollowed out with exceptions” (Shershow 2014: 60). In the same passage, Cicero goes on to state:

...even if a man is more than ordinarily inclined to sensual pleasures, provided, of course, that he be not quite on a level with the beasts of the field (for some people are men only in name, not in fact) – if, I say, he is a little too susceptible to the attractions of pleasure, he hides the fact, however much he may be caught in its toils, and for very shame conceals his appetite. (1913: 1.105)

That “some people are men only in name, not in fact”, while perhaps just “a small rhetorical stutter” (Shershow 2014: 61), does cast doubt on Cicero’s claim to a universal human dignity. This “gap or fissure” in Cicero’s theory makes dignity “at once universal *and* exclusive” given that it introduces a concern with how people behave rather than simply representing “an essence that precedes and transcends behavior” (ibid.: 61; emphasis in the original). The essence, “the dignity of man”, is not

unconditional or inalienable because some, based on their behaviour or indulgence in “sensual pleasure”, are, in Cicero’s view, “on a level with the beasts in the field”. This means that “dignity is the definitive characteristic of all human beings except for those judged not to *be* human” (ibid.; emphasis in the original).

Sensen labels Cicero’s writings as a clear example of the traditional paradigm, which rests on a “twofold conception of dignity” (2011: 75) - the first step being the distinguishing of human beings “from the rest of nature in virtue of certain capacities” (in this instance, the human ability to reason), and the second stage being the “duty to realize fully one’s ...dignity” (ibid.). Cicero’s idea of dignity is thus not an inherent and inalienable inner value that exists regardless of, and despite, external circumstances and behaviour but an inner worth that is conditional on behaving/acting in a particular way.

- Christianity

Christianity’s conception of dignity retains Cicero’s idea of elevated status but here human beings are said to be made in the image of God (McCrudden 2008). Sensen identifies the sermons of Leo the Great as one of the “earliest known usages of the Latin *dignitas* by a Christian thinker” (2011: 78) and notes that they outline a version of dignity in line with the traditional paradigm evident in Cicero’s writings. Leo the Great introduces the idea, still prevalent in Christian thought, that human beings have dignity because they “have been made according to the image of God” (St Leo the Great 1996: 114 as quoted in Sensen 2011: 78). Leo, like Cicero, sets up a dichotomy between the body and the cerebral/spiritual capacity of the human to reason, and maintains that it is the soul that gives humans their dignity:

If...the desires of the body are stronger, the soul will shamefully lose dignity

proper to it, and it will be calamitous for it to be a slave to what it ought to govern. But if the mind, submissive to its Ruler and to heavenly gifts, tramples on the lures of the earthly indulgence...reason will hold a well-ordered leadership. (St Leo the Great 1996: 167-8 as quoted in Sensen 2011: 78)

The sentiment expressed here bears strong resemblance to Cicero's writings in the sense that the human soul, which has the capacity to reason, is the site/grounding for human dignity, and moreover that dignity will be "lost" if the "desires of the body" take over. The Catechism of the Catholic Church today affirms the Christian conception of dignity as being rooted in the notion of *imago dei*, the belief that humans are made in the image of God:

Being in the image of God the human individual possesses the dignity of a person, who is not just something, but someone. He is capable of self-knowledge, of self-possession and of freely giving himself and entering into communion with other persons. (Catholic Church n.d.: Part One, Section 2, Chap. 1, Art. 1, Para 6, Section 357)

The connection between dignity and rationality ("self-knowledge") is still central to the Christian understanding of dignity, although in a passage slightly further down in the Catechism we are reminded that "the human body shares in the dignity of 'the image of God': it is a human body precisely because it is animated by a spiritual soul, and it is the whole human person that is intended to become, in the body of Christ, a temple of the Spirit" (ibid.: section 364). The dichotomy between body and soul, evident in the writings on dignity of the early Catholic writers like Leo the Great, is less obvious in the modern Catechism, where the emphasis seems to be more on the 'whole person' i.e. the *embodied* soul, a unity of the corporeal and the spiritual. It is important to note, however, that the spiritual is still prioritised as the ground of human dignity, where the

body is dignified *by* the presence of the soul, i.e. it is the soul that is the source of dignity for the body. Human dignity is, therefore, still predicated on the idea of human capacities that transcend the body. The Catechism also contains several examples of contentions on how humans *should* behave *because* they have dignity; for example, in the section of the Catechism concerned with chastity, it is stated that:

Man's dignity therefore requires him to act out of conscious and free choice, as moved and drawn in a personal way from within, and not by blind impulses in himself or by mere external constraint. Man gains such dignity when, ridding himself of all slavery to the passions, he presses forward to his goal by freely choosing what is good and, by his diligence and skill, effectively secures for himself the means suited to this end.

(Catholic Church n.d.: Part Three, Section 2, Chap. 2, Art. 6, Para 2, Section 2339)

This excerpt from the Catechism, which suggests that dignity requires humans to “rid... [themselves] of all slavery to the passions”, displays very similar sentiments to Cicero’s view that “sensual pleasure is quite unworthy of the dignity of man” (1913: 1.105). Essentially, both argue that the dignity invested in human beings creates obligations to behave in a particular way.

- Pico della Mirandola

The writings of Renaissance thinker Pico della Mirandola provide another example of the traditional paradigm in which dignity is framed “at once as something absolutely unconditional and absolutely conditional” (Shershow 2014: 35). In one of Pico’s most famous works, which is referred to today as *On the Dignity of Man*, he, like those before him, asserts that what separates human beings from others in the natural order

and gives them dignity is their free will and ability to choose their own path in life (McCrudden 2008; Sensen 2011; Shershow 2014). Not only do humans have this free will, but according to Pico's conception of dignity, they have a duty to exercise it *in a particular way*. According to Kirk, who provides an introduction to a 1956 translated edition of Pico's work, the term "dignity of man" used by Pico "meant the high nobility of disciplined reason and imagination, human nature as redeemed by Christ, the uplifting of the truly human person through an exercise of soul and mind" (1956: xvii). This perspective is evident when Pico says:

If you see a man dedicated to his stomach, crawling on the ground, you see a plant and not a man; or if you see a man bedazzled by the empty forms of the imagination, as by the wiles of Calypso, and through their alluring solicitations made a slave to his own senses, you see a brute and not a man. If, however, you see a philosopher, judging and distinguishing all things according to the rule of reason, him shall you hold in veneration, for he is a creature of heaven and not of earth. (Pico della Mirandola 1956: 10)

Shershow, however, critiques this version of dignity, and those before it, for its insistence that human dignity necessitates the exercise of free will in a highly prescriptive way:

If dignity names both humanity's potential for self-fashioning and the achieved potential, the particular kind of self that may (or may not) be fashioned, then humanity is "free" only insofar as it chooses correctly to reject animality and manifest itself through reason. Thus both the freedom and the universality of dignity evaporate the very moment that it begins to exercise itself in its own most proper form. (2014: 71)

Pico's version of dignity, then, is thoroughly conditional on humans acting in a particular way and, as such, is indicative of the traditional paradigm that can be said to characterise the historical context in which he was writing. In contrast, it is often argued that the Enlightenment, particularly the work of Immanuel Kant, represents the first historical juncture where a version of human dignity was articulated that is most closely aligned with that prevalent in contemporary human rights discourse, as signifying an inherent and inalienable quality that *all* humans possess.

- Kant

Kant's writings on dignity, contained in his *Groundwork for the Metaphysics of Morals*, first published in 1785, have the reputation for being "the single greatest source of the concept of dignity that prevails in contemporary usage" (Shershow 2014: 78) and "the most often cited non-religiously-based conception of dignity" (McCrudden 2008: 659). Yet, while his writings may be credited as a key source in this developing understanding of a universal human dignity, there remains, in his theory, a link between dignity and the exercise of rationality. In Kant's famous maxim, he implores that "[the] rational being...must treat itself and all others *never merely as means*, but in every case *at the same time as ends in themselves*" (Kant 1998: 4:433; emphases in the original). He goes on to explain that for something to "be an end in itself" it has "not merely a relative worth, i.e. a price, but an inner worth, i.e. *dignity*" (*ibid.* at 4:435; *emphasis in the original*).⁶²

For Kant, "morality, is the condition under which alone a rational being can be an end in itself" (*ibid.*). In other words, for a human being to have dignity (to be an end in

⁶² Kant argues that "in the kingdom of ends everything has either *price* or *dignity*. What has a price can be replaced with something else, as its *equivalent*; whereas what is elevated above any price, and hence allows of no equivalent, has a dignity." (Kant 1998 4:434, p.42; emphases in the original).

itself) it must exercise its rational capacities in a moral way. Kant reinforces this when he says that “morality, and humanity insofar as it is capable of morality, is that which alone has dignity” (Kant 1998: 4:435). Kant’s vision of dignity, therefore, has become “most closely associated with...the idea of dignity as autonomy” (McCrudden 2008: 659) because it makes such a direct connection between a human being’s capabilities of rationality (to choose to act morally), as justification for their dignity or inner worth.⁶³

Sensen argues that Kant’s writings do not, in fact, break with the traditional paradigm of dignity but instead reinforce it, in the sense that dignity is rooted, not just in rational capacities but in the demand that these capacities be exercised in a particular way. He bases this argument on the fact that Kant discusses dignity “mainly in relation to duties towards self” (2011: 81):

... These [duties] do not consist...in seeking to satisfy his cravings and inclinations...But they consist in his being conscious that man possesses a certain dignity, which ennobles him above all other creatures, that *it is his duty so to act as not to violate in his own person this dignity of mankind*. (Kant 1900: 101, as quoted in Sensen 2011: 81; emphasis in the original)

These words from Kant quite directly reflect the perspectives advanced by Cicero, Leo the Great, and Pico, in the sense that having dignity creates duties for human beings to behave in certain ways. Rosen notes that this gives dignity a “double character” as “it makes human beings intrinsically valuable, while, at the same time prescribing to them the way in which they should act” (2012: 30). Shershow agrees that “by yoking human

⁶³ Of course, Kant’s notion of an inherent dignity grounded in rationality is easily critiqued on the basis that human beings possess these capacities to varying degrees. We would not, for example, countenance the idea that elderly people suffering from dementia lose their human dignity along with their ability to reason (See Brennan and Lo, 2007; Dupré 2009; Neal 2012b; O’Mahony, 2012a).

dignity to specific forms of behavior as opposed to others makes such dignity at once universal *and* exclusive” (2014: 80; emphasis in the original). In this respect, while Kant may be credited with propagating a version of dignity more closely resembling the contemporary paradigm of universal inherent worth the picture is more complicated and his work is, arguably, more a continuation of the traditional paradigm.

Regardless, after Kant, the entire notion of dignity was popularised in European political philosophy, according to McCrudden, due to “the growth of republicanism” in the 18th century (2008: 660). In the 19th century, dignity begins to be used as a “rallying cry for a variety of...social and political movements advocating specific types of social reform”, including the abolition of slavery and the introduction of social welfare support (ibid.). It is not, however, until the 20th century that dignity became such a central element of the world order, with its prominent placing in the international human rights treaties. The 20th century dignity of international human rights law is associated with universalism and equality, rather than being conditional and hierarchical as per some of the traditional conceptions sketched above. However, while Sensen maintains that the contemporary version is sharply delineated from the traditional paradigm, other scholars take quite a different view and posit a direct evolution from one to the other.

3.2.3 Contemporary dignity and remnants of the traditional paradigm

Waldron (2007) suggests that the contemporary notion of human dignity prevalent in human rights law is a direct evolution of the more traditional rank-based *dignitas*. Crucially, however, he argues that this rank-based dignity has now been universalised to apply to all human beings. He proposes that “when we attribute rights by people in virtue of their dignity, we do so on account of some high rank we hold them to have” (ibid.: 216). Notions of rank are persistent in almost all historical accounts of dignity.

Dignitas was clearly hierarchical and tied explicitly to the holding of high rank or status but even in the more universalised notions of dignity advanced by Cicero or in Christian thinking, dignity is held by human beings because of the high rank they hold in “the great chain of being” (ibid.: 217).

Waldron argues that the ordinary meaning of dignity, “its non-technical, non-philosophical meaning” (ibid.: 214), which remains prevalent today, is closely associated with ideas of rank, bearing and *gravitas*, and “the quality of being worthy or honourable” (ibid.: 214-215). His thesis is that the use of dignity to signify an inherent and universal human worth retains, and reflects, a sense of rank, bearing and *gravitas* in that it signifies the notion of the high rank and *gravitas* of the human species in itself (ibid.: 235). Humans are not, therefore, ranked internally and ascribed dignity (or not), but, rather, the entire species holds a high rank worthy of dignity.

Waldron gives some “brief thumbnail sketches of the dignitary aspects” (ibid.: 232) of certain rights that are now deemed as universal human rights but which in history were reserved for certain human beings by virtue of their higher position or rank. He suggests, for example, that the “fundamental right of each person to have his or her own wishes respected in the conduct of his or her own private life” was at one time “the privilege of a particular rank...the head of a household, but not the right of say women in the household or slaves”, and that the universalisation of this right gives “everyone the privileges once associated with the dignity of a highly ranked subset” (ibid.: 231).

Iglesias (2001) makes a similar argument to Waldron when she distinguishes between the universal and restricted meaning of dignity. For her, the ‘restricted meaning’ refers to a dignity that “can pertain only to *some* human beings” based on “superiority of role either in rank, office, excellence, power etc.”, while the ‘universal meaning’ refers to

“the intrinsic worth of every human being that is independent of external conditions...and that pertains to *everyone*.” (ibid.: 120; emphases in the original). Mirroring Waldron’s thesis, Iglesias argues that “the restrictive Roman meaning of *dignitas* assigned to office and rank, and used as a discriminatory legal measure, began to be used with a new meaning of universal significance that captures the equal worth of everyone” (ibid.: 122).

While Waldron and Iglesias set out a conceptual connection (or evolution) between rank-based dignity and the universal dignity of human rights law, they do not explore the extent to which the current practical application of the concept, in law, may retain elements of the former hierarchical and conditional paradigm. Sensen, in support of his view that they are distinct, argues that the core difference between the two is that the traditional paradigm was most often used to enforce duties, whereas rights have become the focus of its contemporary use. As noted above, the conceptualisation of human dignity in historical Western philosophical thought was often invoked alongside the duty “to fully realize” one’s human dignity or to use one’s capacities for reason in a particular way (Sensen 2011: 83 -84). The contemporary paradigm, on the other hand, as rooted in international human rights law, is principally concerned with the promotion of rights for the individual; and while obligations are, of course, a feature of human rights law, these tend to rest on the state to ensure that it respects an individual’s dignity rather than falling on the individual to act in a particular way.

Hennette-Vauchez (2011), however, finds not only that there is a conceptual connection/evolution between the traditional rank-based *dignitas* and contemporary dignity, but also that the features of *dignitas* remain at play in a number of examples of contemporary dignity jurisprudence. While, then, Sensen disputes any connection and Waldron argues that rank-based *dignitas* has evolved into a universal dignity so that it loses its inegalitarian features of being hierarchical and conditional, Hennette-Vauchez

demonstrates that these features may remain, in some instances of contemporary dignity jurisprudence.

3.2.4 Contemporary dignity and obligations

Hennette-Vauchez argues that there is evidence of “a preliminary bridge between contemporary human dignity and ancient *dignitas*” (2011: 36). She demonstrates this “bridge” using three features of ancient *dignitas*, which she maintains are evident in examples from contemporary dignity jurisprudence (these features are broadly in line with what Sensen identifies as the defining elements of his traditional paradigm).

Hennette-Vauchez notes that a key similarity between ancient *dignitas* and “dignitarian interpretations of the human dignity principle” is that it “grounds obligations (or prohibitions) rather than rights”; and she gives examples from caselaw of situations where dignity arguments led to such prohibitions being placed, including the example of prostitution⁶⁴ (ibid.: 43). She argues that while obligations stemming from *dignitas* were focused on preserving the dignity of the particular status/rank/role to which the *dignitas* was attached, in the contemporary dignity landscape the “source of the obligations is to be found in the concept of humanity” (ibid.):

The mode of reasoning invariably unfolds as follows: every human being is a repository (but not a proprietor) of a parcel of humanity, in the name of which she may be subjected to a number of obligations that have to do with this parcel’s preservations in all times and in all places. (ibid.)

Not only does contemporary dignitarian jurisprudence ground obligations rather than

⁶⁴ One of the cases she relies on to support her argument is the *Jordan* case from South Africa, which was a constitutional challenge to South Africa’s prostitution laws, as mentioned in Chapter 1, and discussed more fully in Chapter 4.

rights but these are frequently “obligations towards oneself” (ibid.: 46). Hennette-Vauchez evidences this on the basis that many of the cases she cites involve situations where courts have explicitly disregarded “an otherwise crucial element: the individual’s consent” (ibid.). In order to uphold the dignity of humanity, the individual human being – “the repository” – must behave/act/treat herself in a certain way to protect her dignity. This connects to Hennette-Vauchez’s final point, which is that both ancient *dignitas* and contemporary dignity are inalienable, in the sense that they cannot be renounced. Once *dignitas* became attached to a specific function or role, it always remained attached and could not be relinquished by the holder of the role. Now that ‘humanity’ has taken the place of the social role or function in the operation of contemporary dignitarian jurisprudence, it “allows for the notion of humanity to play the same role that specific (social, professional, religious) functions used to play” (ibid.: 51). Humanity, in this instance, acts “as the mediator between the individual and dignity”, and “since human dignity relates to humankind more than it does to the human individual, it remains out of the latter’s reach: she cannot renounce it, she is stuck with it” (ibid.: 51-52).

I find Hennette-Vauchez’s demonstration of the similarities between a rank-based *dignitas* and contemporary usage of the human dignity principle convincing. While Sensen may be right that there is a philosophical departure from the historical usages of dignity recounted above and the contemporary version of dignity espoused in international human rights law, this distinction may operate purely at the level of the theoretical. Dignity may be signified as representing an inherent, inalienable and universal sense of human worth in the Universal Declaration of Human Rights; but, as Hennette-Vauchez demonstrates, when we look more deeply at precisely *how* the concept is used in particular judicial decisions, the picture becomes more complicated, with a different understanding of dignity being applied, one which has much in common with the historical usages described above.

An exploration of this linkage between the traditional and contemporary dignity paradigms is important for this thesis because it sets in context the analysis of ‘dignity talk’ in sex work discourse that follows. It is important to alert the reader to the fact that the notion of universal dignity espoused in human rights law is just one of the ways in which dignity is not only understood but is *applied* in concrete cases, including those related to sex work. I, therefore, hope to have established, at the outset, that dignity has no fixed and settled definition, which it never will have; and that the meaning ascribed to it in international human rights law as representing an inherent inner worth is just one of the ways in which the concept may be used in contemporary discourses. In Chapters 4 - 6, I will demonstrate exactly *how* dignity is used by judges and human rights advocates in caselaw and in wider discourses on commercial sex, which will highlight the concept’s diversity in meaning. To facilitate this analysis of dignity-related sex work discourses, it is helpful to elucidate a taxonomy of the *possible* meanings of dignity.

3.3 A useful taxonomy of dignity

Given that the term dignity can be conceptualised in such different ways there have been several attempts by scholars to produce taxonomies of its meanings and uses (Barroso 2012; Fyfe 2007; Meltzer Henry 2011; Jacobson 2009; Mattson and Clark 2011; Rao 2011). Some of these are based on wider reviews of literature (Mattson and Clark 2011; Jacobson 2009) while others focus on how dignity language is used by judges (Fyfe 2007; Meltzer Henry 2011; Rao 2011). Having considered all of these frameworks, I find Rao’s (2011) three concepts of dignity to be particularly helpful. I selected Rao’s taxonomy as a framework to conduct the discourse analysis because it is one of those that is grounded in an empirical study of jurisprudence and so reflects

how the term 'dignity' is actually used by judges, rather than solely reflecting theoretical or philosophical debates.

Rao creates her three concepts of dignity based on a close reading of caselaw, particularly that of the US Supreme Court, but also from the European Court of Human Rights and other national jurisdictions. She concludes that courts tend to use dignity in one of three main forms, which she labels as "intrinsic dignity", "dignity as substantive conceptions", and "dignity as recognition". While Rao's categories may not capture every possible way that dignity can be used (I question whether such a taxonomy is even possible) I found very quickly that her categorisations did reflect much of the content of the legal decisions and political discourses that I was analysing in my thesis. I believe that her work achieves a good balance between capturing the complexity of the term dignity while at the same time producing a clear and streamlined taxonomy.⁶⁵

3.3.1 Intrinsic dignity

The first form of dignity Rao identifies is what she calls "intrinsic dignity", which is the "most universal and open understanding of the term" (ibid.: 196). Intrinsic dignity is the type of dignity invoked in international human rights texts and is said to exist in every human being "merely by virtue of a person's humanity" (ibid.: 187). It is a dignity, therefore, that is unconditional and that emphasises human equality. Unlike the universal ideas of dignity advanced by the likes of Cicero or Pico della Mirandola, which imply that humans should exercise their capacities in a particular way, Rao's concept of intrinsic dignity focuses purely on "human potential - not the exercise of such potential" (ibid.). Of course, there are various theories on what grounds this

⁶⁵ For example, Meltzer Henry (2011) has also produced a taxonomy of dignity based on the jurisprudence of the US Supreme Court but this stretched to five categories, one of which ("institutional status as dignity") was not of particular relevance to my thesis.

“intrinsic dignity” and Rao notes that there is “no agreement about what precisely constitutes our dignity” (ibid.: 199). This lack of agreement on the source of human dignity has led some to challenge the entire notion that humans possess such an inherent, inalienable quality called dignity.

- Source of intrinsic dignity

Bagaric and Allen (2006) critique the concept of dignity on a number of fronts, but perhaps the most fundamental one of these is the fact that the source of an intrinsic human dignity is so unclear; if dignity is an inherent human trait, they want to know where this comes from and what grounds it. *Dignitas* is hierarchical, unequal and far from universal (Barroso 2012); a focus on autonomy and rationality is heavily criticised on the basis that humans possess rational capabilities in varying degrees (e.g. cognitive disability) (Brennan and Lo 2007; Dupré 2009; Neal 2012b; O’Mahony 2012a); and theological arguments hold limited appeal in the secular liberal democracies of the West (Bagaric and Allen 2006). It is argued, therefore, that there is, in fact, no solid philosophical basis for the ontological claim of the equal and intrinsic worth and dignity of all humans (ibid.). Bagaric and Allen suggest that we are being asked simply to “assume” that people have dignity (ibid.: 266) – a situation that can, in turn, lead to the accusation being made that dignity as a concept is “free-floating” (Brennan and Lo 2007: 53) and has “no firm anchoring within a secular framework” (ibid.: 58).

However, while it may be the case that there is no obvious or agreed ‘source’ of human dignity, I do not share Bagaric and Allen’s concern that this represents a philosophical shortcoming - one that, unless ‘rectified’, poses a risk to the usefulness or very validity of the concept. This is because any ‘identification’ of the source or nature of human dignity will *always* be a human construction rather than an uncovering of truth. There are already a number of existing theories on the source of human dignity – the Judaeo-

Christian concept of *imago dei* being one of them, the human capacity to reason being another. If Bagaric and Allen are dissatisfied with the existing theories on dignity's source, then the only option available is for them to propose a new or alternative construction. The attempt to uncover the true grounding of dignity or to discard 'incorrect' or 'misleading' definitions is an impossible endeavour. Rao quotes Francis Fukuyama, who proposes that dignity cannot be reduced to any particular human attribute or quality. He notes that dignity:

cannot be reduced to the possession of moral choice, or reason, or language, or sociability, or sentience, or emotions, or consciousness, or any other quality that has been put forth as a ground for human dignity. It is all of these qualities coming together in a human whole that make up Factor X. (Fukuyama 2002: 171 as quoted in Rao 2011: 199)

Fukuyama's perspective speaks more strongly to me in its rejection of any certainty with regard to the source of human dignity. There are several ways in which we can choose to construct an explanation for the source of the notion that human beings have dignity. I will not, in this thesis, interrogate the 'truthfulness' of the various claims with regard to the source of dignity but will instead focus more on how these different versions of dignity, regardless of their purported source, shape understandings of commercial sex and the legal and political responses to the issue.

- Intrinsic dignity and rights

Rao identifies a connection between intrinsic dignity and individual rights in international human rights law and national constitutions; and especially in the jurisprudence of the US Supreme Court, she argues, there is a strong association between intrinsic dignity and 'negative liberty'. 'Negative liberty' effectively refers to

“individual autonomy and freedom from state interference” (Rao 2011: 203).

Crucially, of course, this negative liberty is “pluralistic” in the sense that “it does not pick and choose among good ways of living, but rather leaves each individual to pursue his own good” (ibid.: 205).

McCrudden identifies a similar connection between intrinsic dignity and ‘negative liberty’ in his expansive study on the judicial interpretation of human dignity.

McCrudden articulates a ‘minimum core’ to the concept of human dignity, which he contends is consistently articulated by “all those who include it in human rights texts” (2008: 679).⁶⁶ McCrudden identifies the minimum core as having three key elements.

The first is that “every human being possesses an intrinsic worth, merely by being human”, which McCrudden calls “the ontological claim” (ibid.). The second is the “relational claim”, which is that this intrinsic worth should be recognised and respected by others, which in turn leads to the prohibition of (or positive duty to ensure) certain forms of treatment (ibid.). The third element, which he notes is an extension of the relational claim and which appears particularly in post-war human rights texts, McCrudden calls “the limited state claim”; the logic of this claim is that “recognizing the intrinsic worth of the individual required that the state should be seen to exist for the sake of the individual human being, and not vice versa” (ibid.). It is a combination of McCrudden’s second and third elements that equate to Rao’s ‘negative liberty’, in the sense that the state is invested with the obligation to respect individual autonomy based on human dignity.

⁶⁶ Beyond identifying this minimum core “at a very high level of generality”, McCrudden acknowledges, based on his analysis of jurisprudence, that there is no further consensus on how the concept of ‘human dignity’ is used/interpreted across jurisdictions or “how any of the three claims that make up the minimum core are best understood” (2008: 679 – 680).

While Rao argues that the connection between dignity and rights often leads, particularly in the US, to an assertion of human autonomy and freedom from state interference, it is important to note that a reliance on intrinsic dignity can also lead, as McCrudden asserts, to the prohibition of certain forms of treatment. The Universal Declaration of Human Rights (and many other human rights treaties) prohibit, for example, torture, inhuman and degrading treatment (Article 5), as well as all forms of slavery (Article 4). These provisions, I would argue, are grounded in a respect for intrinsic dignity, which demonstrates that this particular conception is used not just to promote autonomy based rights but also to enforce prohibitions as a way to prevent harms. This is an important insight that, I will show in Chapters 5 and 6, underpins many of the dignity-based claims made by activists, whether they are campaigning for the abolition of prostitution or for the decriminalisation of sex work.

While there is a general international consensus that torture and slavery are activities that should be prohibited based on human dignity, various other human activities - sex work being one example - instead provoke more complex reactions to the question of their relationship to dignity. Often, in such cases, dignity language is used in an effort to justify prohibitions even though there is no consensus with regard to the morality or harm caused by the practices in question. When dignity is used in this way, it takes the form of a 'substantive conception', according to Rao.

3.3.2 Substantive conceptions

"Substantive conceptions of dignity", Rao's second category, does, in contrast to intrinsic dignity, indeed "pick and choose among good ways of living", as it is primarily concerned with "enforcing various substantive values" (2011: 187). Rao goes on to explain:

Unlike intrinsic dignity, substantive forms of dignity require *living in a certain way*. Dignity may require behaving, for example, with self-control, courage, or modesty. This dignity embodies a particular view of what constitutes the good life for man, what makes human life flourish for the individual as well as the community (ibid.; emphasis in the original)

In this sense, dignity is no longer universal but becomes dependent on some kind of external measure leading to the situation where “a person can lack dignity when he fails to exhibit certain behaviors or qualities” (ibid.: 222). These “substantive conceptions” of dignity are “contingent and evolve based on social values and judgements”, judgements that are concerned with how to “preserve the dignity of the community and individuals within the community” (ibid.: 223). Rao refers to “bans against pornography or prostitution” as examples of substantive conceptions of dignity that “reflect community norms about appropriate behavior and morality” (ibid.). Crucially, it is important to remember that these substantive conceptions are “socially constructed and politically enforced, often against the desires of affected individuals” (ibid.: 222). The fact that these substantive conceptions can be politically enforced against the desire of individuals means that this form of dignity is often referred to as ‘dignity as coercion’ (ibid.). This echoes the findings of Hennette-Vauchez (2011) that some contemporary usages of dignity reflect the traditional rank-based and status-based conceptions of the past where dignity imposes obligations on the self; indeed, Rao notes that “some modern conceptions of dignity retain the evaluative and judgmental quality of traditional dignity” (2011: 224). Substantive conceptions of dignity often clash with the ‘negative liberty’ of intrinsic dignity and Rao suggests the following in respect of laws prohibiting prostitution that are justified on the grounds of dignity:

The issue here is not whether laws prohibiting prostitution or pornography may be desirable as social policy. Rather these examples demonstrate that the conception of dignity used to defend such policies is not that of human agency and freedom of choice, but rather represents a particular moral view of what dignity requires. These laws do not purport to maximize individual freedom, but instead regulate how individuals must behave in order to maintain dignity (and in the case of criminal prohibitions, to stay out of jail). (ibid.: 229)

This connects to Hennette-Vauchez's (2011) theory that when dignity is used to create obligation or impose restraint that what is being protected is the dignity of humanity as a new 'rank'. The individual human being is constrained by her duty to protect the dignity of humanity. Feldman (1999) argues that human dignity exists on three distinct levels - the dignity of the human species as a whole, the dignity of groups and the dignity of individuals. He suggests that when the dignity of humanity is at stake, this requires a wholly objective assessment of what will "protect the special status and integrity of the species" (ibid.: 684). This objective assessment is grounded in "social norms or expectations" (ibid.: 686), which creates the situation of legal paternalism, where "freedom is limited because it is thought to be good for people's dignity (objectively assessed), and dignity is deemed to be good for everyone, whether or not they share the State's model of dignity or want it imposed on them" (ibid.: 700).

- Dwarf-throwing: an example of a substantive conception

There are several examples from case law to demonstrate Feldman's point about legal paternalism and which are clear examples of the use of dignity as substantive conceptions. Perhaps the most famous and most frequently referenced in the dignity

literature is the *Wackenheim*⁶⁷ case. Wackenheim was a dwarf who was employed, beginning in 1991, to take part in contests where he allowed himself to be thrown short distances by competitors onto an airbed. The Conseil d'Etat in France upheld a ban on the practice on the basis that it was an affront to human dignity,⁶⁸ despite Wackenheim having enthusiastically consented to participate in such activities. Wackenheim appealed to the UN Human Rights Committee over the state ban on dwarf-throwing, arguing that "banning him from working has had an adverse effect on his life and represents an affront to his dignity".⁶⁹ He further argued that "there is no work for dwarves in France and that his job does not constitute an affront to human dignity since dignity consists in having a job".⁷⁰

Wackenheim clearly felt that participating in dwarf-throwing contests had no negative impact on his dignity and that, in fact, the ban on such activities caused more dignitary harm because he was no longer able to work. In this case, it can be argued that the individual's subjective sense of dignity is being overridden by the state's view on what is required to protect human dignity in the abstract. According to the decision of the Conseil d'Etat, the state has the power to ban activities that "undermine respect for human dignity".⁷¹ They conclude clearly that dwarf-throwing "by its very object...violates the dignity of the human person".⁷² The Conseil d'Etat uses the term 'dignité de la personne humaine', which can be translated as 'human dignity' or 'the dignity of the human person'; in either translation, dignity is being referred to in its abstract. The dwarf-throwing was thus not banned because it violated the dignity of

⁶⁷ Manuel Wackenheim v. France, Communication No 854/1999, U.N Human Rights Committee (U.N. Doc. CCPR/C/75/D/854/1999 (2002)), 26 July 2002.

⁶⁸ Wackenheim v France, Conseil d'Etat [CE Ass], 27 October 1995, Rec. Lebon 372.

⁶⁹ Supra note 67 at para 3

⁷⁰ Ibid.

⁷¹ Supra note 68. Author's own translation, original French is "atteinte au respect de la dignité de la personne humaine."

⁷² Supra note 68. Author's own translation, original French is "par son objet même...porte atteinte à la dignité de la personne humaine."

Wackenheim himself but because of its impact on the wider notion of the dignity of humanity.

There are often parallels drawn in the literature between the line of reasoning in the dwarf-throwing case and cases related to prostitution - in particular, the *Jordan* case from South Africa, which has received the most academic comment. I will be exploring this case in detail in Chapter 4, along with a range of other court decisions that discussed the impact of sex work on human dignity. As part of this analysis, I will discuss to what extent the judges' use of dignity reflects 'substantive conceptions' and whether they are primarily concerned with the dignity of humanity in the abstract and/or the dignity of the individuals themselves who sell sex.

While substantive conceptions of dignity may override an individual's autonomy and sense of personal dignity in favour of the enforcing of a value-driven collective dignity, the final category in Rao's taxonomy, dignity as recognition, shifts the focus back to a very personal and subjective sense of dignity.

3.3.3 Dignity as recognition

The final of Rao's categories is "dignity as recognition", which centres on the idea "that individuals are constituted by their communities" and that "their self-conception depends on their relationship to the greater social whole" (2011: 243). Claims for dignity in this sense are focused on "*respect* from the social and political community" for each person's uniqueness, including their "lifestyle and personal choices" (ibid.: 243 - 244; emphasis in the original). Dignity as recognition, therefore, goes a step further than the claim for non-interference based on intrinsic dignity, as not only must one be given the freedom to make one's own decisions but these must be respected by the community. In other words, "rather than focus on outward freedom", dignity as

recognition “focuses on inward development” (ibid.: 245). As Rao points out, “dignity as recognition focuses on how a community values and validates the unique personality and choices of individuals and groups within society” (ibid.: 244). This recognition must come not just from other members of the community but “also from the state, as the embodiment of the community’s legal and social norms” (ibid.: 249).

Rao argues that, like substantive conceptions, “the dignity of recognition will depend on evolving social norms”; one crucial difference, however, is that while substantive conceptions tend to be driven by community norms, claims for dignity as recognition are advanced by “individuals or groups who claim to be unrecognized or mis-recognized” (ibid.: 249). Rao notes that claims for dignity as recognition and intrinsic dignity are often associated with each other, or even conflated, in cases before the US Supreme Court. I would argue this extends beyond US constitutional law to encompass a range of different political and legal claims, including many of the ones that will be addressed later in this thesis with regard to sex work/prostitution. She notes that in many situations “the harm of stigma is a consequence of a more fundamental deprivation of equality and individual rights” (ibid.: 267). Examples are given, including the *Loving*⁷³ case, concerning Virginia’s miscegenation law, and the *Lawrence*⁷⁴ case, which struck down Texas’s laws prohibiting anal sex between men, and Rao observes that in these cases “the Court easily moves between securing individual liberty rights to concern for how a person might *feel* when denied these rights by the state” (ibid.; emphasis in the original).⁷⁵ These examples are contrasted to other instances of misrecognition, where the harm of stigma does not flow from other rights violations but stands alone. In these instances, the “feelings of being stigmatized and

⁷³ *Loving v. Virginia*, 388 U.S. 1 (1967).

⁷⁴ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁷⁵ A more recent example of the use of ‘dignity as recognition’ in the caselaw of the US Supreme Court can be found in Justice Kennedy’s judgment in the case of *Obergefell v. Hodges* 135 S. Ct. 2584 (2015), in which the court found state bans on same sex marriage to be unconstitutional.

marginalized deserve legal, even constitutional protection”, in and of themselves (ibid.). The regulation of hate speech is given, by Rao, as an example, of a law that can be justified purely using dignity as recognition (ibid.).

Rao suggests that intrinsic dignity and dignity as recognition “emphasize different aspects of personhood” (2011: 267). In the first instance, intrinsic dignity focuses on human autonomy, with people having the ability to make choices about the direction of their lives; dignity as recognition, meanwhile, focuses not on the ability to choose but on having one’s choices validated and respected by others (ibid.: 268). In this sense, dignity as recognition is “subjective and depends on the perception of individuals and their feelings - therefore the requirements of such dignity will be personal, shifting, and contingent” (ibid.). Rao finds dignity as recognition claims, in isolation, problematic from a US constitutional law perspective, because it “establishes an individualized standard for what constitutes constitutional injury”, whereas US constitutional law attempts to establish “generalizable rules that apply to all individuals” (ibid.). Despite Rao’s problematising of dignity as recognition, it encapsulates a crucial component of the entire notion of human dignity, which is its relational character.

- A relational dignity

This relational aspect of dignity is prevalent in the literature and identified as a key element within the concept. McCrudden’s “minimum core”, for example, contains within it the “relational claim”, in which each person’s inner worth “should be recognized and respected by others” (2008: 679). Jacobson, from her review of dignity literature, categorises ‘social dignity’ as a form of dignity that “is generated in the interactions between and amongst individuals, collectives, and societies” (2009: 3). She classifies ‘social dignity’ into two further sub-categories: ‘dignity-of-self’ is focused

on individual feelings of self-confidence and self-worth, while ‘dignity-in-relation’ describes “the ways in which respect and worth are conveyed through individual and collective behavior” (ibid.).

Even Pinker, who is highly critical of dignity as an ethical principle, identifies this relational element within the concept. Despite his certainty that dignity is not a useful or workable principle in his area of interest, bioethics, he does accept that it warrants some “moral consideration” because it is a “phenomenon of human perception” (2008):

Just as converging lines in a drawing are a cue for the perception of depth, and differences in loudness between the two ears cue us to the position of a sound, certain features in another human being trigger ascriptions of worth. These features include signs of composure, cleanliness, maturity, attractiveness, and control of the body. The perception of dignity in turn elicits a response in the perceiver. Just as the smell of baking bread triggers a desire to eat it, and the sight of a baby’s face triggers a desire to protect it, the appearance of dignity triggers a desire to esteem and respect the dignified person. (ibid.)

Pinker suggests that this perceptual aspect of human dignity that “causes one person to respect the rights and interests of another” means that it cannot be ignored because the perception of “reductions in dignity” can “set off a spiral of dehumanization and mistreatment” (ibid.). This identification of the dangers of dehumanisation through perceiving “reductions in dignity” of a particular group of people is an important theme for this thesis. In my analysis, I will be exploring how the different examples of ‘dignity talk’ used in sex work discourse may impact on the cultural representation of sex workers and whether this helps to reinforce or challenge pre-existing stigmas and dehumanising perceptions. The relational aspect of dignity will, therefore, be at the

forefront of this analysis, with attention paid to how these discourses may shape the perception of sex workers' dignity by the wider community.

Rorty reminds us how important it is to remain alert to the prescriptions of humanness that are applied (or denied) to certain individuals and groups, noting that “everything turns on who counts as a fellow human being” (2011: 120). Moral philosophy, has according to Rorty, “concentrated on the rather rare figure of the psychopath” but “neglected the much more common case: the person whose treatment of a rather narrow range of featherless bipeds is morally impeccable, but, who remains indifferent to the suffering of those outside this range, the ones he or she thinks of as pseudohumans” (ibid.: 119-120). I will argue later in the thesis that ascriptions of dignity are one of the key ways in which people are perceived, in our post-war international-rights-based order, as human beings. It follows then that being perceived as lacking in dignity may lead to the development or reinforcing of dehumanising attitudes. This conceptual/rhetorical link between dignity and humanness is not a new phenomenon. Agamben describes how the Nazis used the term *entwürdigten*, meaning “to deprive of dignity”, to refer to the legal status of Jews after the passage of racial laws in which ‘the Jew’ became “a human being who has been deprived of all *Würde*, all dignity: he is merely human – and for this reason, non-human” (1999: 68). As Shershow notes, “dignity is the definitive characteristic of all human beings except for those judged not to *be* human” (2014: 61; emphasis in the original).

This connection, between ascriptions of dignity and perceptions of humanity, demonstrates, in my view, the importance of pursuing a study like this, which seeks to examine not just how ‘dignity talk’ is used in sex work discourses but how it may affect the cultural representation, and subsequently the lived experiences, of sex workers. The use of the concept of dignity in discourse is not just a rhetorical flourish or a political tool but, given its relational aspects and its close connection with perceptions

of humanness, may have serious consequences for those who are the subjects of the discourse. Before beginning the discourse analysis itself, I want to end this chapter by examining some of the critiques that are levelled towards dignity as a legal and ethical concept, which often suggest that dignity should be eschewed from legal and ethical life because of its woolly and elastic nature.

3.4 Responding to dignity's critics

There are a number of scholars who are highly critical of the concept of dignity as a legal and philosophical concept. It is lambasted as “useless” (Macklin 2003), “eminently malleable” (Feldman 1999: 698) and even “harmful” (Pinker 2008). The critiques of dignity, I would argue, fall into two broad yet related categories. While they are both founded on a concern for the lack of a settled definition of dignity, they have two different points of focus. The first critique I will label as the ‘philosophical objection’ and the second the ‘rule of law objection’.

3.4.1 The philosophical objection

Bagaric and Allen (2006) have a number of worries about dignity as a legal and ethical concept, including, as discussed above, the lack of clarity about the *source* of an intrinsic human dignity. This is aligned with their wider concern about dignity's indeterminacy in meaning, which they argue warrants significant attention, particularly because the concept's influence on human rights and constitutional law is so “pronounced” (ibid.: 263). They are especially focused in their critique on challenging the notion that dignity is the foundation for rights as international human rights law suggests. They discuss a range of the commonly cited and differing ideas/notions associated with the concept, including autonomy-based dignity, intrinsic dignity, and dignity as virtue. Acknowledging that none of the varying meanings given to dignity are

“manifestly incorrect” (ibid.: 264) and that the lack of a fixed and settled meaning is not a “knock down argument against the existence of the concept” (ibid.: 265), they still maintain that indeterminacy leads to the, for them fatalistic, inability to “prove (or disprove) the worth of such a concept” (ibid.: 265).

Bagaric and Allen are essentially saying that if we do not know what dignity *really* is or what it *really* means then the question is raised as to how we can properly evaluate it philosophically. The fact that dignity can be invoked by both sides in the same argument (which is very evident in the prostitution debate) is used as further illustration of the “empty, indeed unhelpful, nature of the concept” (ibid.: 266), with them concluding that “the victor in any debate involving dignity may simply be the side that yells the loudest or uses the most skilled polemicists” (ibid.: 267). Bagaric and Allen’s ultimate conclusion and request is that “dignity should be discarded as a potential foundation for rights claims unless, and until, its source, nature, relevance and meaning are determined” (ibid.: 269).

The attempt to ‘determine’ the source, nature, relevance and meaning of dignity will, however, always be doomed to fail in the sense that any fixing of meaning will always be partial and temporary, according to the tenets of Discourse Theory. This is evident when we look at the evolution of what dignity meant throughout history to how it is framed in human rights law today. Bagaric and Allen seem to be seeking for some kind of ‘truth’ about dignity, which even if it may exist, I would argue is always out of reach given our position as internal to a socially constructed world.

My aim in pursuing this study is not to conduct a philosophical enquiry into the ‘truth’ of dignity claims in the context of sex work but instead to interrogate the concept based on its productive effects. While I, too, want to investigate the usefulness and validity of dignity-based rights claims, at least in relation to sex work, I am not basing

my enquiry on the philosophical rigour or logical consistency of these claims because neither are required to ensure that a particular discourse achieves hegemonic status. That is not to say that matters of logic or philosophy have no influence on how discourses take hold but simply to acknowledge the “primacy of politics” (Howarth and Stavrakakis 2000: 9), as per Laclau and Mouffe’s theory, as discussed in Chapter 2. Spending time, like Bagaric and Allen suggest, on trying to uncover the ‘real’ source and meaning of dignity is, in my view, not a fruitful endeavour and instead the focus should be on examining exactly how, in its contradictions and complexities, dignity is actually used legally and politically.

3.4.2 The rule of law objection

While Bagaric and Allen are concerned about the philosophical rigour of the concept of dignity, others focus their critique on its usefulness as a specifically legal principle. O’Mahony, for example, concludes that dignity may fail to reach “basic rule of law standards” (2012b: 586) if it continues to be given different meanings by different people in legal settings. He calls for a more minimal reading of human dignity by human rights lawyers and judges, in line with its codification in international human rights law, which he labels as the “‘equal treatment and respect aspect’ of dignity” (2012a: 555). For him, this version of dignity has, at its core, three particular elements, which are that: every human being has an inherent and equal dignity simply by being human; this inherent dignity demands that certain human rights should be protected; and human rights should be enjoyed without discrimination because of inherent and equal human dignity (ibid.). O’Mahony thus appears to be essentially calling for dignity to be applied only within the parameters of Rao’s ‘intrinsic dignity’.

Moreover, O’Mahony is critical of usages of dignity by judges that seem to deviate from this minimal conception and particularly raises the example of judges referring to “life

without dignity or individuals being stripped of their dignity or living an undignified life” (ibid.: 563). He argues that this creates a “confusion” between the notion of inherent intrinsic dignity, which an individual cannot be deprived of or live without, and “the more common and every-day usage of the terms dignity and dignified which carry connotations of poise, stateliness, status and self-respect” (ibid.: 562).⁷⁶

Emily Kidd White, in a response to O’Mahony’s article, questions the need for such a minimalist legal conception of human dignity and, in fact, she argues that a “too stringent focus on the concept’s mooring will decrease, rather than increase...the concept’s utility in the field of human rights” (2012: 577). She maintains that dignity is not the only “cluster concept” that exists in law that invokes a “reticulum of ideas, principles, and relationships”, and she identifies “equality, privacy, and freedom” as other examples of concepts that “require a certain degree of flexibility” in how they are applied practically by lawyers and judges (ibid.: 580). For her, any minimalist conception of dignity, while it may satisfy O’Mahony’s ‘rule of law’ standards, ultimately becomes less useful in addressing complex issues of fact and law; this is because she is unable to see how “dignity considerations can be defined so as to render them outside of political questions about human vulnerability and nourishing” (ibid.: 582):

The point is that within human rights law, regardless of the care one takes to delimit the concept of human dignity, there should be space for sincere conflict about the law’s protection and promotion of human life...Any effort to regularize the concept of dignity’s use will not eliminate political and normative tensions arising in the case law. Human dignity as foundation, as the essence and heart of the human rights enterprise, is human dignity as

⁷⁶ O’Mahony is comfortable with the idea of “an attack on human dignity” but not the notion that a person can be “deprived” of their dignity (O’Mahony 2012a: 563).

phenomenological orientation. A claim to human dignity is a political and normative argument of a particular sort...O'Mahony's conceptual demands of dignity require it to sustain a level of high generality, which all but ensures its relative powerlessness. (ibid.: 584).

Neal (2012a) also defends the use of dignity in legal and ethical discourse as a workable legal principle. Using Wittgenstein's notions of 'language games' and 'meaning-in-use', she addresses the criticisms of writers like Bagaric and Allen, and O'Mahony. Neal quotes Wittgenstein's famous maxim: "the meaning of a word is its use in the language" (Wittgenstein 1976: para 43 as quoted in Neal 2012a: 110) to caution against attempts to reach a settled definition of dignity in the abstract. In order to understand the meaning given to words through their use in language, it is essential to look at the language game in which the word is being used. Language games refer to "any instance of language-use in which the participants are sharing a purpose or are 'playing' by shared rules" (Neal 2012a: 110). As such, Neal proposes that law be viewed as a series of "interlocking and overlapping language games" (ibid.), with, in her example, "international human rights law" and "healthcare law and ethics" being distinct legal language games, ones which may contain within them different concepts of dignity.

Neal heeds Wittgenstein's plea to "don't think, but look" (Wittgenstein 1976: para 66 as quoted in Neal 2012a: 112) in trying to uncover the meaning of a word:

We should not attempt to arrive at definitions by thinking about things in the abstract; rather we should be 'looking' – gathering examples of use-content and building from the bottom up, piece by piece, to arrive at an 'understanding' or *appreciation* of meaning. (Neal 2012a: 112; emphasis in the original).

Neal, echoing the point made by Kidd White, argues that a degree of subjectivity and even vagueness in the elucidation of important and significant legal concepts is nothing particularly unusual, giving examples such as “justice, fairness, reasonableness, mercy and compassion”, here noting that “we base a great deal on unscientific, contested concepts all the time” (ibid.: 117).

I agree with Neal and Kidd White that attempting to establish a fixed definition of dignity in the abstract is unhelpful. The attempt to arrive at such a definition cannot, according to Discourse Theory, be realised through deducing dignity’s ‘true’ meaning but, rather, would require a conscious decision to be made to prefer one definition over the other. This process of arriving at a more settled definition of dignity then becomes a political process, with varying parties having their own agendas and ideologies to support particular interpretations. Of course, that is how the battle over meaning is always fought, inside or outside of courtrooms, but it is important that this be acknowledged. Pinker (2008) sarcastically notes that “episodes of divine revelation seem to have decreased in recent millennia” and asks who is supposed to “formulate and interpret” humanity’s moral standards, including claims on human dignity. The answer to this question, according to political discourse theorists, is that the formulation and interpretation of moral standards happens, as it has always done, as part of a politically hegemonic process.

Rather than accepting the criticisms described above as fatal to dignity’s usefulness as a legal concept or analytical tool, I embrace the idea that dignity is a discursive construction and, like any other signifier, its meaning will always remain contingent. By abandoning the search for *the* ‘true’ dignity, space is opened up to explore how different social actors, with differing agendas, construct its meaning. This thesis, therefore, responds to Neal’s suggestion that we should be “cataloguing examples of practical usage” of dignity in specific contexts and “using this to build a concept from

the bottom up” (Neal 2012a: 117). In this way, my thesis is not concerned with defining dignity but looking at how it is used in legal and political discourses on sex work, as a way to build empirical evidence of the concept’s uses and effects.

3.5 Conclusion

In this chapter, I have explored the different ways in which dignity has been conceptualised throughout the history of Western thought and have examined how this may continue to affect its use in contemporary rights-based law and discourse. The aim of this chapter has been to demonstrate the contingency of dignity’s meaning in a general sense, before narrowing the study down to explore the different ways in which dignity is used, and the different meanings assigned to the concept, in discourses on commercial sex specifically. Having noted that one of the reasons why dignity was chosen as the founding principle of the international human rights order was because of its conceptual malleability, it is no surprise then to discover that lawyers, judges, and activists engage with the concept in a range of different ways to support a variety of different legal and political positions.

In order to facilitate an analysis of exactly how these different legal and political actors engage with dignity in discourse related to sex work and prostitution, I have set out Rao’s taxonomy on dignity. This provides a framework through which to categorise and analyse the range of different ways in which dignity is used in sex work discourses. The following chapter begins this analysis, with a study of jurisprudence in which the dignity of commercial sex was explored by judges from a variety of different jurisdictions.

Chapter 4 - 'Dignity talk' in judicial decisions on commercial sex

Chapter overview

This chapter examines caselaw in which judges have used the concept of dignity as part of their deliberations on cases related to commercial sex. It examines the different ways in which 'dignity' is deployed in jurisprudence, doing so in accordance with Rao's typology, and showing that judges across jurisdictions invoke dignity in a variety of different ways, often times using multiple conceptions of dignity in the one decision. The caselaw, from a diverse range of countries, is broadly divided into two categories: those that find prostitution incompatible with dignity, and those that use the concept to extend rights to people who sell sex. Significantly, I note that cases that make findings on incompatibility tend to use 'substantive conceptions' of dignity, while those that advance rights do so most often by relying on 'intrinsic dignity' - although there is crossover between these varying conceptions in some of the cases. Against this backdrop, I examine whose dignity the judges are concerned about, what social values and norms are emphasised in their decisions, and how the practice of commercial sex is framed through their use of 'dignity talk'. I focus, in particular, on how the varying uses of dignity evident in the caselaw leads to quite different legal outcomes for sex workers.

4.1 Introduction

Constitutional courts usually refer to dignity without elaborating its essential meaning and therefore overlook the very different meanings that dignity can have even within the context of particular legal disputes. In a single opinion a court may rely on multiple meanings of dignity, which sometimes will point in different directions or emphasize very different values. (Rao 2011: 189)

Rao's suggestion that courts may rely on several different versions of dignity, even in a single decision, is borne out when analysing the jurisprudence in which judges have used dignity language in cases related to commercial sex. This chapter presents an analysis of these cases, which come from a diverse group of countries, including South Africa, India, New Zealand, Canada, South Korea, Colombia and Israel. As noted in Chapter 2, this analysis of caselaw is based on the text of the full judgments, where these were available in English; otherwise, discussion is limited to the information available in news reports, partial translations and English language summaries. Each case will be discussed in detail, paying particular attention to the version of human dignity deployed by the court, in line with Rao's typology as set out in Chapter 3.

There are several different types of cases in which dignity and commercial sex have been considered together. The *Jordan*⁷⁷ case from South Africa was a *constitutional challenge to the country's prostitution laws*. The same can be said of the Canadian cases (the *Prostitution Reference*⁷⁸ case and the *Bedford*⁷⁹ case), as well as the South Korean case, which was brought by a sex worker named Kim Jeong-Mi (I will refer to the South Korean case as the *Kim Jeong-Mi*⁸⁰ case). All of these challenges were ultimately heard by their nations' highest supreme or constitutional courts. The *Budhadev Karmaskar*⁸¹ case, was also heard by a Supreme Court, this time in India, but rather than being a constitutional challenge, this case originated as a criminal appeal taken by a man who had been convicted of the brutal murder of a sex worker in Kolkata. The appellant's appeal was dismissed on the 14th February 2011 and the

⁷⁷ S v Jordan and others [2002] ZACC 22.

⁷⁸ Reference re ss. 193 & 195.1(1)(c) of Criminal Code (Canada), (the Prostitution Reference), [1990] 1 S.C.R. 1123.

⁷⁹ Canada (Attorney General) v. Bedford [2013] 3 SCR 1101; Canada (Attorney General) v. Bedford 2012 ONCA 186; Bedford v. Canada, 2010 ONSC 4264.

⁸⁰ Case on the Punishment of Commercial Sex Acts, Case No. 2013Hun-Ka2, available at: <http://english.court.go.kr/cckhome/eng/decisions/majordecisions/majorDetail.do>.

⁸¹ Budhadev Karmaskar v State of West Bengal [2011] 2 S.C.R. 925; [2011] 9 S.C.R. 680; [2011] 10 S.C.R. 577; [2011] 11 S.C.R. 397; [2012] 7 S.C.R. 881.

Supreme Court converted the case *suo moto* (on its own motion) into a public interest litigation on the issue of the “rehabilitation of sex workers”.⁸² This case is unique amongst the others examined in this chapter, as it was not pursued directly by a sex worker claimant/plaintiff.

Meanwhile, the four other cases studied in this chapter were related to *sex workers’ attempts to enforce their labour rights, or secure a safe workplace*. The *Montgomery*⁸³ case from New Zealand was heard by the New Zealand Human Rights Tribunal and related to a sex worker’s claim for sexual harassment against a brothel manager; the *Kylie*⁸⁴ case from South Africa was an unfair dismissal claim taken by a sex worker, which reached the Labour Appeals Court; and the Colombian case, known as *T-629-10*⁸⁵, was pursued by a sex worker who was dismissed from her job after becoming pregnant, and it reached Colombia’s Constitutional Court. The final case, from Israel (the names of the parties are not known so I will refer to this as the *Israeli* case), was heard by a first-instance court in Tel Aviv, where a group of sex workers challenged a closure order imposed on the brothel where they worked (Pulwer 2016). Fuller factual accounts of all the cases will be given in the analysis below.

The caselaw considered in this chapter can be divided into two distinct categories. The first category of decision is where the court makes a finding that *prostitution is incompatible with the concept of dignity*. This applies to the *Jordan*, *Budhadev Karmaskar*, *Kim Jeong-Mi*, and the *Prostitution Reference* cases. Within this category, there are some decisions - the *Jordan* case from South Africa being one example - in which this finding is made categorically, and others where the court’s pronouncements

⁸² *Budhadev Karmaskar v. State of West Bengal* [2011] 2 S.C.R. 925 (Order of 14th February 2011) at 930

⁸³ *DML v Montgomery and M&T Enterprises Ltd* 2014 NZHRRT 6.

⁸⁴ *Kylie’ v CCMA and others* 2010 (4) SA 383 (LAC).

⁸⁵ Case T-629-10, full text in Spanish available on the website of the Corte Constitucional of Colombia, <http://www.corteconstitucional.gov.co/relatoria/2010/t%2D629%2D10.htm>. See Women’s Link Worldwide 2010 for English language summary.

are somewhat contradictory and/or where there are dissenting opinions.

Nevertheless, I will argue that these cases tend to rely (although not exclusively) on a conception of dignity most closely aligned with Rao's categorisation of 'substantive conceptions'. The second set of cases are those in which the courts have *recognised sex workers' labour rights* (the *Montgomery*, *T-629-10* and *Kylie* cases), including the right to a safe, indoor, working premises (the *Israeli* case). I will argue that the judges in these cases tend to use a combination of 'intrinsic dignity' and 'dignity as recognition' to justify their decisions, with very limited use of 'substantive conceptions'. The *Bedford* decision stands alone, as the Canadian courts⁸⁶ did not find prostitution to be incompatible with dignity nor did they use the concept of dignity to advance sex workers' labour rights. Instead, dignity was invoked by the government lawyers in this case, in support of the criminalisation of prostitution, and I explore how this was deployed as well as the various courts' response to it.

The caselaw analysis that follows will provide a cogent example of the tensions within the conceptual framework of dignity, identified in the previous chapter, as promoting a range of different values, from inherent human worth to communitarian social norms. Exploring the caselaw using Rao's typology highlights the divergent ways in which courts can interpret the concept of dignity and how applying these different versions of dignity to the context of commercial sex can lead to quite different legal outcomes for sex workers. In this chapter, I will also ask *whose* dignity is being considered in the different cases and how this affects the outcome. I will analyse the social norms and values that are reinforced through the dignity-related findings in the various judgments, and how the practice of commercial sex is framed by judges, depending on *how* they use the concept of dignity.

⁸⁶ The *Bedford* case originated in the Ontario Superior Court of Justice, and was later appealed to the Ontario Court of Appeal and, ultimately, heard by the Canadian Supreme Court. I consider all three decisions in my analysis.

4.2 Substantive conceptions: prostitution is incompatible with dignity

As Rao says, the use of “substantive conceptions” of dignity is primarily concerned with “enforcing various substantive values” (Rao 2011: 187), which are “contingent and evolve based on social values and judgements” (ibid.: 223). The courts, which reach the conclusion that prostitution is incompatible with human dignity, I will argue, do so by relying on particular substantive values about human sexuality and intimacy. The *Jordan* case, decided in 2002, is one of the earliest cases that, in this fashion, reached a finding that prostitution is incompatible with human dignity.

4.2.1 *The Jordan case*

There were three appellants in the *Jordan*⁸⁷ case who had all been convicted of prostitution-related offences—a brothel owner, an employee of the brothel (receptionist), and a sex worker who provided a “pelvic massage”⁸⁸ to an undercover police officer, presumably immediately before she was arrested. The appellants argued that the criminalisation of prostitution breached a number of their rights guaranteed under the constitution, including their rights to privacy, dignity and gender equality. The Constitutional Court split (six/five) on the issue of gender equality, with the majority finding that South Africa’s prostitution law was gender neutral because it “punishes both female and male prostitutes”⁸⁹ and that “the stigma that attaches to prostitutes attaches to them not by virtue of their gender, but by virtue of the conduct they engage in”.⁹⁰ The minority disagreed and, in an opinion written by Justices O’Regan and Sachs, held that the effects of the prostitution law, where sex workers

⁸⁷ Supra note 77.

⁸⁸ Ibid. at para 34.

⁸⁹ Ibid. at para 25.

⁹⁰ Ibid. at para 16.

(predominantly female) are criminalised while purchasers (predominantly male) are not, indirectly discriminated against women. Here, the minority's opinion on gender equality is, thus, premised on exposing the moral double standard where "she [the sex worker] is fallen, [while] he [the purchaser] is at best virile, at worst weak";⁹¹ that the prostitution law perpetuates these double standards and "archetypal presuppositions about male and female behaviour"⁹² has, according to the minority, "the potential to impair the fundamental human dignity and personhood of women".⁹³

While the minority was of the view that South Africa's prostitution laws impaired the dignity of all women because of its reinforcing of a moral double standard in sexual relations, they did, however, decline to find that the law harmed the dignity of sex workers specifically. Contrary to the findings on gender equality, the Court was unanimous that the challenge on dignity grounds had to fail. The majority offered no reasons of their own for the findings on dignity and simply recorded their agreement with Justices O'Regan and Sachs in their handling of the matter.⁹⁴ Notably, the minority declared that "to the extent that the dignity of prostitutes has been diminished, the diminution arises from the character of the prostitution itself".⁹⁵ They also acknowledged that sex workers are "social outcasts"⁹⁶ and that "by using their bodies as commodities in the marketplace, they undermine their status and become vulnerable".⁹⁷ Using one's body as a commodity, they claimed, is to "devalue" the "fundamental dignity of the human body", which is something the Constitution of South Africa aims to protect.⁹⁸ The *Jordan* case did not go so far, however, as to suggest that sex workers *lose* their human dignity by engaging in commercial sex,

⁹¹ Ibid. at para 65.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid. at para 1.

⁹⁵ Ibid. at para 74.

⁹⁶ Ibid. at para 66.

⁹⁷ Ibid.

⁹⁸ Ibid. at para 74.

making it clear that prostitutes must be “treated with respect by law enforcement officers”⁹⁹ and “with dignity by their customers”.¹⁰⁰

The *Jordan* case is criticised by some South African scholars because of its use of ‘substantive conceptions’ of dignity and its consequent failure to apply an understanding of dignity in line with the country’s constitution, which proclaims in Article 10 that “everyone has inherent dignity”. Barrett, for example, argues that the Court specifically relied on a conception of human dignity more closely aligned with *dignitas*, in which factors such as “behaviour, status, or culpability” determine worth and value rather than a universal human dignity that is inherent and inalienable (2005: 539). Meyerson agrees, noting that the judgment elucidates an understanding of dignity “more concerned with conduct which can be described as ‘beneath one’s dignity’” (2004: 150).

As Rao, notes, however, courts often rely on multiple conceptions of dignity in the same decision; and, while it can be fairly claimed that Justices O’Regan and Sachs do deploy ‘substantive conceptions’ in their finding that prostitution violates dignity, I would argue that they then switch to a different version of dignity in claiming that sex workers must be “treated with respect by law enforcement officers”¹⁰¹ and “with dignity by their customers”¹⁰² -alluding in this to a recognition of ‘intrinsic dignity’. The juxtaposition of these pronouncements, alongside the declaration that “the dignity of prostitutes is diminished by their engaging in commercial sex work”,¹⁰³ highlights the tensions discussed in Chapter 3 between ‘intrinsic dignity’ and ‘substantive conceptions’ of dignity. Sex workers, according to the Court in the *Jordan* case, are at

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

once ‘undignified’ by their engaging in commercial sex but at the same time worthy of being treated with dignity by the police and their customers. This is an example of what Shershow describes as dignity’s “strange relation of calculable and incalculable value and worth” (2014: 34).

The finding that prostitution is incompatible with dignity is premised on the particular ways in which Justices O’Regan and Sachs frame the commercial sexual encounter. Their view that “the dignity of prostitutes is diminished by their engaging in commercial sex work”¹⁰⁴ is, I would argue, predicated on a particular moral and social view of the nature of prostitution, which is, of course, historically and culturally contingent. In the *Jordan* case, prostitution is characterised as a practice that denigrates a relational human sexuality.

- Sexual norms in the *Jordan* case

One effect of ‘dignity talk’ in the *Jordan* case is the reification of a certain view of human sexuality that situates the sexual act as a practice that should transcend sensual bodily pleasure and be grounded in a deeper emotional connection based on love. In the *Jordan* case, it is the fact that commercial sex is “indiscriminate and loveless”¹⁰⁵ that appears to make it incompatible with human dignity; indeed, it is noted that the sex worker “is not nurturing relationships or taking life-affirming decisions about birth, marriage or family”, things which are worthy of constitutional protection - instead, “she is making money”.¹⁰⁶ It is further noted by Justices O’Regan and Sachs that “the sex worker empties the sexual act of much of its private and intimate character”.¹⁰⁷ The

¹⁰⁴ Ibid.

¹⁰⁵ Ibid. at para 83.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

vision of human sexuality that is constructed in the *Jordan* case has been described as “a very Victorian morality” (Bonthuys 2006: 400). The depiction, in particular, of female sexuality creates a good woman/bad woman (Madonna/Whore) dichotomy where expressions of female sexuality within the confines of an “intimate and meaningful human relationship”¹⁰⁸ are ‘dignified’, in contrast to commercial sex acts, which are “indiscriminate and for reward”.¹⁰⁹

It is my argument that the signifier ‘dignity’ is a key rhetorical device in de-emphasising (even denigrating) human corporeality, both within and beyond the realm of sexuality. That a ‘dignified’ human being is one that transcends the body is consistent across dignity’s varying, historical interpretations. *Dignitas* is concerned with external social function and role; Christianity’s notion of human dignity rests on the likeness of human beings to God, a being without body; and Kant’s philosophy is grounded in the cerebral quality of rationality. In its colloquial usage, we often think of ‘dignified’ behaviour as behaviour that is restrained and where our animal bodies and raw emotions are tamed and controlled. Even in human rights law itself, Oliver notes that the ‘human rights subject’ is described “in the most abstract terms, as ‘equal in rights and dignity’ and ‘endowed with reason and conscience’, but without a single reference to corporeality” (2011: 94–95). The human is signified, in human rights law, therefore, as fundamentally “disembodied” (ibid.: 94).

Given dignity’s uneasy relationship with the body, it is perhaps unsurprising that, in its decision, the South African Constitutional Court associates ‘dignified’ sexual interaction with relational and emotional intimacy. And this tendency to associate dignified sexuality with non-physical forms of intimacy is not unique to the caselaw on commercial sex but is also evident in a decision from the same court on the

¹⁰⁸ Ibid. at para 79.

¹⁰⁹ Ibid. at para 83.

criminalisation of male sodomy.

- Sexual norms beyond the *Jordan* case

In the South African case of *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others*¹¹⁰ (the *National Coalition* case), the criminalisation of anal sex between men was declared unconstitutional, partly on dignity grounds. While the outcome of this case was undoubtedly progressive, here the Court distances itself from talking about or considering anal sex as a sexual act, situating the criminalisation of sodomy within wider gay identity:

There can be no doubt that the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity...The harm caused by the provision can, and often does, affect his ability to achieve self-identification and self-fulfillment.¹¹¹

Fritz notes that this focus on identity “left little space for the consideration of sex on its own terms”, with Justice Sachs having claimed in the *National Coalition* case that “[o]nly in the most technical sense is this a case about who may penetrate whom where” (Fritz 2004: 233, quoting Sachs at para 107 in the *National Coalition* case). What emerges when looking at this decision, together with the *Jordan* case, is “a very sanitised, pastoral picture of sex” (Fritz 2004: 235), with the term dignity acting as a key rhetorical device in sanitising sex from its “messiness, complexity, its uneasy play with danger, its excess and pleasure for pleasure’s sake” (*ibid.*). The effect of ‘dignity talk’ in judicial decisions concerning sexuality and sexual expression is the reproduction and

¹¹⁰ [1998] ZACC 15.

¹¹¹ *Ibid.* at paras 28 and 36.

reinforcing of a particular normative view on sex that situates human sexuality as a practice that goes beyond sensual, bodily pleasure to become (exclusively) grounded in deeper emotional connections.

Adler argues that the categorisation of some forms of sex as dignified and others as undignified is a “reaction against...the shame, terrors and anxieties associated with sex” (2008: 31), including the shame that attends to human beings around sexual desire (hunger/need for sex) and its connection to our animal bodies. As a way to discharge this shame and anxiety, Adler’s theory is that we create a hierarchy of forms of sexual conduct and “siphon off sex that occurs in the context of an enduring relation from its deprivileged counterpart” - the “deprivileged counterpart” being “utterly self-regarding, unrelated, animalistic sex” (*ibid.*: 38). In this context, Adler suggests that “one could conclude that by conceptually fastening dignity to relatedness, courts are effectively proposing that practitioners of anonymous, loveless, and commercial sex bear the shame and anxiety that attends to sex generally” (*ibid.*: 39).

By adopting a discourse which positions relational intimacy as ‘dignified’, the caselaw discussed above “inherently degrades sex that occurs outside of the normatively prized context” (*ibid.*: 31) and a hierarchy of sexual conduct is created, with commercial sex lying firmly at the bottom. It is my contention that this denigration of commercial sex as a practice has an impact on how those who undertake it are perceived, especially in light of the existing stigma that sex workers face. This will be considered in detail in Chapter 7. The South African Constitutional Court, however, is not the only judicial body to maintain such a connection between dignity and a human sexuality based on relatedness. Similar sexual norms are evident in the *Budhadev Karmaskar* case from India.

4.2.2 The *Budhadev Karmaskar* case

The *Budhadev Karmaskar*¹¹² case began as a criminal appeal taken by a man who had been convicted of the murder of a sex worker in Kolkata. The appellant's appeal was dismissed on the 14th February 2011 and the Supreme Court converted the case *suo moto* (on its own motion) into a public interest litigation on the issue of the "rehabilitation of sex workers".¹¹³ Here, the motivation for initiating this public interest litigation appears to have sprung from a concern for the welfare of sex workers, with the Court declaring that "prostitutes also have a right to live with dignity under Article 21 of the Constitution since they are also human beings".¹¹⁴ The (female) sex worker is depicted by the Court as a victim who sells sex not because "she enjoys it but because of poverty"¹¹⁵ and it is said that society should "have sympathy towards the sex workers and not look down upon them".¹¹⁶

Indeed, the Court's suggestion, in its initial Order, for improving the situation of sex workers in India was the creation of "schemes for rehabilitation" that included "giving technical/vocational training to sex workers"¹¹⁷ as an alternative to continuing in the "flesh trade".¹¹⁸ The Court constituted a panel consisting of senior advocates and representatives of various NGOs, including the Durbar Mahila Samanwaya Committee (DMSC)¹¹⁹, to investigate the issues, liaise with central and state governments, and

¹¹² *Supra* note 81.

¹¹³ *Supra* note 72.

¹¹⁴ *Ibid.* at 930.

¹¹⁵ *Ibid.* at 926.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* at 930.

¹¹⁸ [2011] 9 S.C.R. 680 (Order of 2 August 2011) at 685.

¹¹⁹ The DMSC is the world's largest sex worker rights organisation, based in Kolkata, with over 60,000 members. See www.durbar.org.

report back to the Court on how best to ensure the “rehabilitation of sex workers”.¹²⁰ In the court order that led to the formation of the Panel, the Justices of the Supreme Court directed its investigations into three main areas: “1. Prevention of trafficking, 2. Rehabilitation of sex workers who wish to leave sex work and 3. Conditions conducive for sex workers who wish to continue working as sex workers with dignity”.¹²¹

From this initial framing of the Panel’s terms of reference, it appears that the Supreme Court did not consider commercial sex to be inherently incompatible with human dignity, in contrast to the Court in the *Jordan* case; instead, it suggested that sex can be sold in dignified conditions. This element of the Panel’s instructions (I will refer to it as ‘the dignity term of reference’) is, however, thoroughly misleading because the Court is categorical at various points in subsequent orders that sex work is fundamentally incompatible with human dignity.¹²² For example, the Supreme Court, in its order dated 2nd August 2011, said this:

We are of the opinion that sex workers obviously cannot lead a life of dignity as long as they remain sex workers. Sex among human beings is different from sex among animals. Sex in humans has a cultural aspect to it also, and is not just a physical act. A sex worker who has to surrender her body to a man for money obviously is not leading a life of dignity. Ordinarily, no woman will willingly

¹²⁰ The panel was constituted by the Supreme Court in their order dated 19th July 2011. A copy of the order is not available on the Supreme Court website but contained in the final report of the Panel submitted to the court on 19th September 2016 (Indian Supreme Court Panel 2016: 123- 132).

¹²¹ See Indian Supreme Court Panel 2016: 131.

¹²² It is also worth noting that the dignity term of reference was amended after criticism from the Indian Government on the grounds that it implicitly recognised sex work as a legal occupation. The court did amend the wording to remove the direct suggestion that sex workers could continue to work in the sex trade with dignity. Instead, the amended term of reference more generally asked the Panel to advise on creating “conditions conducive for sex workers to live with dignity.” The vagueness of the modified term of reference and even though there was now an absence of any direct reference to sex workers continuing to sell sex while ‘living with dignity’ did not preclude the Panel from investigating and advising on this very option. In fact, the court said that this change in wording “will not in any way make any difference to the terms of reference.” See [2012] 7 S.C.R. 881 (Order of 26th July 2012) at 884.

surrender her body to a man unless she loves and respects him.¹²³

Furthermore, the Court considers it to be the case that if sex workers are “given proper technical training”, this will enable them to “earn their livelihood through their technical skills instead of by selling their bodies”, which will, in turn, “enable them to live a life of dignity”.¹²⁴

While the Indian Supreme Court’s choice of language appears more visceral than that of the South African Constitutional Court in the *Jordan* case, it can also be said that a similar use of dignity as ‘substantive conceptions’ is used, in which commercial sex is also characterised as a debasing physical act devoid of feeling. The Indian Court suggests, in this, that ‘dignified’ human sexuality should transcend the physical act, because “sex in humans has a cultural aspect to it”.¹²⁵ Like in the *Jordan* case, the Indian Supreme Court takes a particular, normative position on sexuality, tying a “life of dignity” to one in which sexual expression takes place within the context of a relationship based on love and respect. In their order of 24th August 2011, they report, uncritically, on the evidence given by a representative of the State of West Bengal, who described the permanent rehabilitation of some sex workers “in the sense that they have been given direct employment and are now married”.¹²⁶ Female sexuality is also here painted as wholly passive, as women “surrender” their bodies to their male partners, whether that is done in exchange for money or for love and respect. The Court sets up the very same good woman/bad woman dichotomy that is evident in the *Jordan* case, when it is said that sex workers “are not bad persons” but rather are

¹²³ [2011] 9 S.C.R. 680 (Order of 2 August 2011) at 685.

¹²⁴ *Ibid.* at 686.

¹²⁵ *Supra* note 123.

¹²⁶ [2011] 10 S.C.R. 577 (Order of 24 August 2011) at 585 - 586.

“unfortunate girls who have been forced to go into this flesh trade due to terrible poverty”.¹²⁷

While there is evidence of ‘substantive conceptions’ in the *Budhadev Karmaskar* case, it is also clear that the Indian Supreme Court simultaneously deploys here a version of ‘intrinsic dignity’ (in the fashion of the *Jordan* case). For example, their statement in their very first order, that “prostitutes also have a right to live with dignity under Article 21 of the Constitution since they are also human beings”,¹²⁸ appears to be a direct reference to an understanding of dignity as ‘intrinsic’. In this, the inherent, unconditional worth of sex workers is recognised. Further evidence of the court’s recognition of sex workers’ intrinsic dignity can also be found in their assertion that sex workers “have the same fundamental rights as others”.¹²⁹ While the court certainly views sex work as incompatible with dignity because it conflicts with social norms on ‘dignified’ sexuality, they also frame the practice of prostitution as a source of harm for sex workers. They note, for example, that sex workers “are often beaten, not given proper food or medical treatment, and made to do this degrading work”.¹³⁰ It could, therefore, be that, in the minds of the Supreme Court judges, the potential harms faced by sex workers *as individuals* presents a threat to dignity as much as the fact that commercial sex transgresses social values. The Canadian Supreme Court in the *Prostitution Reference* case provides a further example of a case in which the harm said to be experienced by sex workers is given as the key justification for finding that prostitution is incompatible with dignity.

¹²⁷ [2011] 9 S.C.R. 680 (Order of 2 August 2011) at 685–686.

¹²⁸ *Supra* note 114.

¹²⁹ [2011] 11 S.C.R. 397 (Order of 15 September 2011) at 401.

¹³⁰ [2011] 11 S.C.R. 397 (Order of 15 September 2011) at 400.

4.2.3 *The Prostitution Reference Case*

The *Prostitution Reference*¹³¹ case, decided in 1990, examined two of the key prostitution laws in Canada: the law against the keeping of a bawdy-house; and the law against communicating in public for the purposes of prostitution. The challenge to these laws were brought under section 2(b) of Canada's Charter of Rights and Freedoms, which guarantees freedom of expression, and section 7, which guarantees the right to life, liberty and security of the person. The majority in this case found no breach of the constitution, with two judges (Wilson and L'Heureux-Dubé) dissenting. It is important to note that the concept of dignity is not explicitly invoked in the Canadian Charter of Rights and Freedoms, although the Supreme Court has acknowledged that dignity is a key principle that guides its work, with the then Chief Justice Dickson noting in *R v Oakes*¹³² that "the inherent dignity of the human person" was one of the "values and principles essential to a free and democratic society" on which the Court's work "must be guided".¹³³

In the *Prostitution Reference* case, the concept of dignity was not a significant feature of the arguments advanced by the parties and, therefore, it was not addressed in great detail in the decision. As part of the consideration of the case, however, Justice Lamer, delivering the judgment of the majority, offered this particular characterisation of prostitution:

It is in the street that many prostitutes begin in the trade as young runaways from home. The streets provide an environment for pimps and procurers to attract adults (usually, as the data shows, women) and adolescents into the

¹³¹ *Supra* note 78.

¹³² *R v Oakes* [1986] 1 SCR 103.

¹³³ *Ibid.* at 136.

trade by befriending them and often offering them short-term affection and economic assistance. Quite often, it is the young who are most desirable to pimps as they bring in the most money and are the easiest to control. This leads ultimately to a relationship of dependency which is often reinforced by the pimp getting the prostitute addicted to drugs which are used to exercise control over the prostitute. In that process the pimp's control over the prostitute is such that physical violence and in some cases brutality is not uncommon. Prostitution, in short, becomes an activity that is degrading to the individual dignity of the prostitute and which is a vehicle for pimps and customers to exploit the disadvantaged position of women in our society.¹³⁴

I provide this lengthy quotation from Justice Lamer to demonstrate that his conclusion that prostitution is an activity “that is degrading to the individual dignity of the prostitute” is predicated on a very specific and harrowing characterisation of prostitution. The two dissenting judges, who found that the prohibition on communicating in public for the purposes of prostitution was unconstitutional, do, nevertheless, seem to agree with Justice Lamer’s characterisation of prostitution with Justice Wilson, delivering the dissenting judgement stating: “I do not disagree with my colleague that prostitution is, for the reasons he gives, a degrading way for women to earn a living”.¹³⁵

Justice Lamer, however, does not suggest that prostitution degrades dignity because it conflicts with particular substantive moral values; instead, he presents prostitution as a practice that harms at the level of the individuals who engage in it. In this respect, dignity is invoked here as ‘intrinsic dignity’ and prostitution is characterised as a form of abuse. This, importantly, shows that judges uphold the criminalisation of

¹³⁴ Supra note 78 at 1193 - 1194.

¹³⁵ Ibid. at 1210.

prostitution (or aspects of it) not just by using ‘substantive conceptions’ of dignity but that ‘intrinsic dignity’ is also used to support prohibitions when the activity is framed as comprising a harmful practice. This particular use of ‘intrinsic dignity’ will be discussed in greater detail in Chapter 5, when I explore the abolitionists’ use of dignity in their campaigns against prostitution. And more than 20 years after the *Prostitution Reference* case, the constitutionality of Canadian prostitution laws¹³⁶ was again considered by the Supreme Court - in the *Bedford* decision.

4.2.4 *The Bedford case*

In the recent *Bedford*¹³⁷ case, the appellants, Terri Jean Bedford, Valerie Scott and Amy Lebovitch, challenged the constitutionality of Canada’s prostitution laws under section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to life, liberty and security of the person. The argument in *Bedford* essentially centred on how the prostitution laws made sex work more dangerous for sex workers,¹³⁸ which violated their right to security of the person. The appellants’ arguments in the case were narrowly focused on this Charter right, and they themselves did not pursue any kind of argument on dignity grounds.

While the appellants did not pursue dignity-based arguments, the concept was, however, deployed by the state and national governments, who were, of course, arguing that the prostitution laws were compatible with the Canadian Charter. The

¹³⁶ In addition to the bawdy-house and communicating-in-public laws, the *Bedford* challenge also included the law against living on the earnings of prostitution.

¹³⁷ *Supra* note 79.

¹³⁸ Examples of how the law made sex work more dangerous for sex workers include: 1. The law against communicating in public for the purposes of prostitution prohibits street-based sex workers from properly screening and negotiating with clients; 2. The law against bawdy-houses prohibits all indoor working places, which are substantially safer places to work than the street; and 3. The law against living on the avails prevents sex workers from hiring drivers and/or security personnel to help make their work safer.

dignity-based arguments, while taking slightly different forms for each of the provisions being challenged, were effectively all predicated on the notion that prostitution was intrinsically incompatible with human dignity. Before the Supreme Court, the Attorney General of Canada put forward the argument that the objective of the laws against living on the avails of prostitution was “...to promote the values of dignity and equality”.¹³⁹ A similar argument was advanced by the representatives of the Attorney General for Ontario, before the Ontario Court of Appeal, when they claimed that the bawdy-house law and law against communicating in public spaces for the purposes of prostitution had, as their ultimate goal, the promotion of “core societal values, such as human dignity and equality”.¹⁴⁰ These arguments are examples of Rao’s ‘substantive conceptions’, in which the criminalisation of activities associated with prostitution are justified on the grounds that commercial sex conflicts with the substantive values of the community.

At the first-instance hearing, the dignity arguments advanced by the government lawyers took a slightly different form and were more an example of ‘intrinsic dignity’, as the dignity of the individuals involved in sex work was the focus rather than dignity as a substantive value. Before Justice Susan Himel in the Ontario Superior Court of Justice, the Attorney General of Ontario argued that “all sexual gratification in exchange for payment is inconsistent with respect for the human dignity of the seller of sexual services”.¹⁴¹ This is an example of ‘intrinsic dignity’ because the focus is placed on the personal dignity of the sex worker. In the same way that Justice Lamer in the *Prostitution Reference* case did, the Attorney General of Ontario frames commercial sex as invariably an experience of harm and exploitation.¹⁴²

¹³⁹ Canada (Attorney General) v. Bedford [2013] 3 SCR 1101 at para 138.

¹⁴⁰ Canada (Attorney General) v. Bedford 2012 ONCA 186 at para 286.

¹⁴¹ Bedford v. Canada 2010 ONSC 4264 at para 220.

¹⁴² Ibid.

Despite all the ‘substantive-conceptions’-based arguments that were advanced before the Canadian courts in *Bedford*, it is interesting to note that they did not accept any of them as a justification for the prostitution laws. The Ontario Court of Appeal, for example, found that the bawdy-house law was concerned with “nuisance and affront to public decency, not modern objectives of dignity and equality”.¹⁴³ The Supreme Court reached the conclusion that Canada’s prostitution laws did, in fact, expose sex workers to significant danger and, therefore, breached their rights under section 7 of the Charter, rejecting the notion that the laws helped to promote dignity. They provided the Government with one year in which to reform the laws before striking them down. The Government, after a public consultation process, adopted the Protection of Communities and Exploited Persons Act 2014, which is based on the Nordic model of criminalising the buyer of sex and decriminalising the seller. The Preamble to the new law contains a provision noting that “it is important to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children”. This echoes the arguments made by the government lawyers at every stage of the *Bedford* case and is, yet again, an example of ‘substantive conceptions’. The prohibition on purchasing sex is justified on the grounds of protecting the human dignity of the entire society of Canadians. Across the Pacific Ocean, in South Korea, their constitutional court was also deeply concerned about the impact of prostitution on South Korean society, in the *Kim Jeong-Mi* case.

4.2.5 *The Kim-Jeong mi case*

The *Kim-Jeong mi* case was decided in March 2016, when a majority of the South Korean Constitutional Court unequivocally held prostitution to be incompatible with human dignity. The sex work laws in South Korea were overhauled in 2002 after a fire in a red-light district killed 14 young women working as sex workers. The new ‘Anti-Sex

¹⁴³ Supra note 140 at para 190.

Trade Law¹⁴⁴ brought into force stipulates harsh penalties for both buying and selling sex, with up to a year in prison possible for both sex workers and clients. A constitutional challenge to these laws was pursued by a sex worker named, Kim Jeong-Mi, who, having worked in sex work for 20 years, felt compelled to mount the challenge after a police raid on her workplace in 2012. In an article in the *New York Times*, she recounts the police raid, noting that she was with a customer at the time and that the police watched and took photographs of her while she dressed, which she describes as a violation of her dignity: “giving me no time to keep the least dignity as a human” (Choe 2015). Her constitutional challenge was based on the right to self-determination, guaranteed under Article 10 of the Korean Constitution, which states that “all citizens shall be assured of their human worth and dignity and shall have the right to pursue happiness” (Yujin et al. 2016).

The Constitutional Court rejected Kim Jeong-Mi’s case, finding that the prostitution laws did not violate the constitution. The majority found that the legal prohibition on prostitution was justified based on the legitimate legislative purpose of “establish[ing] a sound sexual culture and sexual morality”.¹⁴⁵ As part of their reasoning, they were unequivocal that prostitution conflicted with the notion of human dignity:

Even if the sex worker chose to engage in commercial sex work voluntarily, and not through coercion, debasing one’s body for financial gain, as a means or a tool for the sexual satisfaction or pleasure of the sex buyer, is an act that goes

¹⁴⁴ The South Korean law against prostitution uses the language of ‘sex trafficking’ to describe all commercial sex. In the *Act on the Punishment of Arrangement of Commercial Sex Acts Etc.* a definition of ‘sex trafficking’ is given in Article 2, which states that “1. The term ‘sex trafficking’ means committing any of the following acts for an unspecified person or becoming a partner thereof in return for receiving or promising to receive money, valuables or other property gains: (a) Sexual intercourse; (b) Pseudo-sexual intercourse using parts of the body such as the mouth and anus, or implement”. See *Kim Jeong-Mi* case, supra note 80 at II.

¹⁴⁵ Supra note 80 at IV-C-2a

beyond the private domain as it surrenders human dignity to the power of money.¹⁴⁶

Even if it is done voluntarily, selling sex appears, in the minds of the South Korean majority, to be equivalent to selling one's dignity, which has negative consequences for the society as a whole by threatening "sexual morality" - making this deployment of 'dignity' yet a further example of 'substantive conceptions'. The South Korean Court is, here, unequivocal that the sex worker's consent is irrelevant in their assessment of the harm to dignity caused through selling sex. As Rao says, substantive conceptions are "socially constructed and politically enforced, *often against the desires of affected individuals*" (Rao 2011: 222; emphasis added). The majority characterises prostitution in extremely negative terms, painting a disastrous picture of what 'legalisation' of sex work would do to Korean society, stating that it:

...will lead to massive capital inflows into the sex industry, a rise in the number of illegal immigrants, and the deformation of the labor market, subsequently harming the economic and social stability of people's lives and further exacerbating the corruption of people's sexual morality.¹⁴⁷

Among the consequences of legalised sex work, then, the Court identifies harm to the "social stability of people's lives", noting that it would "exacerbat[e] the corruption of people's sexual morality". This displays a very similar perspective on human sexuality to that taken in the South African and Indian cases, with commercial sex framed as posing a threat to society's sexual mores, which prioritise relational intimacy. The

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

South Korean court specifically notes in their judgement that the sex of prostitution “do[es] not involve emotional connections between humans”¹⁴⁸ and that:

[t]o regard not only one’s own, but also another person’s sex, as honourable, and not to use it as an instrument, are values that have become the basic premise for developing a community where dignity and equality of all humans are guaranteed.¹⁴⁹

While the South African and Indian courts primarily portrayed sex workers as victims of circumstance, the majority in the *Kim Jeong-Mi* case describes people who sell sex as a diverse group - “from the two extremes of ‘free individual’ and ‘victim’ to those in between”.¹⁵⁰ In accepting this diversity, however, they also reinforce the good girl/bad girl dichotomy, by appearing to disapprove of those who “succumb to the allure of easy money” rather than those who engage in sex work due to “social structural factors such as poverty”.¹⁵¹

In the South Korean case, there were three dissenting judges, all of whom can also be seen to invoke the concept of dignity. Judges Kim Yi-Su and Kang Il-Won dissented, finding that the criminal laws that punished sex workers were unconstitutional but upheld the constitutionality of the laws against buyers. In justifying their decision, they suggest that prostitution “is a means for justifying sexual domination by males and the sexual subordination of females, and is an act that infringes upon the personality and dignity of the sex worker”.¹⁵² This reflects the radical feminist position on prostitution, in the sense that commercial sex is said to be an emblematic form of gender inequality

¹⁴⁸ Ibid.

¹⁴⁹ Ibid. at IV-C-2c

¹⁵⁰ Ibid. at IV-C-2b-3

¹⁵¹ Ibid.

¹⁵² Ibid. at VI-A

that causes harm to the women who sell sex. Here, these judges rely more on ‘intrinsic dignity’, as the emphasis is placed on the individual dignity of the people who sell sex rather than the enforcing of communitarian norms. While the findings of Judges Kim Yi-Su and Kang Il-Won are supported primarily with reference to the harm done to female sex workers, they also endorse a view of ‘dignified’ human sexuality in line with the majority decision (and the South African and Indian decisions), noting that “[s]ex is the source of love, marriage and childbirth - the pillars of human life - and upholding the value of one’s sexuality becomes the basis of human dignity and worth”.¹⁵³ They do not, however, suggest that the transgressing of these sexual norms causes harm to the community but instead that “giving up such sexuality...may subject the sex worker to unimaginable physical and mental pain”.¹⁵⁴ This dissenting opinion in the *Kim Jeong-Mi* case provides a further example, in line with the *Prostitution Reference* case, of how prohibitions on prostitution are supported not just through the use of ‘substantive conceptions’ but also with arguments rooted in the potential harm caused to the ‘intrinsic dignity’ of individuals.

The other dissenting judge, Cho Yong-ho, took a different approach and argued that the entire Anti-Sex Trade Law should be struck down as unconstitutional. He appears here to reject the notion advanced by all the other judges, including the other two dissenters, that prostitution violates dignity, encapsulated when he says that “since commercial sex involves selling sexual services, not the human body or personality...commercial sex is essentially the same as labor provided in other service industries”.¹⁵⁵ Judge Cho, then, goes even further in explicitly rejecting the majority opinion that prostitution “infringes upon human dignity” proposing instead that “nothing breaches human dignity more than a threat to survival”.¹⁵⁶

¹⁵³ *Ibid.* at VI-C-1

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.* at VII-A-2a

¹⁵⁶ *Ibid.* at VII-A-2c

This is a unique perspective among all the decisions studied so far, where the indignity of being unable to support oneself is situated as more damaging than selling sexual services. Furthermore, situating prostitution as the sale of services and not the sale of “the human body or personality” is also a significant departure from the previous caselaw discussed. Judge Cho is relying on ‘intrinsic dignity’ here to support his point and he uses it to convey a risk of harm to individuals rather than to society. While the other two dissenting judges use dignity in a similar way, there is, of course, divergence in what they see as being the source of harm and risk to dignity. Judges Kim Yi-Su and Kang Il-Won see the actual practice of prostitution as the source of harm to those who practise it, which justifies its prohibition, while Judge Cho sees the risk of poverty or destitution caused by the criminalisation of prostitution as presenting the risk to sex workers’ intrinsic dignity, justifying his view that it should be decriminalised. What makes these uses of dignity different from the majority, in essence, is that the focus is firmly placed on the dignity of individuals rather than on the more abstract dignity of the society.

I have shown above that in cases where courts find prostitution to be incompatible with dignity, they do so frequently by relying on dignity as ‘substantive conceptions’, and their decisions that uphold the criminalisation of prostitution are supported by reference to particular normative values on human sexuality. However, even in situations where courts primarily rely on ‘substantive conceptions’ to justify the continuing criminalisation of prostitution, they often also invoke ‘intrinsic dignity’. For example, the South African Court insists that sex workers be treated with dignity by their customers¹⁵⁷ and the Indian Court declares that sex workers deserve to live a life of dignity because they are human beings.¹⁵⁸ This illustrates clearly Rao’s statement

¹⁵⁷ Supra note 100.

¹⁵⁸ Supra note 114.

that “in a single opinion a court may rely on multiple meanings of dignity, which sometimes will point in different directions or emphasize very different values” (2011: 189). I have also observed how ‘intrinsic dignity’ can be used to enforce prohibitions on commercial sex based on the perceived harm it causes to the individuals who sell sex. I will move on below to examine cases in which courts primarily rely on ‘intrinsic dignity’, not to enforce prohibitions but to advance the rights of sex workers.

4.3 Intrinsic dignity: the labour rights cases

“Intrinsic dignity”, according to Rao, is the “most universal and open understanding of the term” (2011: 196), and reflects the idea that every human being is born with an inherent and inalienable worth and value. It is a dignity that involves a “presumption of human equality” and “does not establish an external measure for what counts as being dignified or worthy of respect” (Rao 2011: 187). While the cases discussed below primarily invoke ‘intrinsic dignity’, yet again it can be seen that the courts’ use of dignity is not clearly delineated, and that there is evidence of multiple versions of dignity being invoked in the same decision. In illustrating this point, I will analyse cases from South Africa, Colombia, New Zealand and Israel.

4.3.1 The Kylie case

Although the claimants in the *Jordan* case were ultimately unsuccessful and the criminalisation of prostitution persists in South Africa, there is a subsequent South African case, decided in 2010, which uses the findings on dignity in the *Jordan* case to advance the labour rights of sex workers. The case of *Kylie v Commission for Conciliation, Mediation and Arbitration and others*¹⁵⁹ was an employment law case that reached the Labour Appeal Court of South Africa. The appellant in this case was a sex

¹⁵⁹ Supra note 84.

worker who “was employed in a massage parlour to perform various sexual services for reward”,¹⁶⁰ and who was dismissed from this employment without any proper process on 27 April 2006. The appellant complained about this treatment and her case was referred to the Commission for Conciliation, Mediation and Arbitration, with a hearing set down for 13 September 2006. One of the Commissioners, Bella Goldman, before the Commission could hear any evidence, ruled that the Commission did not have jurisdiction to deal with the appellant’s case because her employment was unlawful.

The claimant appealed against this ruling and the matter was heard in the Labour Court by Judge Cheadle. He held that the definition of employee under South African law “was wide enough to include a person whose contract of employment was unenforceable in terms of the common law” but that sex workers were not entitled to protection from unfair dismissal because this would contravene the long-standing principle “that courts ‘ought not to sanction or encourage illegal activity’”.¹⁶¹ Judge Cheadle used the decision in the *Jordan* case, which established the constitutionality of criminalised prostitution, to support his assertion that sex work was illegal activity.¹⁶² The appellant subsequently appealed against this decision and the case was heard by the Labour Appeal Court, with Appeal Judge Davis delivering the judgment on behalf of the three-judge panel.

The crux of the matter before the Labour Appeal Court was whether sex workers had the right to fair labour practices under Article 23 of the Constitution and, by extension, whether they could rely on the rights granted under the Labour Relations Act. The Labour Appeal Court found that sex workers should be entitled to labour rights protection and, in doing so, relied on the comments of Justices O’Regan and Sachs from

¹⁶⁰ *Ibid.* at para 1.

¹⁶¹ *Ibid.* at para 3.

¹⁶² *Ibid.* at para 10.

the *Jordan* case where they insisted that “sex workers must be treated with dignity by their customers”.¹⁶³ Appeal Judge Davis explains thus:

...as sex workers cannot be stripped of the right to be treated with dignity by their clients, it must follow that, in their other relationship namely with their employers, the same protection should hold. Once it is recognized that they must be treated with dignity not only by their customers but by their employers, section 23 of the Constitution, which at its core, protects the dignity of those in an employment relationship, should also be of application.¹⁶⁴

The assertion, then, that was made in the *Jordan* case by Justices O’Regan and Sachs, that customers must respect sex workers’ dignity, has been translated through the *Kylie* case into a tangible legal right – to be treated with dignity by an employer and, by extension, to benefit from the protections of South African labour law.

In addressing the matter of remedy, the Labour Appeal Court considered Judge Cheadle’s objections that, by offering the appellant a remedy under labour law, the Court would be sanctioning illegal activity. Here, the Appeal Court notes that “the criminalization of prostitution does not necessarily deny to a sex worker the protection of the Constitution”.¹⁶⁵ The fact that constitutional protections, including rights to dignity, extend to everyone in South Africa is a well-established principle of its constitutional law.¹⁶⁶ The Appeal Court, therefore, argues that section 23 of the Constitution, which gives everyone the right to fair labour practices, “was designed to ensure that the dignity of all workers should be respected and that the workplace

¹⁶³ Supra note 100.

¹⁶⁴ Supra note 84 at para 26.

¹⁶⁵ Ibid. at para 39.

¹⁶⁶ *S v Makwanyane* 1995 (3) SA 391 (CC) is often quoted in the dignity literature, which found that the right to life and dignity “vests in every person, including criminals convicted of vile crimes” (para 137).

should be predicated upon principles of social justice, fairness and respect for all”.¹⁶⁷ These “noble goals”¹⁶⁸ specifically necessitate that courts stay “vigilant to safeguard those employees who are particularly vulnerable to exploitation”.¹⁶⁹ The Court acknowledges here that despite the range of opinions on sex work in the “feminist literature”, that “within the South African context many sex workers are particularly vulnerable and are exposed to exploitation and vicious abuse”.¹⁷⁰ Noting that the appellant in this case worked long hours and was “subjected to a strict regime of rules and fines”, the Court is of the opinion that she “falls within such a vulnerable category”.¹⁷¹ The Court thus uses the ‘vulnerability’ of sex workers to justify its finding that they are entitled to protection under section 23 of the Constitution:

...where a sex worker forms part of a vulnerable class by the nature of the work she performs and the position that she holds and she is subject to potential exploitation, abuse and assaults on her dignity, there is, on the basis of the finding in this judgment, no principled reason by which she should not be entitled to some constitutional protection designed to protect her dignity and which protection by extension has now been operationalized in the [Labour Relations Act].¹⁷²

Despite finding that the appellant was entitled to the protections guaranteed under the LRA, the Court goes on to preclude the possibility that it could order reinstatement, the usual remedy in an unfair dismissal case, because this “would manifestly be in violation of the provisions of the [Sexual Offences] Act”.¹⁷³ Despite the fact that reinstatement

¹⁶⁷ Supra note 84 at para 40.

¹⁶⁸ Ibid. at para 41.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid. at para 43.

¹⁷¹ Ibid. para 43.

¹⁷² Ibid. at para 44. LRA refers to the Labour Relations Act 66 of 1995, which operationalises section 23 of the Constitution guaranteeing fair labour practices.

¹⁷³ Ibid. at para 52. The Sexual Offences Act is the legislation criminalising prostitution in South Africa.

cannot be ordered, the Court is clear that the appellant was still entitled to legal protection (and the other available remedies) provided by the LRA, noting that this legal protection “can reduce her vulnerability, exploitation and the erosion of her dignity”.¹⁷⁴

In concluding, it can be seen that the Court is at pains to point out that its “judgment cannot and does not sanction sex work”.¹⁷⁵ In an interesting turn of phrase, which is in some way contradictory to the argument in the *Jordan* case, the Court in *Kylie* describes the claimant’s dignity as being “intact”¹⁷⁶ and argues that the constitutional protections “must be available to her as it would to any person whose dignity is attacked”.¹⁷⁷ In framing its judgment in this way, the court in *Kylie* appears not to accept the fact that selling sex itself results in a violation of the appellant’s dignity. Her dignity is “intact” and at risk of violation *through the behaviour of exploitative employers*. The reference to dignity being “intact” also supports the fact that this Court principally invokes ‘intrinsic dignity’, in their apparent, implicit understanding of dignity as pertaining to an inherent and inalienable quality of the individual.

The *Kylie* case received a significant amount of academic attention in South Africa, most predominantly from labour law scholars (Bosch and Christie 2007; Le Roux 2009; Rutherford Smith 2011; Smit and Plessis 2011) but these articles are focused more keenly on the labour law consequences and there is no sustained analysis of the dignity-based arguments deployed by the Labour Appeal Court. I would argue that the Labour Appeal Court has clearly deployed ‘intrinsic dignity’ in this decision and specifically refrains from making any substantive finding on the rights and wrongs of sex work in contrast to judgments utilising ‘substantive conceptions’. Instead, the

¹⁷⁴ Ibid.

¹⁷⁵ Ibid. at para 54.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

focus is placed on the risk of harm to sex workers through exploitative employers, and their intrinsic dignity is used as justification for extending the protections of South Africa's labour laws to prevent attacks or harm to dignity. The question of granting labour rights and protection to sex workers was also addressed by the Constitutional Court of Colombia, in Case *T-629-10*, issued in 2010.

4.3.2 The T-629-10 case

According to the NGO Women's Link Worldwide, the *T-629-10* case involved a woman who had been working in prostitution in a bar in Bogota when she became pregnant. She was told to keep working as normal, then redeployed to running the bar before, eventually, being dismissed without access to any of her maternity rights and with her wages withheld (Women's Link Worldwide 2010). The claimant took her case to the Municipal Court in Bogota, which held that she was not entitled to labour protections because, even though prostitution was a lawful activity, the Court found it to be "contrary to public decency" (*ibid.*). This decision was upheld by the Fifth Circuit Criminal Court before reaching the Third Review Chamber of the Constitutional Court (*ibid.*). The Constitutional Court overturned the decisions of the lower courts, instead finding that sex workers should not be discriminated against on the basis of their work and that they are entitled to the same labour protections as other workers. The Court established that prostitution was a lawful activity, with Colombia adopting laws not to prohibit prostitution but, rather, to prevent the procurement or coercing of someone to engage in prostitution, as well as laws focused on public health and social order.

The *T-629-10* case provides another clear example of how a judgment can contain, within it, references to both 'substantive conceptions' and 'intrinsic dignity'. Unlike in the cases discussed above, however, where 'substantive conceptions' dominated the judgments and were used to justify the criminalisation of prostitution (with peripheral

recognition of sex workers' 'intrinsic dignity'), this case relies primarily on 'intrinsic dignity' to support the granting of labour rights to sex workers, with some peripheral use of 'substantive conceptions'.

In discussing the lawfulness of prostitution, the Court makes reference to the "conflict in values it entails"¹⁷⁸ and, while accepting that it is a lawful activity, notes that prostitution may appear contradictory to "the ideals of a democratic society that observes fundamental human rights and aims to dignify life as much as possible".¹⁷⁹ This is an example of 'substantive conceptions', where prostitution is situated as a threat to society's commitment to dignity. Nevertheless, despite this reference to community values, the Court explicitly concludes that prostitution is a lawful activity in Colombia, when it is practised in such a way as to "observe personal freedom, human dignity¹⁸⁰ and the rights of others".¹⁸¹

The Court reiterates this finding in several other sections of its judgment and notes, for example, that a valid contract of employment exists between sex workers and their employers when the sex worker is working voluntarily, without inducement and "the sexual and other services are provided in conditions that respect the worker's dignity and freedom".¹⁸² Beyond the fact that sex workers must participate freely in prostitution, I was unable to find any elaboration on the precise conditions envisaged by the Court to ensure that sex was being sold in conditions of dignity, but this formulation at least creates/suggests the possibility that sex work *can* be undertaken

¹⁷⁸ Supra note 85 at para 100 (all English translations from this judgement provided by Rob Dunn, legal translator).

¹⁷⁹ Ibid. at para 112.

¹⁸⁰ The Court describes dignity as "a constitutional principle and an independent fundamental right" (para 76), noting that it is intended to guarantee the following: "(i) the autonomy or possibility to design a life plan and determine the details of it (to live how one wants), (ii) certain specific material conditions of existence (to live well), (iii) the inalienability of the intangible possessions of physical and mental well-being (to live without humiliation)" (para 76).

¹⁸¹ Supra note 85 at para 100.

¹⁸² Ibid. at para 150.

with dignity. Despite raising the possibility that prostitution may conflict with the constitutional value of dignity, the Court appears, ultimately, to conclude that if the sex workers' 'intrinsic dignity' is respected in the commercial sex transaction then there is no such conflict.

Thus far, then, the Colombian Constitutional Court paints a picture of commercial sex as an activity which "takes multiple forms" and which *can* be undertaken in such a way that complies with the values of human dignity. This is, however, complicated when we turn to look at the remedy that the Court granted. Having found that sex workers are entitled to all employment protections, the Court orders that the petitioner should be given compensation for unpaid wages and maternity leave. She had also requested reinstatement but the Court declines to grant this, arguing that "in many aspects sex work conflicts with dignity".¹⁸³ The Court goes on to say:

...the request for reinstatement is rejected. Because, as stated in the general considerations, given the nature of the services Ms LAIS provided and given how these duties conflict with liberal, rational and human dignity constitutional ideals and in particular with the state's obligations under international law, the court finds that the provision in this case should not be protected by the employment guarantees given to prostitutes working as employees.¹⁸⁴

The Colombian Constitutional Court here adopts the same position as the Labour Appeal Court in the *Kylie* case, which also explicitly excluded reinstatement as a remedy for cases brought by sex workers. While the South African Court did so because prostitution is illegal there, the Colombian Court's justification appears to rest on its view that prostitution conflicts with human dignity, as a constitutional value.

¹⁸³ Ibid. at para 155.

¹⁸⁴ Ibid. at para 218.

This is a fascinating statement from the Court. Having found that prostitution was a lawful activity as long as it was undertaken within conditions “that respect the worker’s dignity and freedom”¹⁸⁵, nevertheless, it finds that there is something particular about the nature of prostitution that conflicts with human dignity, setting it apart from other work such that the Court cannot order reinstatement. I am unaware of what type of sex work this claimant participated in, and it could be that the particular services she offered prompted the Court to reach this finding that the work she did conflicted with human dignity rather than it being a blanket assertion on all forms of prostitution. However, it is crucial to observe that in this statement, the outcome of which, it could be argued, is a curtailment on the rights of the petitioner, the Court refers to dignity as an abstract ‘constitutional ideal’. As noted in the previous section, invoking dignity as an abstract communitarian value tends to lead to prohibitions while a focus on individual dignity leads to the advancement of rights or protection from harm. This case confirms that pattern, and while most of the decision, relying as it does on ‘intrinsic dignity’, is concerned with protecting sex workers’ labour rights, the use of ‘substantive conceptions’ - that is, a focus on dignity as a constitutional ideal - sets some limits on their rights.

4.3.3 *The Montgomery case*

Labour rights protection for sex workers is available in a relatively small number of countries worldwide, with the court decisions described above extending this protection to sex workers in South Africa and Colombia. New Zealand, where the *Montgomery*¹⁸⁶ case was decided, in contrast, is one of the few countries that has extended labour rights by way of legislative changes rather than through the intervention of the courts. In 2003, the New Zealand Parliament passed the

¹⁸⁵ Supra note 182.

¹⁸⁶ Supra note 83.

Prostitution Reform Act, which decriminalised adult sex work and aimed to “create a framework that safeguards the human rights of sex workers”.¹⁸⁷ The Act decriminalised the selling and buying of sex on the streets, as well as creating a system of Small Owner Operated Brothels (SOOBs), where up to four sex workers can work collectively from an indoor premises without requiring a license. Any person seeking to open a larger brothel (where more than four sex workers will be working) requires a Brothel Operators Certificate, which certifies them as a suitable person to exercise control over sex workers in the workplace. Sex workers operating in managed premises have access to labour rights and human rights protection and can pursue claims before the courts, like any other worker or employee.

A female sex worker, who was working at a brothel in Wellington called the Kensington Inn, made a complaint of sexual harassment against Aaron Montgomery, the manager of the brothel. When workers began working at the brothel, information about them, including details about their bodies and the services they were willing to provide, were noted on a card at reception in case enquiries were made by clients. There was, therefore, no requirement for the brothel manager to repeatedly ask sex workers about their intimate body parts or the sexual services they offer, which Mr Montgomery did repeatedly to this particular sex worker. The Tribunal found that Mr Montgomery “enjoys controlling women and at times humiliating them”¹⁸⁸ and that his comments created a “demeaning and hostile work environment”¹⁸⁹ for the complainant, which culminated in her leaving her employment at the Kensington Inn. Upholding the complaint of sexual harassment, the Tribunal awarded the sex worker compensation of \$25,000 for “humiliation, loss of dignity and injury to feelings”.¹⁹⁰ In compensating the sex worker for loss of dignity, the implication is that her dignity was

¹⁸⁷ s.3 Prostitution Reform Act 2003.

¹⁸⁸ Supra note 83 at para 92.

¹⁸⁹ Ibid. at para 119.1.

¹⁹⁰ Ibid. at para 138.

left intact by her involvement in commercial sex and only affected by the unlawful sexual harassment.

In justifying the award for loss of dignity, the Tribunal referred to the Canadian Supreme Court case of *Law v Canada*,¹⁹¹ where Justice Iacobucci had stated that human dignity “means that an individual or group feels self-respect and self-worth”, that it is “concerned with empowerment” and that it “is harmed when individuals and groups are marginalized, ignored, or devalued”.¹⁹² In the *Montgomery* case, therefore, the Tribunal situated the “loss of dignity” not in the sex worker’s involvement in commercial sex per se but in the harmful experiences that occurred while she was selling sex. The term “loss of dignity” is, itself, interesting to comment on given the notion of inherent and inalienable human dignity. If dignity really is inalienable then how can it be lost? This turn of phrase is an example of what O’Mahony (2012a) criticises as creating confusion and not aligning with the notion of dignity in international human rights law.

What is most interesting to note, however, is that the New Zealand Court uses dignity in a way that conflates ‘intrinsic dignity’ and ‘dignity as recognition’. The New Zealand Tribunal’s reference to the Canadian Supreme Court and their conception of dignity as representing “self-respect and self-worth” speaks to ‘dignity as recognition’, which is about how individuals and groups are valued by the community, as discussed in Chapter 3. ‘Dignity as recognition’ and ‘intrinsic dignity’ are, however, often closely associated in caselaw, and in explicating this tendency Rao suggests that “the harm of stigma” (2011: 267), which may trigger judges’ use of ‘dignity as recognition’ “is a consequence of a more fundamental deprivation of equality and individual rights” (*ibid.*), which are grounded in an acceptance of ‘intrinsic dignity’. I would argue that

¹⁹¹ [1999] 1 SCR 497.

¹⁹² *Ibid.* at para 35.

this applies to the *Montgomery* case, as the Tribunal is compensating the sex worker for a breach of her right not to be subject to sexual harassment, one of the consequences of which may be feelings of low self-worth. In other words, the Tribunal is compensating her for the ‘loss of dignity’ that occurred as a consequence of the harassment (a breach of her rights), rather than compensating her for any standalone harm to her self-value or self-worth as a result of societal attitudes (stigma) towards sex workers. Evidence that the Tribunal viewed the complainant’s treatment as a fundamental deprivation of rights can be found in their concerted assertion of the rightful place of sex workers as equal human beings who “have the same human rights as other workers”.¹⁹³ ‘Substantive conceptions’ are entirely absent from the *Montgomery* decision, which is not surprising, given that sex work is decriminalised in New Zealand and the sex industry is not viewed, at least in public policy, as contrary to the country’s values. ‘Substantive conceptions’ were also absent in a recent case heard by Judge Itai Hermelin in the Tel Aviv Magistrates’ Court, in 2016.

4.3.4 *The Israeli case*

This case involved a brothel in Tel Aviv that the state prosecutor was trying to have permanently closed down. In Israel, like the UK, selling sex itself is legal but brothel-keeping and other ancillary activities are criminalised. Judge Hermelin issued the closure order for this particular brothel but provided a reading of the brothel-keeping laws that suggested that there were ways for sex workers to operate legally indoors. His interpretation of the brothel-keeping laws suggest that it would be legal in Israel for a woman to work from her own apartment, or an indoor premises rented by several women who are working collectively (Yashar 2016). He also suggests that it would be within the law for one woman to rent a property to use for work and invite other sex workers to work in the space with her (ibid.).

¹⁹³ Supra note 83 at para 146.

In this case, Judge Hermelin justifies his interpretation of the brothel-keeping law using the concept of dignity. First of all, he argues that “as long as prostitution is permitted in Israel...it is incumbent upon the state to minimize the risks these women face” (Pulwer 2016). The judge argued that should the brothel be permanently closed then the 15 women who were working in the premises would be forced to work on the streets. He went on to note that “pushing these women onto the street violates their dignity in an unacceptable manner. As a result, interpreting the law in a way that criminalizes prostitution taking place in a building is unconstitutional and must be rejected” (*ibid.*). Judge Hermelin invokes ‘intrinsic dignity’ here in the sense that he focuses on sex workers’ individual dignity, emphasising that forcing them onto the streets to work would result in harm. He suggests that prostitution itself does not violate the dignity of sex workers, but rather that the conditions within which it is practised could impact on dignity.

Some of the women who worked in the brothel were parties to the litigation and testified in court, which appears to have had a strong impact on the judge’s findings. He is reported as noting in his ruling that the “main criticism voiced by the sex workers speaking in court was directed not at their place of employment – which they described as discreet, safe and clean – but at the police”, whose behaviour was “depicted as degrading and harmful” (*ibid.*). The judge also strongly criticised the state for objecting to the application to have the sex workers become a party to the litigation. He described the state’s objections as a form of silencing and rejected the concern that they would simply be expressing the view of their employers. The judge is reported as saying that “such silencing offends their human dignity, since it’s based on an unexamined a priori assumption that they are not autonomous beings and that they won’t express their own views” (*ibid.*). This is a further reference to ‘intrinsic dignity’, evidenced by Judge Hermelin’s clear associations between dignity and autonomy.

Despite Judge Hermelin's 'progressive' reading of Israel's brothel-keeping laws, he did not issue the closure order requested by the state in this case, presumably because the premises in question did not meet his requirements for constituting a 'legal brothel'. The brothel was subsequently closed down by the State Prosecutor and several of those involved in the running of the premises have been charged with a range of prostitution related criminal offences (Hovel and Lee 2017). It is unclear, in the absence of local empirical research, whether Judge Hermelin's decision, and his arguments on dignity, have had any impact on how prostitution laws are enforced in Israel. The likelihood of significant change is, however, slim as his decision appeared to provoke significant backlash in Israel, with harsh criticism levied towards Judge Hermelin from the Israeli Knesset (Yonah 2016) and the State Prosecutor's Office, in a statement released following the judgement, vowed to "continue to fight these phenomena [prostitution], which degrade human dignity" (Pulwer 2016).

4.4 Conclusion

This chapter began with a quote from Rao, noting that judges often use multiple conceptions of dignity in the same decision and this was certainly evident in the jurisprudence on sex work. In this chapter, I explored *how* courts conceptualised and applied dignity in their judgements and noted that this had a significant influence on the legal outcomes for sex workers. The first set of decisions I analysed found prostitution to be incompatible with human dignity, and I argued that these cases tended to rely on 'substantive conceptions' of dignity. The analysis of the judges' findings has shown that their pronouncements on dignity and sex work often reflect particular sexual norms that reify emotional and relational intimacy. It is no surprise to see that, when these 'substantive conceptions' are invoked by the courts, that this leads to the upholding of criminal prohibitions on prostitution. This form of dignity is

specifically concerned with protecting communitarian norms and values by enforcing constraint on behaviour at the expense of individual autonomy.

However, it is not the case that upholding prohibitions on prostitution are *only* justified using ‘substantive-conception’-based dignity arguments. Justice Lamer in the *Prostitution Reference* case, for example, notes that prostitution is “degrading to the individual dignity of the prostitute”.¹⁹⁴ This is a reference to ‘intrinsic dignity’; the criminalisation of prostitution is justified not based on the upholding of social and moral values but because it causes (in his view) significant harm to those who sell sex. This perspective is important to highlight, and while Rao may be right that there is a strong association, in jurisprudence, between ‘intrinsic dignity’ and freedom from state interference, this association is not exclusive and it can also be used to justify constraints on freedom and autonomy.

While ‘intrinsic dignity’ can also be used, like ‘substantive conceptions’, to impose constraint on behaviour, we see in the labour rights cases that it is, however, most often used to promote individual rights. The labour rights cases predominantly keep their focus on how the dignity of individuals is impacted by external factors, like poor employment practices or, in the *Israeli* case, by a brothel closure. The Israeli Judge Hermelin refers to the closure of the brothel, and sex workers’ resultant move to street working, as “violat[ing] *their* dignity in an unacceptable manner”, and the opposition to allowing the sex workers to speak in court as “offend[ing] *their* human dignity” (Pulwer 2016; emphasis added). The Montgomery case is the only case in my analysis to specifically invoke the notion of ‘dignity as recognition’, although, as I noted, this is blended somewhat with the idea of ‘intrinsic dignity’. It is significant that the New Zealand Tribunal was the only judicial body to use an understanding of dignity that was focused on subjective feelings of self-value and self-worth. It could be that this level of

¹⁹⁴ Supra note 134.

concern for sex workers' inner life is only possible in a context in which prostitution is decriminalised and accepted as part of the social fabric of the country.

While judges have the power to make formal legal pronouncements on the dignity of commercial sex, these are shaped and influenced by the arguments that are advanced in courtrooms and in wider discourse. Political activists have a particular role to play in shaping public discourses on commercial sex, and my attention in the following two chapters turns to how they use the concept of dignity in their work. As discussed in Chapter 1, campaigns to reform prostitution laws are significantly polarised, and I will begin in Chapter 5 by exploring the discourses produced by abolitionist campaigners, who seek to eradicate the practice of commercial sex.

Chapter 5 - The concept of dignity in abolitionist feminist discourses

Chapter overview

This chapter explores the use of ‘dignity talk’ in abolitionist feminist discourses. It begins by tracing how the concept became a feature of abolitionist campaigns, as part of attempts to frame prostitution as a ‘human rights issue’ on the grounds that it is inherently incompatible with human dignity. I demonstrate how this particular line of argument has been adopted consistently by abolitionists across the world, and has also had, through activist efforts, a wider influence on the structuring of legal and political discourses on commercial sex. I explore Canada’s Protection of Communities and Exploited Persons Act 2014 and a European Parliament resolution, also passed in 2014, as examples of the impact and reach of abolitionist perspectives on dignity and prostitution. Drawing upon my empirical interview data with abolitionist activists, I explore, in more detail, what ‘dignity’ means to these activists and why they use it in campaigning efforts. Applying Rao’s typology to the interview data and wider textual sources, I note that there is some evidence that dignity is used within abolitionist discourses in the manner of ‘substantive conceptions’, enforcing particular normative values on human sexuality, but that abolitionists mostly use the concept to represent ‘intrinsic dignity’. In this way, ‘dignity talk’ plays a particular role in abolitionist discourses, in constructing prostitution as a seriously harmful and abusive practice, akin to slavery and other forms of violent oppression.

5.1 Introduction

Perhaps the deepest injury of prostitution, with material basis in the converging inequalities of which its unequal concrete harms are irrefutable evidence, is that there is no dignity in it. (Mackinnon 2011: 307)

In the activism and campaigning of feminist abolitionists, and as illustrated by Mackinnon's words above, commercial sex is situated squarely as a violation of human dignity, echoing a number of the judicial decisions discussed in the previous chapter. However, while some of the courts (for example, in the *Jordan* case and *Budhadev Karmaskar* case) suggest that women do not necessarily choose to sell sex and are compelled to as a result of poverty, they still isolate the dignity violation in the woman's actions, as the one who commodifies her body and her sexuality.¹⁹⁵ Abolitionist feminists, in contrast, assert that the dignity of women selling sex is violated not by what they do but by what is done to them, by male purchasers. They attempt to shift legal regulation from the (predominantly female) sex worker body to the (predominantly male) client body, through campaigning for the introduction of laws that criminalise the purchase of sex - otherwise known as the 'Swedish model', or 'Nordic model', in deference to the country(ies) where this form of legislation was first introduced. Abolitionist feminists believe that by criminalising the purchase of sex, the demand for commercial sex will reduce, which will eventually lead to the eradication of prostitution.

In this chapter, I seek to explore how the concept of dignity is utilised by abolitionist activists in furthering their legal and political objectives. I begin by tracing how dignity became a feature of abolitionist campaigns, paying particular attention to the work of Kathleen Barry. It is noted that in the late 1980s/early 1990s, Barry was at the forefront of attempts to frame prostitution as a human rights issue, based on the argument that it violated human dignity. This work led to the development of a draft international treaty called the Convention Against Sexual Exploitation, which was designed to create new obligations for states to eradicate prostitution premised on a radical feminist

¹⁹⁵ For example, Justices O'Regan and Sachs in the *Jordan* case stated that sex workers, "by using their bodies as commodities in the marketplace...undermine their status and become vulnerable". See Chapter 4, section 4.2.1, supra note 91.

analysis of the issue, including its impact on dignity. While the draft Convention did not gain any traction at the UN and has never been adopted, the notion that prostitution is a violation of human dignity has become a central, and widespread, feature of global abolitionist campaigns. I use the theory of the “norm lifecycle” (Finnemore and Sikkink 1998) and Wylie’s work (2017) on transnational abolitionist advocacy to explore what influence the abolitionist perspective on dignity and commercial sex has had in formal legal discourses, particularly highlighting the examples of Canada’s Protection of Communities and Exploited Persons Act 2014 and a European Parliament resolution on prostitution, passed in the same year. I argue that ‘dignity talk’ plays a particular role in abolitionist advocacy, acting as a gateway to a range of human-rights-based legal and political tools.

Having explored how ‘dignity talk’ became established in abolitionist discourses and the influence that this has had globally, I move on, in the second part of the chapter, to analyse more deeply how the concept is deployed by activists. I use Rao’s taxonomy of dignity (2011), which provides a helpful analytical framework for comparing and contrasting all of the different discourses analysed in this thesis. I apply Rao’s three concepts of dignity, in this chapter, both to my interview data as well as wider abolitionist textual sources and campaigning materials. I interviewed five abolitionist activists in total, with three participants from Canada and two from South Africa. I introduce the participants initially through an exploration of the different *personal* meanings they assign to the concept of dignity and their reflections on dignity’s elastic nature.

Applying Rao’s typology, thereafter, to wider abolitionist discourses as well as the interview data shows that there is some evidence that dignity is used by abolitionists in the fashion of ‘substantive conceptions’, to uphold particular normative values on sexuality in a similar way to its use in some of the court decisions discussed in Chapter

4. Nevertheless, I argue that abolitionist use of dignity is generally *not* reflective of moral opposition to prostitution but, instead, that it is most often invoked to reflect 'intrinsic dignity'. In this way, their use of 'dignity talk' is specifically deployed as part of the attempt to hegemonise understandings of prostitution as a violent and abusive practice akin to slavery. It is this characterisation of prostitution that is used to support the contention that it is incompatible with the notion of human dignity, with abolitionists arguing that it ultimately results in the dehumanisation of women who sell sex. I end by looking at what solutions abolitionists present to address the perceived harms done to women involved in prostitution. The chapter begins, however, as mentioned before, by exploring exactly how 'dignity talk' became such a feature of abolitionist discourses in the first place.

5.2 Tracing dignity in feminist abolitionist discourse

5.2.1 Kathleen Barry: an introduction

The sociologist and campaigner, Kathleen Barry, is a key figure in the developing of a radical feminist discourse that positions commercial sex as incompatible with human dignity. The growing influence of 'dignity' in Barry's work is evident when comparing her early writings from the 1970s with her later work from the 1990s. In Barry's *Female Sexual Slavery* (1979), there is very little reference to the concept of dignity in her theories on prostitution. She does, however, rely on the concept when she discusses a more general theory of "sexual perversion" (ibid.: 266 - 269). Here, for Barry, "where there is any attempt to separate the sexual experience from the total person, that first act of objectification is perversion" (ibid.: 266). She proposes, instead, that the "positive, constructive experience of sex, *must be based in intimacy*" (ibid.: 267; emphasis in original). In turn, intimacy is said to be "cultivated from dignity, respect, caring, tenderness" (ibid.: 267-268) and destroyed by "depersonalization"

where the “self is devalued into an object and deprived of respect, honor, and dignity” (ibid.: 268).

Barry asserts here that cultivating dignity (alongside other ‘related’ qualities) is a crucial step in elevating human sexuality from an experience of objectification for women to a “positive, constructive experience of sex” (ibid.: 267). What Barry does is outline a highly prescriptive version of ‘good sex’. Interestingly, Kulick (2005) explores how notions of ‘good sex’ were a central consideration in Sweden, as part of the rationale for criminalising the purchase of sex. In Sweden, ‘good sex’ has to be “mutually satisfying sexual relations between two (and only two) consenting adults or young adults who are more or less sociological equals” (ibid.: 208). What these discourses of ‘good sex’ lead to, however, is the creation of normative hierarchies, where a narrow and limited range of sexual practices and sexual subjects are given social acceptance (Rubin 1984; Vance 1984). As noted above, for Barry, one of the key conditions for normatively acceptable sex, is that human dignity is recognised and cultivated during sexual contact.

Dignity, in these earlier writings, is thus used by Barry in a philosophical sense, in the framing of her theories on sexuality, perversion and intimacy. A similar philosophical usage of the term is also in place in her later writings, predominantly her 1995 book *The Prostitution of Sexuality* (although, as we shall shortly see, such writings are also characterised by ‘dignity’ being utilised in another significant sense), where there is continuing reference to the connection between dignity and a positive sexual experience for women:

I would suggest that the minimum conditions for sexual consent are in sex that is a human experience of personal dignity and one that is enjoyed with respect and pleasure. Neither marriage nor prostitution, as structures of patriarchal

domination, institutionally provide for them. Therefore, although women and men may experience sex that does not violate human dignity and personal respect, their experiences are not because of but external to structured patriarchal power. (Barry 1995: 68-69)

Like in her earlier writings, Barry, here, sets out a clear vision for a positive or 'good' human sexuality, with the notion of dignity playing an important role in this. What is required in order to respect or cultivate dignity when two human beings are actually engaging sexually is not elaborated upon in Barry's writings, but she is clear that the default sex of prostitution (or marriage) does not provide it. This is because, as Barry makes clear in the quote above, she sees prostitution (and marriage) principally as a site of male domination.¹⁹⁶

Significantly, however, and foreshadowing an important theme for this chapter, dignity begins to take on a different character in Barry's later writings as it is increasingly used as a legalistic concept, connecting her theories on prostitution to human-rights-based discourse. The concept of dignity appears as a way to frame, and reinforce, the notion that prostitution is a violation of women's human rights - something which has subsequently become a key element of abolitionist campaigns. For example, Barry says:

In the fullness of human experience, when women are reduced to their bodies, and in the case of sexual exploitation to sexed bodies, they are treated as lesser, as other, and thereby subordinated. This is sexual exploitation and it violates *women's human rights to dignity and equality*. (ibid.: 24; emphasis added)

¹⁹⁶ Kulick also notes that 'good sex' in Sweden "must not involve money or overt domination, even as role-playing" (2005: 208).

Here, Barry begins to invoke dignity as a 'human right', which was entirely absent from her earlier work but is now a central feature of her theorising on prostitution. Indeed, the decision to adopt a human-rights-based discourse is reflected on directly by Barry when she says she has chosen to "focus [her] militancy and strategizing against oppression on *human rights*" (1995: 10; emphasis in original). This focus on human rights is driven by a recognition that prostitution (and other forms of sexual exploitation) is an issue that confronts women as a class. Barry's ultimate objective is to see that "sexual exploitation is treated as a class condition that is *a crime against humanity* as much as it is a crime against any individual human being" (ibid.: 10; emphasis in original). This framing of prostitution, as a violation of dignity, and therefore, a 'human rights issue', is, I would argue, a key moment in the structuring of feminist abolitionist discourse on prostitution, which continues to form a central element of their campaigning work today.

5.2.2 The development of an abolitionist feminist human rights discourse

The development of this new human-rights-based discourse, and its reliance on framing prostitution as a violation of dignity, has its genesis in the late 1980s/early 1990s, spearheaded by Barry's activism of this time and coinciding with the founding of the (still-functioning) Coalition Against Trafficking in Women (CATW), an international NGO, headquartered in the United States, that campaigns for the abolition of prostitution. Barry describes the principal events that led to the defining of prostitution, in abolitionist feminist discourses, as a violation of human rights (and dignity):

In 1986 I had been a rapporteur in a UNESCO meeting of experts on prostitution held in Madrid. In that meeting it was clear to me that present U.N. conventions could no longer address the problems of sexual exploitation...that

five-day meeting was the first time since I wrote *Female Sexual Slavery* that I had been challenged into new analysis of this issue. Seven years was a long time to wait. Those new ideas led to a collaboration with UNESCO in a meeting I held at Penn State in the spring of 1991... (ibid.)

The 1991 meeting referred to above was organised by Barry at Pennsylvania State University, where she gathered together a group of experts to “identify international human rights approaches to the exploitation of women in prostitution” (CATW/UNESCO 1992: 1). The meeting was organised on the basis of the distinction made between forced and voluntary prostitution in the only existing human rights treaty addressing the issue at this time - the 1949 Trafficking Convention. It was felt that this distinction did not reflect the reality of women involved in prostitution because, in accordance with radical feminist theory, no woman could freely consent to the selling of sex given the constraints on her opportunities and choices under patriarchy. The meeting, therefore, proceeded on the premise that it was “no longer possible to accept the concept of forced prostitution which was the philosophical basis of the United Nations Convention of 1949, nor to accept the implied existence of prostitution that is freely practiced” (ibid.: i).

Significantly, the report of the 1991 meeting states that the group of experts in attendance was creating a “new discourse which considers prostitution as a form of sex discrimination, sexual violence, and *the (sic) violation of human dignity*’ (ibid.: 34; emphasis added). The report makes frequent reference to the fact that an original and novel approach was being developed by the group (ibid., e.g.,: i), one resting upon and promoting a “new concept/definition of prostitution” (ibid.: 7)) - as a form of sexual exploitation.

5.2.3 A new convention against sexual exploitation

The 1991 Penn State meeting - with its 'new' definition of prostitution, as a form of sexual exploitation that violates dignity - marked, according to Barry, the beginning of a 'New Feminist Human Rights' (1995: 304). A number of subsequent meetings took place, sponsored by CATW and UNESCO, out of which a "new human-rights instrument" was developed (ibid.). This was called the Convention Against Sexual Exploitation ('the New Convention'), and Barry and her colleagues presented this to the United Nations, with the intention that it would replace the 1949 Trafficking Convention (see Barry 1995: 323 - 344 for a copy of the draft Convention). Sexual exploitation is defined in this new Convention, under Article 1, as "a practice by which person(s) achieve sexual gratification or financial gain or advancement through the abuse of a person's sexuality by abrogating that person's human right to dignity, equality, autonomy, and physical and mental well-being" (ibid.: 326). Article 2 proceeds to list the activities that are deemed to be sexual exploitation, including prostitution (ibid.).¹⁹⁷ The assertion that prostitution, a form of exploitation, violates a person's human right to dignity was, therefore, codified in the drafting of the New Convention. Moreover, and importantly, while this new treaty is framed as a convention against *sexual exploitation* more widely, it was developed principally as a response to the issue of prostitution (CATW/UNESCO 1992). Barry, and her colleagues, believe that "prostitution is the most extreme and most crystallized form of all sexual exploitation" (Barry 1995: 11) and that "it is the foundation of all sexual exploitation of women" (ibid.: 65).

¹⁹⁷ Other activities listed in Article 2 as forms of sexual exploitation include female infanticide and murder, pornography, genital mutilation, sexual harassment, rape, incest, sexual abuse and temporary marriage (see Article 2 of the Draft Convention Against Sexual Exploitation, in Barry 1995: 323 - 344).

The New Convention failed to garner support, however, either within the United Nations or, indeed, in wider feminist circles, and while still existing in draft form, it has never been implemented. Indeed, it is worth noting that the UN adopted the *Declaration on the Elimination of Violence Against Women* in 1993, around the time the New Convention was being drafted, which retains the free/forced distinction from the 1949 Trafficking Convention. Article 2 of this Declaration specifically elucidates “forced prostitution” as a form of violence against women but is silent on “non-forced prostitution”¹⁹⁸ - the implication being that, at least in formal international human rights treaties, there has been a clear rejection of the position set out in the New Convention that any, and all, forms of prostitution constitute a violation of human dignity.

5.2.4 Dignity in feminist abolitionist campaigns worldwide

While the view that prostitution, in all its forms, violates human dignity failed to gain traction within international human rights law, it has since been adopted wholeheartedly by feminists who campaign for the abolition of prostitution. There appears to be consistency and clarity in the use of ‘dignity talk’ in abolitionist discourses that have come into circulation over subsequent years; elements of the definition of sexual exploitation found in the New Convention are to be found in abolitionist campaigns in many different countries around the world. For example, in a policy document called *Prostitution: a violation of human rights*, the Irish abolitionist organisation, Ruhama, directly references the “new Convention Against All Forms of Sexual Exploitation”, arguing that, if adopted, it would “make all prostitution and trafficking violations of human rights” (2007: 6). Ruhama goes on to argue that

¹⁹⁸ See *Declaration on the Elimination of Violence Against Women*, available at: <http://www.un.org/documents/ga/res/48/a48r104.htm>, last accessed 13 June 2018.

“prostitution...violates the human dignity and integrity guaranteed to all in the UN Declaration on Human Rights 1948” (ibid.: 2).

In some instances, abolitionist campaigning has been so successful that the definition has made its way into official government policy. For example, in Scotland, the definition of sexual exploitation used in the Scottish Government’s Violence Against Women policy document *Safer Lives: Changed Lives* is modelled precisely on the definition found in the New Convention:

A sexual activity becomes sexual exploitation if it breaches a person’s human right to dignity, equality, respect and physical and mental wellbeing. It becomes commercial sexual exploitation when another person, or group of people, achieves financial gain or advancement through the activity. (Scottish Government 2009: 8)

‘Dignity talk’ is also widely used by feminist abolitionists at the European level, where framing prostitution as a dignity violation appears to be a key goal of abolitionist campaigns. German feminist Alice Schwarzer, who launched a highly publicised campaign against Germany’s legalised prostitution, proclaims that “it has encouraged us [abolitionists] to see that in Europe, there are more and more countries that speak of prostitution in terms of human dignity” (South African Press Association 2013). The European Women’s Lobby, which campaigns for a ‘Europe Free from Prostitution’, maintains that “refusing prostitution is about setting a standard of human dignity for all women and girls around the world” (2011).

Canadian abolitionist groups also appeal to dignity language, with two of the most prominent groups using the term as part of their organisational name. Defend Dignity is a faith-based organisation, part of the Christian and Missionary Alliance Canada, and

it believes that “the selling of sexual services...undermine[s] the dignity of women, men and children” (n.d.). One of the aims of another of Canada’s faith-based abolitionist organisations, REED (Resist Exploitation Embrace Dignity), is “[t]o *embrace dignity* by entering into transformative relationships with women who are harmed by the sex industry” (n.d.; emphasis in the original).

The same applies in South Africa, where one of the leading abolitionist organisations calls itself Embrace Dignity, and the Coalition to End Sexual Exploitation South Africa (CESESA) has launched a ‘True Dignity’ campaign to “to oppose decriminalised prostitution”.¹⁹⁹ In a statement produced by CESESA, it is argued that “inherently and by definition, the practice of prostitution demeans those who are involved and constitutes the most direct and blatant denial of human dignity” (n.d.: 5). The Women’s Forum Australia also argues that “the legitimisation and normalisation of the sex industry has a profound, negative impact on the human rights and dignity of all women” (Perry n.d.).

International abolitionist activism has recently coalesced around the forming of a new organisation called CAP International - the Coalition for the Abolition of Prostitution. This organisation was launched in October 2013, and, according to its website, “it develops strategic partnerships with existing abolitionist networks, NGOs and broader organisations that support the universal abolition of prostitution” (n.d.- a). It is funded by donations from private individuals and private foundations (n.d.- b). The global reach of the abolitionist use of ‘dignity talk’, then, is strikingly evident in the work of this organisation – and it is, thus, to an examination of its discourses that we now turn.

¹⁹⁹ See the organisation’s homepage at: <https://cesesa.org.za/>, last accessed 13 June 2018.

5.2.5 CAP International: solidifying the human-rights-/dignity-based approach

CAP International is primarily focused on pursuing policy and legislative change, in line with the Nordic model, which includes the criminalisation of the purchase of sex, decriminalisation of those who sell sex and support for people to exit prostitution (n.d.-b). In pursuing these objectives, CAP International is clear that prostitution is a violation of dignity, making this a key element of their discourse (2017: 8). In a publication called *Prostitution under International Human Rights Law: An Analysis of States' Obligations and the Best Ways to Implement Them*, CAP International attempts to read into international human rights law a duty on states to eradicate prostitution *precisely because it is said to violate dignity*. It proclaims that “prostitution is recognised as a violation of human dignity under human rights law” (Théry 2016: 11) and supports this claim by referencing the 1949 Trafficking Convention. It is, then, further argued that because “international human rights law recognises prostitution as a violation of human dignity” that there are “key consequences for States Parties and UN bodies and agencies alike” (ibid.: 13). These “key consequences” for states are, according to CAP International, that they must “work towards the elimination of prostitution and protection of its victims” (ibid.). Not only that, but states are “de facto prohibited from implementing policies that would encourage prostitution and thereby foster a violation of human dignity” (ibid.).

This document from CAP International, and the arguments contained therein, provide a cogent example of how the concept of dignity, given its prominence in human rights law, can act as a bridge between political demands and the legal obligations found within human rights treaties. CAP International acknowledges that criminalising the purchase of sex - their ultimate political/legal goal - is not yet a specific obligation under international law (ibid.: 18). However, they then go on to argue that such an obligation can be assumed to exist precisely because, in their view, prostitution is a

violation of human dignity, making it contrary to states' obligations under existing human rights treaties. They describe the introduction of laws criminalising clients as the "logical consequence" of a human-rights-based approach, as "sex buyers play an obvious and direct role in what is recognized as a violation of the dignity and worth of the human person" (ibid.: 18).

5.2.6 Abolitionist influence on international law

CAP International is a key player in what Wylie (2017) describes as the "transnational advocacy networks" that promote a neo-abolitionist approach to prostitution, rooted in the theories of radical feminism. She uses the theory of a "norm lifecycle" (Finnemore and Sikkink 1998) to chart the increasing influence of neo-abolitionist policies in international law and policy. According to Finnemore and Sikkink, new norms begin life by being proposed by "norm entrepreneurs" who "call attention to issues or even 'create' issues by using language that names, interprets, and dramatizes them" (1998: 897). These new ideas/norms are then taken up by organisations and transnational advocacy networks, who promote the norm and attempt to translate it into concrete laws and policies. Finnemore and Sikkink propose that once "a critical mass of states become norm leaders" (they suggest around 40), a "threshold or tipping point is reached" and the new norm then "cascades" into the international system, whereupon "more countries begin to adopt new norms more rapidly even without domestic pressure for such change" (ibid.: 902). The final stage in the norm lifecycle is internalisation, where "norms may become so widely accepted that they are internalized by actors and achieve a 'taken-for-granted' quality" (ibid.: 904).

The theory of the 'norm lifecycle' expresses, in a different language, the basis of Laclau and Mouffe's theory on hegemony. When a norm cascades through the international system and becomes internalised, we could also say that this particular discursive

framing of the issue has achieved hegemonic status through the efforts of the 'norm entrepreneur' and their transnational advocacy networks. While I would suggest, based on the ideas discussed above, that the notion that 'prostitution violates dignity' has been effectively cascaded throughout the global abolitionist movement and achieved hegemony in that context, it is not the case that this norm has reached a critical mass in terms of its adoption in international legal contexts. The only international treaty to propose that prostitution violates dignity is the aforementioned 1949 Trafficking Convention.

More specifically, the Preamble to the 1949 Convention states that "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person". Marcovich charts the influence of abolitionist feminist campaigning on the adoption of the Convention and notes that it "was the result of an abolitionist and feminist struggle in England, begun and led by Josephine Butler in 1866" (2002: 2). She explains that the 1949 Convention has no monitoring or enforcement mechanism attached to it and has been ratified by a relatively small number of countries, totalling 73 (ibid.: 25). This leads to arguments that it is meaningless and has no effect, but Marcovich rejects this view, noting that the Convention "has withstood many years of attacks from the captains of the sex industry, the pro-'sex work' lobby, and regulationist states" (2002: 19). While acknowledging that it "remains a fragile instrument", she argues for its continuing importance and relevance (ibid.). She reminds us that "international treaties also have a symbolic value carrying a vision, message and frame of reference that embody the aspirations and values of a society" (ibid.: 20). The Convention is still referenced as part of national and global abolitionist campaigns (see, for e.g., Ruhama 2007 and Théry 2016), demonstrating its continuing symbolic value for the movement, which is perhaps particularly emphasised given the lack of any future international legal text, which adopts the 'abolitionist dignity norm'.

5.2.7 The spread of the abolitionist dignity norm outwith international law

While the 1949 Trafficking Convention is the only treaty at the international level that has adopted the abolitionist perspective on dignity and prostitution, there are examples of its particular use of ‘dignity talk’ cascading down to the regional and national level. At the national level, abolitionist rhetoric on dignity and prostitution has been formalised in Canadian law, after the adoption of the Protection of Communities and Exploited Persons Act (PCEPA). This Act was the Government’s response to the striking down of the country’s prostitution laws by the Supreme Court in the *Bedford* case, and, among other things, it criminalises the purchase of sex, in line with abolitionist feminist demands. The Preamble to the Act reflects the notion that prostitution is incompatible with human dignity, when it states that “it is important to protect human dignity...by discouraging prostitution...”²⁰⁰

Joy Smith MP, a vocal supporter of Bill C-36, which became the PCEPA, frequently used dignity rhetoric in her campaign to see the Bill pass in Parliament. In an article for the *Huffington Post*, she declares, in the headline, that “Our New Prostitution Bill Protects the Dignity of Women and Youth” (J. Smith 2014a); and, in another newspaper opinion piece, she states that “a truly progressive society encourages the equality and dignity of women, not the prostitution of women” (J. Smith 2014b). In a speech to Parliament on 12th June 2014, Ms Smith again used dignity language in arguing for the adoption of Bill C-36: “For the first time in Canada’s history the buying of sexual services would be illegal. For the first time, women trafficked into prostitution would not be treated as nuisances, but with dignity” (Parliament of Canada 2014). To the best of my knowledge, the Canadian Act represents the first time, since the 1949 Trafficking Convention, that the explicit notion that prostitution is incompatible with human

²⁰⁰ Protection of Communities and Exploited Persons Act (PCEPA); copy available at http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2014_25/page-1.html, last accessed 1 June 2018.

dignity has made its way into codified statutory law, at either a national or international level.

Returning to Europe, it can be seen that, while not an example of formal law, the European Parliament did pass a non-legally binding resolution on 26th February 2014, in which prostitution was said to be incompatible with dignity (European Parliament 2014). This resolution was proposed by the Parliament's Committee on Women's Rights and Gender Equality ('the Committee'). In the proposed resolution, prostitution is said to be a "form of slavery incompatible with dignity" (Women's Committee 2014: 6); and in the explanatory statement, it is further argued that "prostitution is a very obvious and utterly appalling violation of human dignity" (ibid.: 15)). Mary Honeyball was the MEP (Member of European Parliament) who spearheaded the resolution and was its public face (although it was proposed collectively by the Committee). In an article in *The Telegraph*, published to celebrate the adoption of the Committee's initial report on the issue (a few months in advance of the debate and vote on the resolution itself), Honeyball and her co-author, Joan Smith, argue:

If you accept that all human beings are entitled to be treated with dignity, it's impossible to support a trade which treats women's bodies as disposable. That's why we're thrilled that the MEPs on the European Parliament's women's committee have accepted this report today, and support the extension of the 'Swedish model' across Europe. (Smith and Honeyball 2014)

It is important to note that there was dissent in the Committee towards the characterisation of all prostitution as violating human dignity, and an amendment was proposed, making a sharp distinction between 'forced' and 'voluntary' prostitution. Here, in the minority opinion of several MEPs (Ulrike Lunacek, Marije Cornelissen, Iñaki Irazabalbeitia, Raul Romeva and Sophia In't Veld), it is specifically noted that

“forced prostitution...is a violation of human dignity”; and they go on to complain that “the report does not differentiate between forced prostitution and prostitution resulting from individual decision” (Women’s Committee 2014: 19). These interventions have led to the rather confusing final text of the resolution reading that “prostitution and forced prostitution are forms of slavery incompatible with human dignity” (European Parliament 2014: para B). While recognising that “individual Member States have the competence to decide how they approach the issue of prostitution” (ibid.: para V), the resolution nevertheless thus frames prostitution almost entirely as a harmful and violent practice and advocates adoption of the Nordic model.

Wylie (2017) provides a useful background account of the steps leading up to the adoption of the resolution in the European Parliament. She identifies the work of the European Women’s Lobby as being crucial to the pursuance of the resolution, claiming that “lobbying for neo-abolitionist goals has been a key aim of EWL in recent years” (ibid.: 22). As noted above, one of the key principles of the EWL’s ‘Campaign for a Europe Free from Prostitution’ is that prostitution violates the dignity of all women and girls (2011). Wylie argues that “what these interactions between EWL, MEPs and the Committee illustrate is the intense activism of neo-abolitionist lobbyists within the European regional framework, working to spread and cascade their normative take on trafficking and prostitution in the EU” (2017: 22). Of course, the framing of prostitution as a violation of dignity is just one element of this “normative take” on commercial sex. The European Parliament Resolution also, for example, makes reference to prostitution as being “intrinsically linked to gender inequality” (2014: para E) and that “prostitution markets fuel trafficking in women and children” (2014: para P). However, the prominence that the concept of dignity has in human rights treaties and wider rights-based discourses makes ‘dignity talk’, I would argue, an attractive option for advocates to use. This is because the use of dignity language acts as a strategic gateway, not just

to the actual laws and remedies of international human rights law but also to its symbolic power.

5.2.8 Strategic use of ‘dignity talk’

This strategic use of ‘dignity talk’ is evident in the aforementioned resolution proposed by Mary Honeyball and her colleagues. In the report that was prepared to accompany the resolution, the Committee on Women’s Rights and Gender Equality states that because “human dignity is specifically mentioned in the Charter of Fundamental Rights, the European Parliament has a duty to report on prostitution in the EU and examine ways in which gender equality and human rights can be strengthened in this regard” (Women’s Committee 2014: 15). The Charter of Fundamental Rights (‘the Charter’) was drafted in 2000 and adopted by the EU as part of the Lisbon Treaty in 2009. Unlike the European Convention on Human Rights (ECHR), which makes no mention of human dignity,²⁰¹ the Charter is explicit in Article 1 that “human dignity is inviolable” and “it must be respected and protected”. The Lisbon Treaty, however, also makes it clear that “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties” (Article 6(1)). Abolitionist campaigners in Europe are likely aware of the fact that prostitution laws and policies are a matter for individual member states and that the European institutions have no power to impose any European-wide law on the issue. The suggestion, therefore, that the European Parliament “has a duty to report on prostitution in the EU” (ibid.) because it impacts on human dignity is, I would argue, evidence of a strategic framing of the issue that inflates the symbolic/influential power of the resolution and is an attempt to leverage a *political* response from the European institutions.

²⁰¹ Even though the concept of dignity does not appear in the text of the ECHR, it is frequently referred to in decisions of the Court, particularly cases related to Article 3 (prohibition on torture, inhuman and degrading treatment) (see Costa 2013; Waldron 2010; Webster 2018).

The reality is that the European Parliament can pass non-binding resolutions on any number of issues, within and outwith its own legislative competencies as long as it relates, very broadly, to a “matter falling within the spheres of activity of the European Union”.²⁰² This is nothing new and it is certainly not a power that was granted by the Charter of Fundamental Rights. While the European Parliament has a duty to ensure that, when acting within its competencies, it complies with the Charter, there is no formal legal duty inferred on it to “report” on matters that impact on fundamental human rights. The European Parliament may choose to exert influence this way, acting as a sort of “European conscience” but it is under no obligation to do so (Camporesi 2010: 92). Why, then, might the Committee have chosen to emphasise the Charter’s provisions on dignity and suggest (incorrectly) that this meant the Parliament has a duty to report on the issue of prostitution? The reason may well be that, while its “actual legal effects have been exaggerated”, it remains the case that the “symbolic importance of the Charter is powerful” (Piris 2010: 160). This “symbolic importance”, therefore, provides European abolitionist campaigners with a clear advantage in framing prostitution as a violation of dignity - and, by extension, incompatible with the Charter - as this achieves important political impact even in the absence of concrete legal effects.

5.2.9 Reflecting the local analytic

The decision of the European Parliament’s Committee on Women’s Rights to use ‘dignity talk’ as a way to strengthen the legitimacy and impact of their resolution was explicitly tied to the importance of the concept of dignity in the EU Charter of Fundamental Rights, a key regional human rights treaty. This is just one example of the

²⁰² See Rule 133 of the Rules of Procedure of the European Parliament, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20170116+RULE-133+DOC+XML+V0//EN&language=EN&navigationBar=YES>, last accessed 7 June 2018.

influence that the local or regional legal context has on the decisions made by activists to pursue a dignity-based discourse. For instance, South Africa was identified in the course of my research as a context where the notion of human dignity has become such a strong constitutional value that it pervades all aspects of South African life. Both of the abolitionist campaigners from South Africa I interviewed (and also those who advocated from a SWR perspective; see Chapter 6) discussed the country's history of apartheid and the subsequent embrace of dignity as a key constitutional value:

...in the terms of apartheid, the issue of dignity was important because people were regarded, not because of anything they'd done, but they were regarded as second-class citizens... the Bill of Rights is the cornerstone of democracy in South Africa; it enshrines the rights of all people in our country and...the democratic values of human dignity, equality and freedom. So that is used and the term is used quite frequently in saying, 'Look, you're not recognising the dignity of people just because they are people.' (Abolitionist Activist D, South Africa)

... particularly in the South African context, where dignity has been stripped of us. I mean, I could go on and on about telling examples of how people had to live under apartheid, and it's just guttingly, emotionally horrible. So the whole idea of dignity for us is something that we hold with a great deal...of honour. (Abolitionist Activist E, South Africa)

That the concept has such a powerful place in the political, social and cultural life of South Africa can be seen as having influenced activists' decisions more widely to use it to frame arguments around prostitution. This is evidenced in the available textual sources, where 'dignity' can also be seen to have informed *how* those arguments were constructed. For example, in a statement produced by South Africa's Coalition to End Sexual Exploitation (CESESA), the influence of the country's apartheid history on the

current importance of the concept of dignity is made explicit when it is asserted that “respect for dignity of all human beings is particularly important in South Africa because people were refused respect and dignity in the past” (n.d.: 4). It is of note that CESESA’s writings on prostitution and dignity are framed as a “constitutional argument”, and they state that “the appropriate perspective from which to address commercial sexual exploitation is not an ideological labour model but a South African constitutional dignity model” (ibid.: 5). This demonstrates the extent to which dignity has been constructed in South Africa as a key national value, deeply connected to its particular history of state-sanctioned racist oppression. This trajectory is perhaps unsurprising given that the ideal of human dignity has played a similar role in the world’s response to the horrors of the Second World War, and specifically the racist genocide of the Holocaust, when it was given its prominent place in the post-war international human rights framework.

Thus far, I have charted how the concept of dignity came to be widely embraced by feminist abolitionists globally and discussed the occasions in which their perspectives on dignity and prostitution have influenced global, regional and national legal discourses. I have also suggested that dignity has been embraced by abolitionist activists as a way of framing their demands within international human rights law, which gives them access to particular rights-based legal and political advocacy tools. CAP International’s argument - that states have an obligation under international law to criminalise the purchase of sex on the grounds that prostitution violates human dignity - is one such example. In addition to acting as a gateway to international human rights law, ‘dignity talk’ is also adopted by activists as a way to reflect the importance of the concept in their own local or regional contexts, as evidenced by the resolution from the European Parliament’s Committee on Women’s Rights and Gender Equality and my interviews with South African abolitionist activists. I now want to look more deeply at precisely how abolitionist activists use the concept of dignity, what

meanings they ascribe to the concept, and how their use fits within Rao's typology.

5.3 Introduction to the interviewees: reflections on the meaning of dignity

As noted in Chapter 3, 'dignity' can hold within it a range of different meanings, and it can be used in a variety of ways. Here, I introduce the abolitionist interviewees and explore their personal understandings of dignity, as they expressed it in the interviews. This provides an initial insight into how these participants conceptualise dignity generally, before I go on in section 5.4 to analyse more specifically how the concept is actually used in the creation of their own, and wider, abolitionist discourses on sex work. There was some divergence, although minimal, in how the five abolitionist activists that I interviewed for this thesis each conceptualised dignity. Four out of the five were people of faith and, of these four, three of them emphasised how their Christian faith influenced their understanding of human dignity. For example:

Well, I think, you know, because we are faith-based, and certainly I'm a person of faith, and so my underlying belief is that all of us, every single person, is made in God's image, and that really is the crux of why I believe that every single person therefore is made with great dignity. (Abolitionist Activist A, Canada)

So, I mean, in our view, so, organisationally... - and this would be the same for me personally too - as Christians, we believe that God has created all people in his image, that he loves each one. And so I will often talk about how this understanding, this belief compels us to both announce and to guard the fundamental dignity of each person. So, dignity is rooted in who we are in relation to our creator. (Abolitionist Activist B, Canada)

These two Canadian activists, thus, stressed that their personal beliefs are aligned with their organisation's positions on dignity. In contrast, one of the South African activists clearly distinguished his personal view from the organisational approach:

But my own position as a [Christian religious denomination] provided the space for me to recognise everyone as having inherent dignity and worth, and that of God and everybody. So that's my own personal position on it. But I think the organisation, we have people of different faiths in the organisation, [and] we don't prescribe any faith on people. (Abolitionist Activist D, South Africa)

What the three activists quoted above share in common when referencing their faith is their use of words like "inherent" and "fundamental" when describing how they conceptualise 'dignity'; they invoke clear themes of equality in their responses, which speaks strongly to a sense of 'intrinsic dignity'. Meanwhile, the other Canadian activist, who did not work for a faith-based organisation, invoked similar themes of equality and equal value in her explanation of what dignity meant to her, but this was done through a secular rather than religious lens:

I think dignity, for me, is being able to have that feeling that I deserve to be in the same place as everyone else. That when you're prost – because I was prostituting for fifteen years, right, and there's this overlying sense that we're relegated over here and we're allowed to be there, but don't go into all of these other places where the nice people go. So, I think it's making sure everyone has a feeling and an understanding that they have a right to access free space, just like everyone else. (Abolitionist Activist C, Canada)

This conceptualisation of dignity, I would argue, displays elements of both 'intrinsic dignity' and 'dignity as recognition'. The idea that everyone, regardless of who they

are, has the same “right to access free space” speaks to an inherent human dignity that should guarantee equality and fundamental rights. There is also, in this interviewee’s response, reference to the inter-subjective aspect of ‘dignity as recognition’, where negative societal attitudes are internalised by people who sell sex, affecting their self-esteem and their ability to move freely in public space.

The final activist, who was from South Africa, while working for a faith-based organisation, did not discuss his personal religious beliefs when asked how he conceptualised dignity. Instead, this activist acknowledged, more than any of the other abolitionists, the ‘elastic’ nature of dignity and the difficulty in pinning down a clear definition or meaning:

I think, for me, dignity is one of those terms like freedom and maybe other ones that come to us from the universal declaration on human rights; many of them are problematic in that they’re carefully elastic, but they capture something, I think... if you think about in the Second World War context where what happened to the Jews was strongly (sic.) motivation to put that declaration together in the first place. And even then it was highly problematic because they couldn’t get agreement on what dignity – even things like freedom mean. And those debates continue. So why keep them? And, to me, it’s because of those atrocities, it’s because of the atrocities in Rwanda where people were [killed in the] genocide, a whole lot of people. And because of these terms, even though they are elastic, and maybe it’s the elasticity that is why they continue to be used in high court rulings and things of this sort, is because they still seem to capture something, if not very easily, in terms of definition.

(Abolitionist Activist E, South Africa)

What is interesting about this activist’s comment is that while he acknowledges the

elasticity of the concept of dignity, he also associates it very strongly with extreme examples of dehumanisation and genocide, making specific reference to the Holocaust and the Rwandan genocide. This, together with his reference to the universal declaration of human rights, suggests that his primary association is with the notion of 'intrinsic dignity'.

5.3.1 Dignity as an empty signifier

The description of dignity as "elastic", in the quote above, recalls the discussion in Chapter 2 about how the word dignity, to use Laclau's term (1994), acts as an empty signifier. Describing a signifier as 'empty' does not denote that it has no meaning but instead the 'emptiness' of the signifier points to its ability to have different meanings and connotations projected onto it in order to satisfy different political objectives (Howard and Stavarakis 2000: 9-10). The fact that dignity is capable of holding within it various different meanings was not, however, readily accepted by all of the abolitionist activists. The two Canadian abolitionists who worked for faith-based organisations, for example, felt that the concept of dignity was very clear and unambiguous. They specifically contrasted the certainty of meaning that they perceived as being attached to the term 'dignity' with the ambiguity and flexibility of the notion of 'rights':

I much prefer, actually, to talk about dignity as opposed to human rights, because I think human rights can vary so much depending on who you're talking with, right. We all have so different [an] understanding, I think, of what a human right is, whereas dignity to me is pretty foundational; it's pretty basic, I guess... Human rights can just about mean anything you want it to mean, it seems to me. Dignity, I don't think you can muck around with that so much.
(Abolitionist Activist A, Canada)

When human dignity is kind of the foundation for your understanding of rights, the perspective is a bit bigger. So meaning that so often the language of human rights is very subjective. It's very individual. (Abolitionist Activist B, Canada)

Interestingly, one of the non-abolitionist interview participants, who worked for a global anti-trafficking organisation, raised in their interview the fact that the abolitionist movement tends not to acknowledge the contingent nature of the term 'dignity':

And I think they [abolitionists] are using it, they are using the concept of dignity completely in a, yeah, as if it's something defined and is talked in the same way by everyone. (Staff Member of Anti-Trafficking Organisation, Global)

The same participant went on to describe the abolitionist position that prostitution is incompatible with human dignity as a "catchphrase". In Discourse Theory terms, he alludes, here, to the fact that the 'empty signifier' of 'dignity' has been 'filled' most successfully by abolitionists in the sex work debates, as it has become so closely associated with their particular political perspective. The perspective that 'prostitution is incompatible with dignity' was certainly strongly evident in the interviews with all of the abolitionist activists. Even the Canadian campaigner from a non-faith-based organisation, who was a little more reticent about using the concept of dignity in her work, said the following:

And I know the other side would say, like, who are we to determine someone's dignity, like, that's not for us to decide, like, do we think people who dye their hair blue and have multiple face piercings have dignity or whatever, right? But I

think we can realise prostitution is such an egregious form of abuse that it doesn't really have to be argued at all. (Abolitionist Activist C, Canada)

This quote is an example of an abolitionist activist expressing an essentialist understanding of prostitution, as discussed in Chapter 1. In this instance, commercial sex is essentialised as “an egregious form of abuse”, which is used to support the assertion that it violates dignity. The fact that it “doesn't really have to be argued at all” captures the attempt to hegemonise a discourse that situates prostitution as a phenomenon that *always* violates dignity. Which ‘version’ of dignity, however, is being used to support this position? Having noted above that the abolitionist activists interviewed displayed *personal* understandings of dignity in line with the notion of ‘intrinsic dignity’, with some reference to ‘dignity as recognition’, is this, similarly, reflected in an analysis of how ‘dignity talk’ is used in the creation of wider abolitionist discourses?

5.4 Abolitionist feminist rhetoric and Rao's taxonomy

Rao distinguishes three main types of dignity, as discussed in Chapter 3: ‘intrinsic dignity’, ‘substantive conceptions’ of dignity, and ‘dignity as recognition’. ‘Intrinsic dignity’ “exists merely by virtue of a person's humanity” and “does not establish an external measure for what counts as being dignified or worthy of respect” (Rao 2011: 187). The notion of ‘substantive conceptions’ refers to the use of dignity as “the ground for enforcing various substantive values” (ibid.), and Rao makes clear that ‘substantive conceptions’ are “contingent and evolve based on social values and judgements” (ibid.: 223). Finally, ‘dignity as recognition’ introduces an important relational element into dignity, which is focused on a sense of interpersonal respect: “respect for a person's dignity requires recognizing and validating individuals *in their particularity*” (ibid.: 188; emphasis in original).

Abolitionist feminist legal and political demands are focused on prohibiting prostitution (by criminalising the purchase of sex) and so it may seem that their use of dignity would fall under the 'substantive conceptions' approach as outlined by Rao. This version of dignity is often labelled as 'dignity as coercion' (ibid.: 222) as it is about imposing certain standards of behaviour on people in order to preserve or promote dignity. In fact, Rao gives the example of "bans against pornography or prostitution" as examples of "dignity as coercion" that "reflect community norms about appropriate behavior and morality" (ibid.: 223). 'Substantive conceptions' of dignity are contingent and "reflect public judgments about how to preserve the dignity of the community and individuals within the community" (ibid.). Rao notes that 'substantive conceptions' of dignity are "socially constructed and politically enforced, often against the desires of affected individuals" (ibid.: 222). This creates a tension between the rights of the individual versus the rights of the community, which is, indeed, a theme that is addressed in abolitionist writings.

5.4.1 Communitarian dignity: substantive concepts

In abolitionist feminist texts, a strong emphasis is placed on the harm that prostitution does, not just at an individual level, but to all women and all of humankind. Kathleen Barry, for example, argues that prostitution must be confronted as a "class condition" (1995: 10). The Women's Forum Australia believes that "the legitimization and normalization of the sex industry has a profound, negative impact on the human rights and dignity of all women" (Perry n.d.). Ruhama, the aforementioned Irish abolitionist organisation, argues that "as well as breaching an individual's human rights, the prostitution system and the trade in human beings is a violation of the rights and dignity of humankind as a whole" (2007: 2).

In the report of the meeting that led to the creation of the Convention Against Sexual Exploitation, the question of whether a right to prostitute exists is addressed. It is argued that “clearly prostitution cannot exist as a right because it usurps already established human rights of the prostitute woman to human dignity, bodily integrity, physical and mental well-being” (CATW/UNESCO 1992: 6). According to CATW, the fact that prostitution, as a practice, is said to violate dignity precludes anyone from exercising a choice to sell sex. The impact of prostitution on the dignity of women who sell sex and “ultimately [of] all women” (ibid.) trumps an individual’s freedom of choice to undertake it. Rao points out that when ‘substantive conceptions’ of dignity are deployed, this presents a conflict with “human agency and freedom of choice” as the purpose of such conceptions is to “regulate how individuals must behave in order to maintain dignity” (2011: 229).

This theme was also raised in interviews with abolitionist campaigners, who rejected the notion of dignity representing individual rights, in favour of a focus on dignity as something to protect at the collective level. For example:

So, the pro-prostitution groups would argue that there is a right to prostitute, to do what you want with your body, etc., etc. But when you start from the place of the dignity of the person, [I] think your view is necessarily less subjective, it's less individual. My dignity, my rights, my autonomy does not trump yours. So, if all people have this inherent dignity, then to think solely in terms – or primarily in terms of the individual rights, especially in this context, I would say is to deny the dignity of the many. (Abolitionist Activist B, Canada)

In this vein, when another abolitionist campaigner was asked how she would respond to sex workers who maintain that they feel their dignity is not violated or harmed by selling sex, her response was to say, “I just keep asking, ‘how does men being able to

pay for sex help create an egalitarian society?’ And yeah, that’s what I want to know” (Abolitionist Activist C, Canada). The focus is, therefore, shifted here away from the individual dignity of sex workers, and whether this is violated through selling sex, and onto the impact of prostitution on the collective. Another of the abolitionist campaigners echoed these sentiments, when she spoke of a dichotomy between “the narratives of personal choice, of freedom” with “these broader notions of human dignity, of advancing collective rights of all women to be free from exploitation and violence” (Abolitionist Activist B, Canada).

In the quote directly above, Abolitionist Activist B suggests that prostitution should be prohibited in order to protect all women (including those who do not sell sex) from exploitation and abuse. This reflects the broader abolitionist view that the existence of commercial sex contributes to the sustaining of a culture in which all women are sexually objectified and, therefore, at increased risk of sexual abuse and exploitation (Barry 1995). Meanwhile, when ‘substantive conceptions’ of dignity are used by judges in their decisions, as explored in Chapter 4, this most often serves to bolster normative perspectives on an appropriate and ‘dignified’ human sexuality, such that sex *should* be reserved for enduring relationships. Is there support for similar sexual norms in abolitionist use of notions of ‘substantive conceptions’?

5.4.2 ‘Substantive conceptions’ and sexual norms in abolitionist feminism

Kathleen Barry’s writings, as noted above, are perhaps one of the most obvious examples of abolitionist feminist work that theorises a ‘dignified’ human sexuality that is said to be rooted in intimacy and emotion and that is denigrated by commercialisation. These arguments have been taken up by other abolitionist activists and remain an element of current campaigning and activism on the subject. For example, one of CAP International’s justifying statements for why, in their view,

prostitution violates human dignity is that “prostitution is a societal obstacle to establishing truly free, respectful and egalitarian sexuality” (2017: 9). What this free, respectful and egalitarian sexuality looks like in practice is not elaborated upon, however, beyond the implication that commercial sex is incompatible with it.

A reification of a human sexuality rooted in relational intimacy was also apparent in my interviews with some of the abolitionist activists, especially those who worked for faith-based organisations. While these activists had a strongly held belief that their campaigning work on prostitution was not morally driven, there were hints of a moral objection to sex work in how they spoke about sexuality. Abolitionist Activist A (Canada) was very concerned about appearing as if her work on prostitution was all about a Christian moral objection to sex work. She did, however, also acknowledge that her faith informs her attitudes to sexuality and relationships. In discussing the conclusions of the South African and Indian Courts in the cases of *Jordan* and *Budhadev Karmaskar*, she talked about sexuality in this way:

Yeah, you know, again, again my faith informs me and I would say it's a beautiful gift that is meant to be between two people that love each other, a husband and wife, and anything outside of that, which of course certainly happens, but it's not, it's not the best. (Abolitionist Activist A, Canada)

The other Canadian abolitionist who worked for a faith-based organisation also reified, to an extent, sexual expression within the context of a relationship:

I don't think anyone wins in prostitution. And yes, comfort, intimacy, all this stuff. But how much better, how much more fulfilling, how much more meaningful in the context of actual relationship, you know? (Abolitionist Activist B, Canada)

One of the South African activists (E), meanwhile, referred to the dignity of marriage in his interview. These interviewees' statements on sexuality and relationships were, however, juxtaposed, in their respective interviews, with an insistence that their activism on prostitution was *not* rooted in moral objections to commercial sex. Dealing with the accusations that are levelled against them for being moralistic, Abolitionist Activist A said:

The pro-side like to frame the fact that the new legislation²⁰³ was put in place thanks to the faith community, which we just really find quite funny.... I think there is this sense that they like to build the case that, you know, this is a moral issue and down on the faith community. We've never, ever approached it that way. We approached that from the side of dignity; we approach it from the side of human rights. We certainly don't lead with our faith foot, even though that might be the end-of-line motivation of what we do. (Abolitionist Activist A, Canada)

This quote demonstrates that, for this particular activist, notions of 'dignity' and 'human rights' provide a framework for their advocacy work on prostitution that creates some rhetorical distance between their faith and their activism, and is a way of avoiding accusations that they are taking a particularly moral approach to the issue.

Abolitionist Activist E, from South Africa, however, pointed out that dignity could, in fact, be used to sanitise one's moral objections to prostitution:

...the whole dignity side could couch one's own religious, own moral and all of

²⁰³ This is a reference to Canada's Protection of Communities and Exploited Persons Act 2014, supra note 200.

those beliefs as well. If you were a Muslim, or here in Africa we have really, really weird beliefs about women, that whole dignity or the dignity of our culture, our cultural beliefs could also be couched in a dignity approach that is actually just masking a different type of prejudice. (Abolitionist Activist E, South Africa)

This quote highlights the potential for dignity arguments, contrary to the perception of Abolitionist Activist A (Canada), to provide some cover for moralistic arguments. That 'dignity talk' can be closely associated with religion or moralism was also picked up by the one abolitionist activist who did not have a faith background; she identified "the association of dignity with religious overtones" (Abolitionist Activist C, Canada) as one of the potential dangers in using the concept in political campaigning work. These varying perspectives show that, like all protest movements, abolitionism is not monolithic and its activists hold different beliefs and value systems.

It is an easy objection to make that abolitionist feminist campaigning on prostitution is founded on moral outrage, and to claim that their arguments against commercial sex are part of some moral crusade, but I believe this is to risk misrepresenting the abolitionist movement; certainly, explicit claims to morality were not expressed by my research participants during interviews. In the same vein, while accusations are often levied against abolitionists that they are in an 'unholy alliance' with fundamentalist Christians on the topic of prostitution (Meredith 2013), this is, I would say, too simplistic an analysis. Abolitionist activist, Julie Bindel, in her recent book *The Pimping of Prostitution*, maintains that "draw[ing] comparisons between abolitionists and religious moralists" is a tactic used by opposing activists simply to discredit the abolitionist movement, and she maintains that abolitionist objections are "not built on flimsy moralistic grounds but on solid research" (2017b: 55).

In terms of my own research, I acknowledge that while four out of the five activists I interviewed were people of faith, this is not necessarily representative of the global abolitionist movement. While some elements of 'dignity talk' used by abolitionist campaigners may reinforce sexual norms that reify relational intimacy, as evidenced above, I am not arguing from this that abolitionist dignity discourses are particularly rooted in religious or moral objections to sex work. As already noted in this chapter, a significant reason for adopting 'dignity talk' as a campaigning strategy is due to the concept's close association with secular human-rights-based discourses. Indeed, what struck me about the abolitionist campaigners who worked for faith-based organisations was that the use of dignity language was seen as safe ground for political work, as it was slightly removed from the direct invocation of religious beliefs. When I asked one participant who worked at a faith-based abolitionist organisation if she saw any risks in using the concept of human dignity, she replied:

No, no, I don't think so. I think the risks come when I speak about faith or, or you know, 'I believe God to have made us this way.' That's, if I use that language, that, that, in some settings gets me into trouble, if that's the right word. (Abolitionist Activist A, Canada)

The same participant went on to say:

I would certainly use the word, dignity, when I perhaps started discussing the issue with parliamentarians. How much I would bring in my faith background? Sadly, I want to and with some I could, but I just know, because of the strong pushback that we get from the other side, you know, they switch it over to being moralistic, where I don't, that's not, you know, I think moralistic is very different than defending dignity, but we have to be careful... (Abolitionist Activist A, Canada)

This particular activist is clear that “defending dignity”, in the context of her activism on prostitution, does not reflect a moral or religious approach to the issue. Even though this person’s conceptualisation of dignity, as noted earlier, is heavily rooted in their faith, their use of ‘dignity talk’ in public discourses on prostitution intentionally avoids any direct reference to religious faith.

To sum up, then, there is certainly some evidence of abolitionist rhetoric on dignity that corresponds to Rao’s notion of ‘substantive conceptions’. The whole notion that prostitution denigrates ‘natural’ human sexuality and, therefore, threatens the dignity of humankind serves to enforce particular social and cultural norms on ‘good sex’. I do not, however, believe that this is the sum total of abolitionist use of ‘dignity talk’ and I would argue that the core of their dignity-based arguments are *not*, in fact, reflective of ‘substantive conceptions’. For instance, interviews highlighted that there are a variety of religious and moral perspectives in the abolitionist movement, and, as said before, one of the interviewees explicitly expressed concern about dignity’s connotation with religious overtones. In addition, the vast majority of the abolitionist texts analysed in this thesis do not contain reference to any overt moral or religious objections to prostitution. I am, therefore, of the view that ‘dignity talk’ is not used in abolitionist campaigns primarily as a reflection of moralistic objections to commercial sex. While the abolitionist political demands may *appear* to align more with a ‘substantive conceptions’ approach because they seek legal prohibitions on prostitution, I think that their use of dignity, in fact, corresponds more closely to the idea of ‘intrinsic dignity’.

5.4.3 Abolitionism and ‘intrinsic dignity’

It may seem counter-intuitive to suggest that abolitionist activists, and the discourses that they produce, make frequent reference to ‘intrinsic dignity’ given that their political demands are so focused on curbing and restricting commercial sex. As Rao notes, “in constitutional law, concepts of inherent dignity relate, in part, to *freedom from interference* and maximizing the space for individual autonomy” (2011: 242; emphasis added). While it may be true that in constitutional law, especially that of the US Supreme Court, that inherent or intrinsic dignity is most closely associated with individual autonomy (its caselaw on the constitutionality of gay sex²⁰⁴, gay marriage²⁰⁵ and abortion²⁰⁶ are examples of this), the notion of ‘intrinsic dignity’ has a much wider scope and is also associated, in certain contexts, with prohibitions. Protection of ‘intrinsic dignity’ is used, for example, as a justification for the prohibitions on torture and other seriously harmful practices like slavery that are found in international human rights law. The European Court of Human Rights, when dealing with cases under Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment), often base their decision-making around the concept of human dignity, even though the concept is absent from the Convention itself (Costa 2013; Waldron 2010; Webster 2018).

Shultziner creates a distinction between ‘thick’ and ‘thin’ meanings of dignity, which expresses Rao’s categories of ‘substantive conceptions’ and ‘intrinsic dignity’ in different language. More specifically, according to Shultziner, dignity in its ‘thick’ meaning “encapsulates a whole moral world view” (2007: 79), which is more closely aligned with the category of ‘substantive conceptions’. The ‘thin’ meaning, instead, refers to an intuitive understanding of the debasement of human moral worth; and Shultziner uses writings by Holocaust survivors and activists from the US civil rights

²⁰⁴ Lawrence v. Texas, 539 U.S. 558 (2003).

²⁰⁵ Obergefell v. Hodges 135 S. Ct. 2584 (2015).

²⁰⁶ Planned Parenthood of Southeastern Pa. v. Casey 505 U.S. 833 (1992).

movement to demonstrate that “humiliating or degrading conduct...is intuitively perceived” (ibid.: 86). The ‘thin’ meaning of dignity, therefore, is what is engaged in support of the widespread, and relatively uncontroversial, condemnation of torture or slavery that currently prevails.

To elaborate, while a ‘thick’ version of dignity is being invoked when arguments are made such that ‘commercial sex harms the dignity of humankind because of its denigration of human sexuality’, abolitionist activists, I would argue, more frequently invoke dignity in its ‘thin’ sense. Invoking a ‘thin’ version of dignity, or emphasising ‘intrinsic dignity’, plays a particular role in abolitionist rhetoric, which is to construct prostitution as a practice of extreme harm, akin to other atrocities like genocide or slavery. Not only are these direct parallels drawn in abolitionist writing (examples given below) but prostitution is generally portrayed as a violent and dehumanising practice, and notions of inherent dignity are used to justify calls for its eradication. CAP International make it clear that prostitution violates dignity because it involves a “direct violation of the physical and moral integrity of prostituted persons” (2017: 9), and CATW believes that prostitution is something that is done “always by force” (CATW/UNESCO 1992: i), both statements framing prostitution as inherently violent. In terms of dehumanisation, Melissa Farley states that “prostitution *always* includes the dehumanization, objectification and fetishization of women” (Farley 2006: 136 – my emphasis); and in the report of the meeting that led to the drafting of the Convention Against Sexual Exploitation, it is argued that sexual exploitation, including prostitution, dehumanises by “reducing and equating [human beings] to sex and nothing more, thereby violating their human dignity” (CATW/UNESCO 1992: 7).

5.4.4 Prostitution as dehumanisation

Notions of dehumanisation are prevalent in abolitionist feminist texts, with it being argued that it is the objectification of women in prostitution that makes it such a dehumanising practice. Feminist abolitionists frame prostitution as the commodification of women's bodies in which the woman (a whole person) is made into an object (her body). This discourse rests on the analysis that the male clients see women who sell sex purely as objects. The sex worker is not perceived as a whole human being but simply as "a mouth, a vagina, and an anus" (Dworkin 1993: 7). Barry also invokes themes of dehumanisation when she contends that "sexual exploitation reduces the value of female life to that of 'throwaway women' who are like no-deposit, no-return bottles or cartons disposed and unaccounted for" (1995: 44). The woman who sells sex is dehumanised, not only in the eyes of the men who buy her but by the rest of society. She becomes: a "non-person" (Farley 2006: 126); the "ultimate anonymous woman" (Dworkin 1993: 6); and a "nonentity" (Leidholdt 1993: 135).

The idea that purchasers have free reign over the bodies of women who sell sex is a key element in the assertion that sex work is objectifying and dehumanising and, by extension, a violation of dignity (Dworkin 1993; Leidholdt 1993; Barry 1995; Farley 2006; Mackinnon 2011). The man, it is said, by virtue of his economic power, is able to buy the woman and then do exactly what he wants with her. Prostitution is, therefore, often described as 'slavery' or 'modern day slavery' (Dworkin 1993; Barry 1995; Farley 2006; Mackinnon 2011). By accepting payment, the woman herself no longer has any semblance of power, control or agency. Her humanity is taken from her, purchased by the buyer:

With the money he can buy a human life and erase its importance from every aspect of civil and social consciousness and conscience and society, from the protections of law, from any right of citizenship, from any concept of human

dignity and human sovereignty. For fifty fucking dollars any man can do that.
(Dworkin 1993: 4)

Dworkin, in this quote, draws connections between the notion of dehumanisation (“he can buy a life”) and a subsequent ‘loss’ of dignity (“erase its importance...from any concept of human dignity”).

5.4.5 Dignity and dehumanisation

Actions that dehumanise and erase a sense of self and identity are frequently seen as resulting in a violation of human dignity (Kaufman et al. eds 2011). In fact, as noted at several points in this thesis, it was the reaction to the extremes of the dehumanising genocide that took place during World War II that led to the founding of the Universal Declaration of Human Rights and its focus on the inherent dignity of human beings (McCrudden 2008). Given that the prominence of the concept of dignity in the post-war human rights instruments was related to the horrors of the Holocaust and other mass wartime atrocities, it has become associated, at least in human rights discourses, with a commitment to prevent extremes of violence and harm.

‘Dignity talk’, therefore, advances abolitionists’ political ambitions (eradication of prostitution), by associating prostitution with violence, degradation and dehumanisation. Direct parallels are drawn in abolitionist feminist writing between the dehumanisation that, they say, results from prostitution and historical incidences of oppression, including slavery and the Holocaust; indeed, one author claims that “[t]hose in prostitution, like slaves and concentration camp prisoners, may lose their identities as individuals, becoming primarily what masters, Nazis or customers want them to be” (Farley et al. 2004: 58). According to Julie Bindel, most prostitution is “actually slavery” (2017a), while Leidholdt compares participation in prostitution to life

in “prisons or concentration camps” (2003: 172). I would argue that the signifier ‘dignity’, given the historical context that precipitated its inclusion in the Universal Declaration of Human Rights, becomes the abolitionist feminist’s natural ally in attempts to frame the commercial sex encounter as an inherently violent and harmful practice that must be eradicated.

Similar themes were raised in my interviews with abolitionist activists, particularly the two from South Africa. When asked to explain explicitly why abolitionist activists felt that prostitution violated dignity, their discussions invoking ‘intrinsic dignity’ frequently took place alongside rhetoric around objectification, dehumanisation and oppression. For example, Abolitionist Activist E said that prostitution “is not enriching people, it’s not advancing flourishing; it’s actually advancing something that is not beneficial to humanity. In the same way that apartheid did, in the same way what happened to the Jews did”. One of the Canadian activists, meanwhile, said:

So, part of what we tried to do on prostitution was to get people thinking a little more deeply about the issue, ‘why is it problematic? What is the heart of the problem?’ And the heart of the problem is that violation of human dignity. It’s that use and abuse of another person... (Abolitionist Activist B, Canada)

The phrase “use and abuse of another person” speaks to the characterisation of prostitution as objectifying and dehumanising. The same activist, later in the interview, described her perception of how women are treated in brothels, suggesting that they are viewed “like products, like cattle, like race horses” and noting that “absolutely that kind of treatment is a violation of dignity” (Abolitionist Activist B, Canada).

I would, thus, argue that it is a sense of ‘intrinsic dignity’ that illuminates much of abolitionist feminist ‘dignity talk’ on prostitution. The argument that prostitution

violates the intrinsic dignity of the women who sell sex is advanced precisely because it helps to frame commercial sex as a violent practice that must be eradicated. It is argued that the dignity violations are caused by the objectification that is inherent in prostitution and the women who sell sex are signified as objects, as noted above. Signifying women who sell sex as objects is a rhetorical strategy that may be designed to create a sense of shock in the reader; but there are important questions to ask about what impact these discursive constructions have on the lived realities of sex workers and their social and cultural standing. This will be addressed in more detail in Chapter 7.

Given that abolitionists construct prostitution as a dehumanising practice, and the women who sell sex as dehumanised by male purchasers, it then follows that the only option to 'humanise' women who sell sex, and protect their dignity, is to end their involvement in commercial sex. In interviews with abolitionist activists, it was clear that their activism sought, as one of its goals, to ensure that the dignity and humanity of women who sell sex was properly recognised and protected; crucially, however, they saw eradicating prostitution (in the long term) and/or supporting women to exit (in the short term) as the sole means to achieve this.

5.5 Abolitionist solutions and resistance

When asked what legal or policy measures would be needed to best protect or promote sex workers' dignity, one of the Canadian abolitionists replied:

I think the best thing we can do for them is make sure men are arrested before they enter the front door...I mean, I think the best thing we can do for prostituted women's dignity is to let them know that somebody loves them,

somebody cares for them, and that I'm going to do that by making sure your abuse stops. (Abolitionist Activist C, Canada)

While there is a focus in this quote on criminalising the purchase of sex (the abolitionists' ultimate legal demand), it is also noteworthy that this activist sees this 'solution' as a way to let sex workers know "that somebody loves them, somebody cares for them". Criminalising the purchase of sex achieves this goal, however, only because prostitution is framed as a form of abuse that must be stopped. Support for the Nordic model was universal amongst all the abolitionist activists I interviewed and there was a shared sense that pushing for routes out of prostitution was the only way to protect sex workers' dignity. One of the Canadian activists, however, was very clear that the Nordic model would only be successful if the reforms to the criminal law were accompanied by the provision of appropriate social and financial support for women seeking to exit:

This model only works – can only work truly and effectively in a way that protects and promotes the dignity of those in prostitution - if we do that piece well too, if we provide those social supports and services; because, otherwise, you are just chopping off someone's livelihood and not taking care of them.
(Abolitionist Activist B, Canada)

If criminalising demand and providing exiting support is seen as the way to best protect the dignity of women who sell sex, what is the perception amongst abolitionists about the dignity of women *while* they are selling sex? The only abolitionist activist I interviewed who was also a survivor of prostitution had an extremely important and interesting insight on this point. She was vociferous in her assessment of prostitution as a practice that seriously harmed dignity, saying, "Prostitution is a dignity destroyer, like absolutely. You can't retain a healthy level of self-esteem and human dignity if

you're not having it acknowledged within your person on a regular basis" (Abolitionist Activist C, Canada). However, she also noted that women who sell sex are able to resist this 'destruction' of their dignity:

But, just because something doesn't give you dignity, doesn't mean that you can't have that for yourself in some way. Like, when I was working, I can't tell you how badly I hated it, but I always knew that I had the right; so I was raising kids and stuff like that while I was working, right, I always knew I had the same rights to go on my kids' field trip or to – like that. So, the act of prostitution, it never fed my dignity and made me a bigger person like, but it didn't – I didn't deny myself the right to do what I wanted to because I knew I had equal opportunity as everyone else. (Abolitionist Activist C, Canada)

This perspective is important and it speaks to the possibility that individuals can retain not just a 'sense' of dignity but their 'actual' dignity (if it is accepted that humans have this inherently), no matter what experiences they face. This point is often lost in abolitionist rhetoric, given that the focus is so strongly on the representation of prostitution as harmful and abusive. It could be argued that highlighting the potential for women who sell sex to maintain their dignity undermines the abolitionist narrative that prostitution, in any context, violates dignity. What is notably absent from most abolitionist dignity rhetoric - the quote above from Abolitionist Activist C constituting a rare exception - is acknowledgement of the idea that sex workers can resist perceptions of them as dehumanised and that they, in fact, always retain their 'intrinsic dignity'. Abolitionist discourses, instead, tend to depict them *only* as dehumanised and degraded, and as one-dimensional abject victims (Scoular 2015).

5.6 Conclusion

I have set out in this chapter the trajectory that the use of ‘dignity talk’ has taken in abolitionist campaigns, from its burgeoning role in framing opposition to prostitution as a ‘human rights issue’ in the late 1980s and early 1990s, to its current worldwide embrace by the movement all over the world. The construction of prostitution as a violation of human dignity has taken hold, not just in the abolitionist movement, but has also, in some rare instances, trickled down into formal legal and political discourses, as represented and articulated, for instance, in Canada’s Protection of Communities and Exploited Persons Act. Analysing abolitionist discourses through the lens of Rao’s typology shows that dignity is sometimes deployed in a way that reflects ‘substantive conceptions’, in line with its usage by many of the judges discussed in Chapter 4. When used in this way, ‘dignity talk’ has the effect of supporting certain sexual norms that reify emotional and relational intimacy. Despite this, I have argued that moral objections to sex work do not appear to be at the core of most of the dignity-based discourses advanced by abolitionist activists, evidenced both through my interviews and wider textual sources, with ‘dignity talk’, instead, most often utilised to represent ‘intrinsic dignity’. The language of ‘intrinsic dignity’ plays a crucial role in the representation of prostitution as a form of abuse and oppression, with comparisons typically made to other examples of gross human rights violations.

What ‘dignity talk’ does, therefore, is support abolitionists’ attempts to essentialise the practice of commercial sex as an experience of violence, harm and degradation. While I believe that this rhetoric fails to capture the diverse experiences of sex workers, as I set out in Chapter 1, I will not be interrogating the ‘truthfulness’ of this perspective. Instead, I want to specifically examine the consequences of such a construction. How does the abolitionist use of ‘dignity talk’ influence the subject positions available to people who sell sex? I will explore these consequences in greater detail in Chapter 7,

but, before doing so, I will turn my attention, in the following chapter, to the matter of how the concept of dignity is used in sex worker rights campaigns

Chapter 6 – The concept of dignity in sex worker rights discourses

Chapter overview

This chapter examines how the concept of dignity is deployed by the sex worker rights (SWR) movement, noting that, in contrast to the abolitionist movement, SWR activists use ‘dignity talk’ much less consistently. Given this inconsistent use, I begin the chapter by exploring why some SWR activists embrace, and others reject, dignity-based discourses, using my interview data to do so. Here, a range of possible ‘risks’ in using ‘dignity talk’ that interviewees identify are considered; and it is further noted that the local legal and political contexts in which activists work also play a significant role in influencing their decisions concerning usage of the concept of dignity. I move on in the second half of the chapter to look more closely at *how* SWR activists use ‘dignity talk’, applying Rao’s taxonomy in this context, and noting that they, like abolitionists, invoke ‘intrinsic dignity’ as a way of highlighting the harms that are done to people who sell sex. The harms identified are, however, different, with the SWR movement arguing that it is criminalisation and stigmatisation of sex work that harms sex workers. Using ‘dignity as recognition’ is also a feature of SWR discourses; and, in particular, I highlight the argument of the SWR movement that the social and legal recognition of people who sell sex as *workers* is a key source of dignity. I conclude by exploring examples of how SWR activists use ‘dignity talk’ to *reframe* selling sex, from being seen as a form of ‘dirty work’ to a form of ‘decent work’.

6.1 Introduction

Our dignity is not harmed by sex work – it is harmed by being treated as criminals and the denial of our rights as workers. (Ping Pong – Sex Worker, Thailand; quoted in Empower 2016: 63)

This opening quote, from Ping Pong, a sex worker based in Thailand, sums up how the concept of dignity tends to be used by the sex worker rights (SWR) movement. Rather than constructing the exchange of sex for money as a practice that violates dignity, sex workers and SWR activists tend to situate harm to dignity in the criminalisation of sex work, arguing that the granting of labour rights and recognition as workers would help promote sex workers' dignity. While the abolitionist movement seeks to hegemonise the meaning of prostitution as a violent and harmful practice that is incompatible with human dignity, the SWR movement resists this characterisation and argues that sex workers should have the right to sell sex *with dignity*. In other words, their position is that there is nothing inherently dignity-violating about the practice of selling sex but the conditions in which it is undertaken, particularly in contexts of criminalisation, do affect dignity.

This chapter explores in greater detail how the concept of dignity is used in the discourses produced by the SWR movement. It takes a slightly different format from the previous chapter because of the different relationships that SWR discourses have with 'dignity talk'. In the previous chapter, I was able to trace historically how 'dignity' became a feature of abolitionist discourses and how this has spread throughout the movement, due to the wide availability of written sources that have engaged with the concept. A study of SWR discourses, in contrast, shows that 'dignity talk' is used much less consistently across the movement and there is, relative to abolitionism, a reduced number of written advocacy materials that discuss the concept in depth. Therefore, I begin this chapter by presenting a brief mapping of 'dignity' in SWR discourses, which highlights this inconsistent use, and then move on to analyse the interview data with SWR activists. I interviewed a total of 13 participants who advocate from a SWR perspective, with the sample comprising of five people (three activists/two academics) based in New Zealand, three activists from Canada, two activists from South Africa, two

European activists (one from the Netherlands and one from Germany), as well as one person who worked for a global anti-trafficking organisation.

In terms of the interview data, I begin by discussing the meanings that these activists ascribe to dignity and, like in the previous chapter, explore their views on dignity's status as an 'empty-signifier'. Notably, the inconsistency in use of 'dignity talk' raises the question as to why some SWR activists choose to adopt dignity-based discourses and others do not. I discuss the potential dangers identified by activists in using the concept of dignity in SWR activism and explore the reasons why, nevertheless, some choose to do so - noting, like in the previous chapter, that local political and legal contexts play a significant role in influencing these decisions. Given that dignity-based arguments are so prevalent in abolitionist activism, much of which predates the SWR movement's engagement with the concept, I explore to what extent SWR activists use 'dignity talk' as a way to respond, or talk back, to abolitionists rather than as a way to proactively frame their own political demands.

Having explored questions around motivations for using, or rejecting, dignity-based discourses, I go on to examine in more detail precisely *how* 'dignity talk' is used by the SWR movement, with reference to activist texts that engage with the concept; I also continue to draw here on my interview data. In exploring how SWR activists use 'dignity talk' I rely again on Rao's three concepts of 'intrinsic dignity', 'substantive conceptions', and 'dignity as recognition', in the same way as I did in chapters 4 and 5, which provides a consistent analytical framework in order to compare and contrast the different discourses explored in this thesis. I note that SWR activists tend to deploy 'dignity talk' in a way that corresponds with Rao's categories of 'intrinsic dignity' and 'dignity as recognition'. In particular, the criminalisation of sex work is situated as a key source of harm for sex workers, which is said to lead to violations of their 'intrinsic dignity'. The solution then presented by SWR advocates in order to address this, and

protect sex workers' dignity, is for sex work to be accepted as a form of legitimate work, and for the people who sell sex to be given *recognition* as workers, with access to labour rights protection. The construction of a worker identity as a source of dignity is thus emphasised in SWR discourse, and, indeed, I conclude the chapter by exploring how sex workers and SWR advocates use 'dignity talk' as a way to reframe sex work, from being perceived as 'dirty work' to a form of 'decent work'.

6.2 Mapping the use of dignity in sex worker rights campaigns

In the previous chapter, I observed that discourses in which prostitution is said to violate dignity have been adopted consistently by abolitionist campaigners globally, and I traced the development of these lines of argument in abolitionist rhetoric. In SWR campaigning, however, the concept of dignity is deployed much less consistently and does not necessarily form a central element of the approach of the global SWR movement. It is notable that the language of dignity is entirely absent from the international human rights documents prepared by the movement. The *World Charter of Prostitute Rights*,²⁰⁷ which came out of the World Whores Congress in Amsterdam in 1985, makes no mention of dignity, nor does the more recent *Declaration of the Rights of Sex Workers in Europe* (ICRSE 2005). The Global Network of Sex Work Projects (NSWP), which is an umbrella organisation representing many sex worker rights organisations internationally, does not reference 'dignity' in any of its core values - values that focus on recognition of sex work as work, opposition to all forms of criminalisation and legal oppression of sex work, and promotion of the self-organisation and self-determination of sex workers (n.d.).

Instead, adoption of dignity-based discourses appears to be a much more localised phenomenon in SWR activism, with certain countries and organisations using 'dignity

²⁰⁷ Copy available at: http://www.walnet.org/csis/groups/icpr_charter.html, last accessed 14 June 2018.

talk' more than others. For example, some SWR organisations do put the concept of dignity at the heart of the organisation's mission statement or vision. There is no clear geographical pattern in terms of the organisations that use the language of dignity as part of their organisational identity, and they include groups based in Africa, North America, Asia and Europe. For example, Kenya's Bar Hostess Empowerment and Support Programme seeks to create "a society where sex workers...are treated with respect and dignity..." (n.d.); the mission of Maggies (Toronto Sex Workers Action Project), meanwhile, is "to provide education, advocacy, and support to assist sex workers to live and work with safety and dignity" (n.d.); and the DMSC (Durbar Mahila Samanwaya Committee), based in Kolkata, India, aims to "enhance a process of social and political change with an objective to establish, promote and strengthen the rights, dignity, social status, and improvement of the quality of life of all sex worker communities" (n.d.). What is important to note about how the term 'dignity' is employed in these examples - and this is reflected in wider SWR discourses - is that contrary to how prostitution is framed in abolitionist campaigns (and in many of the judicial decisions discussed in Chapter 4), these organisations are calling for the rights of sex workers to live and work *with* dignity. In other words, within SWR discourses, the possibility to live and work as a sex worker and still live a 'dignified' life is emphasised.

One important point worth making is that while some activist groups use 'dignity talk' in setting out their organisational identity, it is important to recognise that an appearance of dignity language in a mission statement or as part of an organisation's core values does not necessarily translate into a wider embrace of the concept in campaigning or advocacy activities. Organisations, especially political activist groups, are ever-changing, fluid entities and the adoption of a mission statement or tagline on a website may have been agreed many years ago by an entirely different group of people than those who are now working in the organisation. Groups vary in terms of

their organisational strength and identity, and members may, in fact, not even be aware of the precise language used in mission statements. For example, in an interview with a Canadian SWR activist, who works with an organisation that uses the term dignity in their strap line, she said:

...it's just on our documentation. Like, nobody - you know, we don't walk around saying that, but it is on our documentation; and, at some point, some of us looked at each other and we thought, 'how did that get in there, like where the, when did that get in there, how (sic.) did it come from?' And, like, I don't have time to do like an imagology or study of where it came from. (SWR Activist C, Canada)

This point is useful to highlight because it means that a superficial examination of an organisation's basic public identity, in the form of their mission statement or organisational values, is not a reliable indicator of actual use of the concept of dignity in its political activities. It was clear, for example, through the examination of textual sources and the interview data in Chapter 5 that 'dignity talk' had permeated the abolitionist movement beyond the use of dignity language in some organisational names and mission statements. A thorough analysis of SWR activists' adoption of 'dignity talk' in campaigning work also requires, therefore, a deeper examination of written advocacy materials, as well as, in the case of this thesis, interviews with activists. To this end, I begin, then, by exploring what the concept of dignity means to SWR activists, before going on to examine more precisely *how* the concept is used.

6.3 Reflections of SWR activists on their use of dignity

6.3.1 Meanings

The SWR activists I interviewed, like the abolitionist activists discussed in the previous chapter, displayed variant personal understandings of the meaning of 'dignity'. Three of these interviewees held what appeared to be a negative understanding of the concept, with them suggesting that the term represented social, cultural or familial pressure to behave in a certain way - this corresponding directly with Rao's category of dignity as 'substantive conceptions', or 'dignity as coercion'. Here are some examples of those who perceived dignity primarily as a coercive force:

I just associate it with how you should be, you know, it's not something, it doesn't have much positive meaning. (SWR Activist J, Germany)

So, this idea of dignify, being dignified and, and having a respectable job... so, very personally, yes, I would say, 'oh that sounds like something my parents would've said.' (SWR Activist A, Canada)

...the way the word dignity's often used is around nudity, like 'have some dignity', you know, or like around sexuality and, like, you know, covering up or, like, it's the way that people are taught about it. (SWR Activist C, Canada)

Meanwhile, several of the other interviewees who adopted a SWR perspective identified autonomy and self-determination as central to the notion of dignity, which, as noted previously, is a key element of Rao's concept of 'intrinsic dignity'. These are some examples from activists based in New Zealand:

...when I think of dignity, I think about autonomy first and foremost; I think about autonomy. So, you know, do people have the capacity for the – you know, the ability to decide – and to make their own decisions about their own lives, yeah. (SWR Activist G, New Zealand)

...to me, it means something around people having made a choice about being where they are, about being proud in what they do... (SWR Activist H, New Zealand)

Some of the interview responses also reflected Rao's category of 'dignity as recognition', with a concentration on the inter-personal and relational element of the concept. For example, one of the Canadian activists spoke about having her experiences 'heard' and accepted by others as being crucial to her feeling dignified, saying "yeah, I find it incredibly undignified when people are disbelieving me" (SWR Activist B, Canada).

Continuing on the theme of 'dignity as recognition', it was apparent that some SWR activists perceived dignity to be an inner experience of self-worth or self-esteem, with one of them saying that, to her, dignity means that, "I feel good about myself. I think simply on an individual level" (SWR Activist F, New Zealand). The staff member of an anti-trafficking organisation that adopts a sex worker rights perspective in its work, connected the concept of dignity to a similar sense of self-worth, saying that dignity "means to be able to hold your head high, so to speak, to feel empowered" (Staff Member, Anti-Trafficking Organisation, Global). Only one of the SWR activists connected dignity to economic and financial security, saying that dignity "is linked to your ability to take care of yourself in economic terms, and your family" (SWR Activist D, South Africa). It is interesting that only one SWR activist identified economic security as a key element of dignity because I will demonstrate later in this chapter, through an examination of textual sources, that adopting work-based discourses - in particular, framing commercial sex as a form of 'dignified' work - is a key element of how the SWR movement engages with the concept of dignity.

Overall, the responses above to the question about what dignity means demonstrates quite a wide divergence in how SWR activists conceptualise dignity, which provides further empirical support for the assertions set out in Chapter 3 about dignity's elastic and flexible character. The responses from SWR activists to this question about meaning shows, for example, that dignity can represent *both* 'social constraints on behaviour' *and* 'personal autonomy', opposite ends of the one spectrum. In the previous chapter, I noted that one of the abolitionist activists (E, South Africa) I interviewed was particularly alert to the idea that the term has this floating elastic character, operating as an 'empty signifier' (Laclau 1994), while two of the Canadian abolitionists (A and B) felt that the concept of dignity, on the other hand, was a clear and stable foundation for campaigning, comparable to others like 'rights'. Amongst the SWR activist interviewees, however, there was an almost universal acknowledgement that 'dignity' *is* a slippery concept because of its malleability. There was, however, some divergence in terms of whether this was seen as a negative or a positive aspect of using the concept in activism.

6.3.2 Dignity as an empty signifier

One of the SWR activists, at the beginning of her interview, when asked what dignity meant to her personally, was very clear that dignity is "an extremely complicated concept. Nobody knows what it means" (SWR Activist K, Netherlands). This perspective that dignity was vague and difficult to define was, moreover, advanced by the majority of participants who were involved in SWR activism: SWR Activist H (New Zealand) said, "it's the kind of word that's a bit loaded, I guess; people have different meanings"; the participant who worked for an anti-trafficking organisation felt that "it's a very subjective and relative concept"; SWR Activist J (Germany) said, "it's very controversial; it's a word that can be, you know, it can be instrumentalised a lot"; a Canadian activist stated, "it's a really problematic concept for me to say that anything

is, cannot be dignified. I mean, what does that mean?" (SWR Activist A, Canada); and one of the South African activists felt that "the concept of dignity... is something that is defined by the person themselves" (SWR Activist D, South Africa).

There was, however, some divergence in terms of whether dignity's 'emptiness' was seen as *problematic* or *helpful*. Those who found it problematic had varying reasons for holding this position. One of the SWR advocates from Canada, for instance, who made it clear that dignity was not a concept she would use, gave this as an explanation:

I think we're actually focused more on real lived experiences, rather than sort of conceptual ideas, and dignity is more of a conceptual idea than it is an actual lived reality, if that makes sense?... It's hard to measure. Whereas we can say, 'sex workers feel this', 'sex workers aren't this', 'this is a sex worker's experience', but dignity, you get into this sort of like, like philosophical conversation. (SWR Activist C, Canada)

This activist labels dignity as a "conceptual idea" in contrast to "actual lived reality", with the suggestion that there are better and more concrete ways to measure sex workers "lived experiences". She goes on to say that there are no "measurable ways" to decide whether "something is dignified, or something isn't dignified", which appears related to a perception that 'dignity' is primarily a philosophical or metaphysical concept. Instead, then, this activist felt that the concept of "safety" was a term that is better suited to her activist work, saying that "safety is measurable, whereas dignity is not" (SWR Activist C, Canada). The continuing use of the term 'measurable' by this activist appears significant, and I interpret this as a reference to a spectrum of objectivity and subjectivity. For her, whether a sex worker's work is undertaken in safety can be more objectively measured than whether or not the work is dignified. This activist here, I would argue, is reflecting primarily on how dignity can be used in

the manner of 'substantive conceptions', given her focus on how dignity is used to reach judgements on particular behaviours. Her assertion that there are no objective ('measurable') ways to establish what is dignified or not corresponds with Rao's theory that when dignity as 'substantive conceptions' is invoked, this simply reflects changing and contingent social norms. Another of the Canadian activists made a very similar argument, saying that dignity is "too nebulous" for her and that instead she focuses her activist discourse on issues of violence and safety: "so we say, criminalisation forces us to work in even more dangerous situations. We bring it down to violence" (SWR Activist A, Canada). This focus on safety by Canadian activists may also be related to the framing of the recent constitutional challenge to the sex work laws in Canada in the form of the *Bedford* case (see Chapter 4), which will be discussed in more detail below.

Another SWR activist, who was also uncomfortable using 'dignity talk' in her work, identified the fluidity of the concept as highly problematic because of the potential for its 'emptiness' to be filled by more powerful, dominant forces than either sex workers themselves or the SWR movement:

I wouldn't use the word 'dignity' in fact, because also, within the human rights debate, it's an extremely complicated concept. Nobody knows what it means. And so, in the end, dignity is basically about who has the power to define what dignity is. So, especially if you worked with marginalised groups, dignity is not really very helpful because they are not empowered to define what it is. (SWR Activist K, Netherlands)

This comment speaks strongly to Laclau and Mouffe's theory of hegemony, with this activist suggesting that sex workers are unable, because of their marginalisation, to successfully render hegemonic an understanding of dignity that would support their struggles.

However, while dignity's 'emptiness' and floating character was met with suspicion by many of the SWR activists, this was not a universal perspective, with some participants – namely those from South Africa – precisely speaking positively about the fluidity of dignity's meaning. They were fairly unequivocal that, in their particular context, "it's helpful to talk about dignity" (SWR Activist D, South Africa) and that especially, as part of legal activism, dignity-based claims were hugely beneficial and useful because 'dignity' is "a broader sort of concept and you can link most things to it" (SWR Activist E, South Africa). What this shows is not that dignity has less of a free-floating existence in South Africa, but that because it is so prevalent in the local political and legal culture (as discussed in more detail in Chapter 5; also see Section 6.3.4 below), activists see it as a useful and helpful concept to engage with rather than as something that is suspect and dangerous. This South African perspective does, however, stand in stark contrast to the positions taken by all the other SWR activists I interviewed.

6.3.3 Dangers of 'dignity' discourses

The fluidity of the concept of dignity was not the only reason given by SWR activists to explain why they perceived the adoption of dignity-based discourses to be a risky or dangerous strategy. There were, in fact, two other key concerns, or suspicions, raised by participants about the presence of 'dignity talk' in discourses on commercial sex, which can be connected back to analysis from the previous two chapters. The discussion in Chapter 4, of judicial decisions on dignity and sex work, highlighted how particular sexual norms were reinforced or reified through the pronouncements made by judges that commercial sex is incompatible with human dignity. Similar sexual norms were evidenced in examples of abolitionist feminist writing and in comments made by some, although not all, of the abolitionist activists interviewed. The fact that dignity-based discourses can have this effect of reinforcing social norms about

sexuality, and women's sexuality in particular, was, indeed, identified by several SWR activists as problematic. The SWR activist from the Netherlands, for example, felt that "dignity has, through history, [been] used to consolidate unequal power relationships and norms, especially sexual norms and norms for women, that are not really conducive for women's autonomy and rights" (SWR Activist K, Netherlands). Another participant, from Canada, suggested that the argument that sex work is a threat to women's dignity is just a new way of describing women as "fallen":

Well I, it just seems to me that, you know, if you are engaging in prostitution then your dignity is at risk. You know, so it's something like, some inherent quality about yourself is in danger of being eroded. So, we used to talk about women as being 'fallen', so now it seems this is the same kind of, this threat to dignity... So you know, it's...a proxy for, for immoral, for dirty, for contaminating... (SWR Activist A, Canada)

One of the activists from South Africa made particular reference to rehabilitation programmes run by religious groups and their use of 'dignity talk':

Well, the religious, the religious groups use 'dignity' and imply that they can restore dignity through their programmes. Which often involve a sort of – a restoration into traditional womanly roles. So, sewing or beading or learning some kind of skill like that and, you know, going to church regularly, dressing in, you know, ways that are more acceptable. (SWR Activist D, South Africa)

The existence of rehabilitation programmes and the notion that these are a way for sex workers to 'reclaim' their dignity was also described by sex worker rights activists as an example of how 'dignity talk' can be used to justify a form of paternalism. The potentiality for the concept of dignity, especially when taking the form of 'substantive

conceptions', to lead to paternalistic policy outcomes was discussed in Chapter 3, and SWR activists were well aware of this risk. One of the activists from New Zealand said that "the idea that somebody other than yourself gets to tell you what is dignified, what isn't dignified, it's quite paternalistic. And...kinda condescending" (SWR Activist G, New Zealand).

Beyond the risk that 'dignity talk' can be used as a way to justify the regulation of female sexuality, another key danger identified by SWR activists was that a dignity discourse was inherently classist in nature:

If I think something is undignified - no, I can't, I can't get my head around it, it's too classist. ... so maybe it's undignified for me, but people don't usually talk about their, being undignified for themselves; it's usually something we say about other people. ... I mean to me, dignified is, is more inherently classist as a concept, yeah. (SWR Activist A, Canada)

Concerns were expressed, by SWR Activist A (Canada), not just about the potential for classist judgements to be applied to sex workers by external actors through use of dignity discourses, but also that if the movement were to adopt 'dignity talk' as a campaigning focus, this had the potential to lead to division within the movement by creating a classist hierarchy among sex workers:

I think it would also reapply divisions within the sex industry, right. So, 'it's dignified to be an escort, but it's undignified to stand on the street corner'; 'it's undignified to look like a slut.' So, I think it would be incredibly, it has the potential to be incredibly disruptive.

This association of ‘dignity talk’ with classism was noted by several other activists, particularly those from New Zealand. There was a strong sense from the New Zealand participants that dignity was too strongly associated with class and hierarchy to be of value to the sex worker movement. It was described as an “old-fashioned term” and “so last century” (SWR Activist F, New Zealand). The same participant joked that “it’s *Pride and Prejudice* – it’s ‘don’t go out without your bonnet’”; and one of the academic participants noted that it is a concept associated with “people who are a bit up themselves, the gentry” and “it’s sort of like something that we try to reject with the monarchy, in a way” (Academic B, New Zealand).

Despite all of these identified risks and dangers with ‘dignity talk’, it remains the case that the decision to adopt dignity-based discourses is not only influenced by personal feelings and perspectives on the issue but equally as important is the local political context in which different activists are working. This was a point made in Chapter 5, and the interviews with SWR activists provide further evidence in support of it. Decisions on which discursive frameworks to adopt (including ‘dignity talk’) are frequently influenced by the local social, legal and political conditions faced by activists.

6.3.4 The importance of local contexts

In the interviews with abolitionists, as discussed in Chapter 5, South Africa was identified as a context in which dignity discourses flourish because of the country’s particular history of apartheid and subsequent embrace of ‘dignity’ as a constitutional value. This influences the entire sex work debate in South Africa, making dignity an essential concept for all activists to use, including those advocating from a SWR perspective. The first of the two SWR activists that I interviewed in the South African context, and who was involved in legal activism specifically, acknowledged that dignity “forms a key part of most of our applications and court cases” (SWR Activist E, South

Africa). The second activist, meanwhile, affirmed that dignity “is something I hear a lot in the work that we do at [organisation name]” (SWR Activist D, South Africa). When asked whether she felt ‘dignity talk’ would still be such a strong feature of SWR campaigning even if the concept did not feature so prominently in South Africa’s constitution, this same activist said, “I think it would be still a very strong concept, because sex workers themselves talk about dignity in such detailed ways”. Of course, it is difficult to know if sex workers in South Africa “talk about dignity in such detailed ways” precisely because it is such a strong constitutional value. While the South African context clearly demonstrates, then, the impact that local contexts have on decisions to pursue dignity-based discourses, the data from Canadian activists provides another interesting case study on how activist discourse is formed; in this instance, the *Bedford* case is presented as a key moment in the structuring of SWR discourses in Canada.

- Canada

Interviews with Canadian activists demonstrated quite inconsistent use of dignity language in SWR advocacy. Only one of the three Canadian SWR activists I spoke to said that she uses the concept in her work, with her claiming that she “talk[s] quite a bit about sex workers wanting to be treated with dignity and respect” (SWR Activist B, Canada), while the other two activists from Canada were fairly adamant that it was a concept that they do not use. One of them said “[n]ever. We never use it...I mean, I don't know why we don't use it. We've never had a conversation about not using it, it's just not there” (SWR Activist A, Canada). In Canada, there was a sense that ‘dignity’ was a term deployed more by abolitionist organisations, and especially faith-based organisations, with one of the SWR activists saying that “it's only abolitionists [who use the concept of dignity], it's only abolitionists and it's the...Christians” (SWR Activist A, Canada). That ‘dignity talk’ was indeed used by these faith-based groups was

evidenced in interviews with Canadian abolitionists, as discussed in the previous chapter. The SWR movement in Canada, in general, seems, thus, to have little appetite for engaging with the concept of dignity, despite its superficial appearance in organisational mission statements.²⁰⁸ The fact that dignity was *not* a concept substantially used by Canadian SWR activists was, interestingly, observed by all of the Canadian abolitionist activists interviewed. For example, one of them said:

...the concept of dignity is not really one that has been advanced by pro-prostitution voices here in our debate, that I've noticed. Their arguments have been centred very much around the ideas of safety, personal autonomy, choice, security of the person and so on. (Abolitionist Activist B, Canada).

This, then, raises the question as to what influence the local political/legal context has had in 'dignity talk' not becoming a major focus of the discourses produced by the Canadian SWR movement. A clear theme that emerged from the interviews was how the recent constitutional challenge to the country's prostitution laws in the *Bedford* case (see Chapter 4) has had such a strong influence in framing discourses used by SWR activists. The *Bedford* case was fought on the grounds that Canada's prostitution laws violated section 7 of the Canadian Charter of Rights and Freedoms, which guarantees the right to life, liberty and security of the person. Using this particular Charter right meant that the arguments in *Bedford* were heavily focused on the risk of violence faced by sex workers and how this was exacerbated by the prostitution laws. Hence, concepts such as 'safety' and 'violence' were identified by Canadian activists as the main focus of their public advocacy activities and discourses. Two of the Canadian SWR

²⁰⁸ For example, the mission of Maggie's (Toronto Sex Workers Action Project), Canada, is "to provide education, advocacy, and support to assist sex workers to live and work with safety and dignity" (n.d.); and Stella, based in Montreal, has as its tagline "living and working in safety and with dignity" (n.d.).

activists did, however, also reflect on the limitations inherent in having the arguments so narrowly defined by the case.

One of these participants suggested that there was a feeling among activists that they “need to move away from only the concept of harm” but that it was impossible “because the arguments had already been put forward, in 2007” (when the case was lodged in the first-instance court in Ontario) (SWR Activist C, Canada). This participant went on to state that if another Charter challenge is taken in Canada, then they may “introduce [the] concept of autonomy...to ensure that the concept of harm isn’t the only thing that’s driving our rights”. Another activist said:

...it’s interesting because in Canada we have focused so exclusively on violence, in part, because that’s what the parameters set by the *Bedford* case, right, so they did only a section 7, which is about the person. So, there was no room to talk about equality; like, we couldn’t bring in other Charter [rights], you know, because we were, already the parameters were set. So, in some ways that has also defined the conversation and a number of us were talking about how that’s really limiting. (SWR Activist A, Canada)

While both these interviewees were keen to expand the potential arguments advanced in any future strategic litigation in Canada, it is interesting that neither mentioned ‘dignity’ as one of the concepts that they would like to see introduced. Instead, concepts like ‘equality’ and ‘autonomy’ or ‘right to work’ were talked about, and, indeed, one of the activists explicitly rejected the idea of relying on the concept of dignity in any future constitutional challenge, saying that “to me, the argument...you know, is about right to work and not right to work in a dignified way, just right to work” (SWR Activist A, Canada).

In sum, then, it can be seen that the local context clearly does have an impact on the decisions made by SWR activists generally to adopt, or reject, dignity-based discourses. However, are there other factors that may influence such decisions, and what are they? Specifically, what role do such factors play in informing the choice made by some SWR activists to 'still' use 'dignity talk' as part of their advocacy work, despite its perceived problems?

6.3.5 Beyond the local context: why adopt a dignity discourse?

Beyond the influence of the local political contexts, there was a sense among some of the SWR activists that framing arguments using 'dignity' can also be a pragmatic way to access specific legal tools and instruments. That 'dignity talk' can operate as a gateway to rights-based legal discourses and remedies is an observation I made in Chapter 5 when exploring abolitionist use of the concept; and, I argued, this was a key reason for the abolitionist movement's decision to focus on dignity so heavily. Data from SWR activists shows the very same motivation is present in the SWR movement, among those who choose to use the concept in their work. One of the Canadian SWR activists, for example, expressed clearly how dignity's prominence in human rights law would impact her decision to use dignity language in activism (even though she was reticent about using it generally):

So, I think the concept of dignity is useful and it does have a relationship with human rights in the sense that if you use that language you get access to human rights systems...It's a hard question because the relationship isn't necessarily a relationship in real time, but it's a relationship in the tools that we need to actually access. So, when you're accessing the courts, or when you're trying to access human rights tribunals, you have to use the language that they use; and

the word 'dignity' is used, the framing of dignity is absolutely used, and so we need to understand what it means. (SWR Activist C, Canada)

This activist speaks very pragmatically about the reasons why she, and others, may choose to frame arguments using the concept of dignity, that is, as a way to gain access to certain legal institutions, like courts and human rights tribunals. She uses the term 'tools' to describe the adoption of dignity-based discourses, highlighting the fact that decisions on framing arguments are not necessarily, or not only, based in ideology but that more practical considerations also play an important role in the process of discourse formation.

One of the other factors that influences SWR activists' decisions to adopt a dignity discourse is whether, and to what extent, dignity arguments are advanced by the abolitionist opposition. It became apparent in interviews that the use of the concept, by other legal and political actors, in discourses surrounding commercial sex meant that the SWR movement simply could not ignore it, even if it wanted to do so:

I don't think the movement should avoid it ['dignity']. You can't. I'd love to have the debate with it, but it's the same with trafficking, it's there. And you can try to avoid it but it won't avoid you. So, you have to deal with it one way or the other. (SW Activist K, Netherlands)

The same participant from the Netherlands spoke a great deal about competing claims on dignity and referenced the work of other rights-based movements as examples of political contexts that demonstrate the need to engage with the concept of dignity, rather than leave it behind:

...maybe we could learn from the abortion movement and the gay rights movement. And they did fight the battle on competing claims on what dignity is. So they did engage in that fight, so maybe we should...in that sense, maybe, indeed we should not lose dignity but claim it... don't give them the power to walk away with that concept.

This call to “claim” dignity from political opponents suggests that when SWR activists engage with the concept, they may do so as a way to speak back to abolitionist activists. One of the South African activists felt that even if sex workers in South Africa did not themselves feel compelled to talk about dignity, the movement would still have to engage with it because the concept “is widely used” by abolitionists (SWR Activist D, South Africa). Indeed, South Africa was the one context in which there was a clear antagonistic fight over the concept of dignity, as both the SWR movement (as discussed in Section 6.3.4) and the abolitionist movement engage with it directly in their campaigns to advance very different political goals. The same SWR activist reflected on the use of ‘dignity talk’ by one of the abolitionist organisations there, noting that “in our context, the concept of dignity was sort of usurped by another organisation that’s an anti-trafficking organisation”. She goes on to say:

...we had a little bit of difficulty trying to figure out how do we reclaim this word without seemingly using the same language that they do. And, in the end, we decided that the concept of dignity is more – is a universal one and, you know, isn’t owned by anti-trafficking organisations, or anti-sex-work more like organisations. And so, we decided to sort of reclaim the concept in the documents that we put forward in support of decriminalisation. And we talk more about the idea of dignity and what it means for, for, for sex workers. So, I think we made it more visible rather than, than less visible in the end.

The use of the term “reclaim” in this activist’s quote is significant as it implies that ‘dignity’ was introduced into discourses on commercial sex by abolitionist or anti-trafficking activists, and that SWR activists are responding to this rather than proactively and independently bringing ‘dignity talk’ into the debate. Indeed, this perception is supported by the textual analyses from Chapter 5, which shows that dignity-based arguments have been advanced consistently by abolitionists from the late 1980s/early 1990s, while there is a clear absence of ‘dignity talk’ in the early years of the SWR movement (covering broadly the same time period); the textual sources from the SWR movement that do engage with the concept of dignity have been produced more recently.

6.3.6 Reclaiming dignity from abolitionists

This idea of reclaiming the concept of dignity in SWR campaigns is supported by some of the textual sources that I have analysed. The Sex Worker Outreach Project (SWOP) is the largest sex worker rights organisation in the United States. At time of writing, there were 18 SWOP Chapters in different states and cities across the US,²⁰⁹ with each of these Chapters required to sign-up to the SWOP Mission and to the SWOP Agreements. The following is an excerpt from the SWOP Agreements:

In the past ‘respect’ and ‘dignity’ were used against sex workers and other ‘un-pure’ women to kill or imprison them. In our struggle for human rights we choose to reclaim these words and give them renewed meaning. (n.d.)

In this quote, SWOP make clear their intention to reclaim the word dignity and reformulate its meaning. The inclusion of the phrase “other ‘un-pure’ women”

²⁰⁹ A list of the SWOP Chapters can be found here: <http://www.new.swopusa.org/chapters/>, last accessed 14 June 2018.

suggests that a religious-moralistic reading of the dignity idea has been used to support the criminalisation of sex work, which is responsible for the harm done to sex workers; such a conceptualisation reflects Rao's category of 'substantive conceptions'. The SWOP Agreements go on to say that "[t]hrough dignity we honor the unique diversity that is intrinsic in all people", claiming this is the crux of the "renewed meaning" that they are assigning to the term (ibid.). Notably, this renewed meaning is in line with the meaning assigned to it in mainstream human rights discourse. By honouring "unique diversity", the equal worth and value of everyone is recognised regardless of their individual attributes, life experiences and backgrounds. SWOP are attempting here, then, to replace a moralistic reading of the human dignity principle with a universal and democratic interpretation. To use the language of Rao's typology, they are calling for an appreciation of 'intrinsic dignity' and 'dignity as recognition' to counter the harm done to sex workers through the use of dignity as 'substantive conceptions'. Sex worker's dignity, according to SWOP, is not determined by *what they do* but by *who they are*.

Further evidence of the SWR movement responding to abolitionist usage of dignity language can be found in a statement, released in 2005, by an organisation called PONY (Prostitutes of New York). PONY's statement was submitted to the Beijing+10 meeting, which took place at the UN Headquarters in New York to review progress made since the Fourth World Forum on Women, held in Beijing in 1995. The PONY statement is written in direct response to the increasing use of 'dignity' as a "buzzword among some anti-trafficking activists" (PONY 2005). In other words, it is not a statement that attempts to frame SWR arguments positively using the language of dignity but instead is a response, and challenge, to abolitionist²¹⁰ use of the term. The statement notes that:

²¹⁰ Abolitionists frequently refer to themselves as 'anti-trafficking activists'. In fact, one of the leading global abolitionist organisations is called the Coalition Against Trafficking in Women.

As sex worker rights activists, we fully subscribe to the belief in the dignity of all human beings. Prostitution is not the purchase of a person, but of a person's services, as in other service occupations. However, the term 'dignity' has never been explicitly defined by advocates who intend for commercial sex to be seen as incompatible with personal dignity. In fact, they advocate against sex workers' rights by citing sexual commerce as the sale of the person him/herself. This view of dignity as exclusive of sexual commerce is a condescending reduction of a person to his or her sex, a reduction that feminists have combated for hundreds of years. Such condescension has no place in any discussion of justice or rights. A sex worker's dignity is not determined by feminist perception of sex work. Furthermore, sex workers feel that efforts to deny them of their livelihood are efforts to deny them of the dignity of earning a living. (ibid.)

PONY relies here specifically on an understanding of 'intrinsic dignity' when it is noted that they "fully subscribe to the belief in the dignity of all human beings". Furthermore, I would argue that PONY positions abolitionist rhetoric on dignity as an example of 'substantive conceptions', in their suggestion that abolitionist dignity discourse "has no place in any discussions of justice or rights". 'Dignity talk', here, is framed as an oppressive force in the lives of sex workers. Perhaps even more significantly, however, PONY suggests that dignity for sex workers is fostered through "earning a living". The conceptual linkage between dignity and sex work as a form of labour is, indeed, a strong feature of the SWR movement's use of 'dignity talk', which will be explored in more detail below. As will also be noted, however, emphasising the dignity of labour is just one of the ways in which SWR activists may use the concept of dignity in their work; indeed, my study of wider text-based SWR discourses shows that the concept of dignity is frequently invoked in the context of

complaints of discrimination and stigma (Stella 2007, 2013; TAMPEP 2009; WONETHA/UHRA 2010; Sisonke and SWEAT 2012).

6.4 How dignity is used by SWR activists, part I: discrimination and stigma

It is often argued by SWR activists that experiences of discrimination and stigma violate or harm the dignity of sex workers. For example, the Canadian SWR organisation Stella notes that stigma has a major impact on sex workers' lives and that it "compromises their dignity" (2007: 1); similarly, TAMPEP, a European migrant sex workers health project, suggests that "promoting dignity" requires "challenging the stigma and discrimination experienced by sex workers" (2009: 13); and a group of Indian activists maintain that "sex workers can live a life of dignity...if stigma, discrimination and violence by the society and state are eliminated" (Pawar 2017). Stigma, as discussed in the introductory chapter, is well-documented in empirical research as something that people who sell sex routinely face, and it was a topic raised as constituting a major concern by almost all of the participants I interviewed.

In SWR discourses, stigma is frequently said to be a consequence of the criminalisation of sex work. Unlike abolitionist rhetoric, which argues that selling sex itself violates sex workers' dignity, SWR discourses emphasise the criminalisation of sex work - and the consequent experiences of discrimination, harassment and stigma - as the key threat to sex workers' dignity. Reform of the criminal laws are, then, argued to be (one of) the material changes in conditions that are required to enable sex workers to live and work with dignity (Empower 2016; Pivot Legal Society 2006; Stella 2007, 2013; Sisonke and SWEAT 2012). For example, South African SWR groups Sisonke and SWEAT write that the criminalisation of sex work "exposes sex workers...to massive indignities" (2012: 10) and that if sex work were to be decriminalised, this would create a legal and policy environment that instead "builds the dignity of sex workers" (ibid.: 17).

When the concept of dignity is used to make this argument, it is, according to Rao's taxonomy, signifying 'intrinsic dignity'; and it plays a similar function to the use of 'dignity talk' in much abolitionist rhetoric, which is to emphasise harm. The political strategy is similar, in that appeals to an innate human dignity are used to support the eradication of harmful practices: it is just that the source of the harm in each discourse is radically different.

In a piece of text written by members of the Indian sex worker collective Durbar Mahila Samanwaya Committee (DMSC), based in Kolkata, the impact of stigma and societal judgement on the lives of sex workers is highlighted, which leads to them becoming 'easy targets' for violence and discrimination:

Local toughs as well as petty officials from police stations claim a share of the earnings of sex workers. They need not filch, a threatening eye is enough – as we are the fallen ones. Midnight looting is legitimate as these are brothels. When we are not even accepted as humans, can we expect to be honored as citizens of this country. The common rights and privileges accorded to every other citizen are not applicable to us. (Pal et al. 1998: 200-201).

In response to these experiences of stigma and harassment, the sex workers of the DMSC want to "earn a little dignity and self-respect that any ordinary citizen should rightfully enjoy" (ibid.: 203) and their plea is "to be accepted as human beings" (ibid.). They note the subversive power of such a plea, saying that "no one in his heart of hearts can really endure the idea of a prostitute holding her head high" (ibid.:201). The solutions presented, then, to improve the situations of Indian sex workers, and to enable them to "earn a little dignity and self-respect", include "legal recognition for our profession" and "[efforts] to make our professional environment more humane" (ibid.:

202). Sex workers' dignity, therefore, it is argued, is not protected by exiting or eradicating prostitution but by altering a number of associated factors: the legal status of sex work, societal attitudes, and working conditions in the sex industry.

Similar demands were noted by many of the SWR activists interviewed – for example:

And I think sex workers are very well able to define in very practical terms, like you say, what dignity is. Basically, dignity is to be treated as other human beings are, so, indeed, the right to work without being raped or intimidated or whatever, [and] access to health services that people have, you know, [and] the right to work freely on the streets. There's the right to raise your own children. (SWR Activist K, Netherlands)

So, the main problems for sex workers would be, you know, stigma and discrimination, violence; you know, access to – access to health care, access to housing, things like, you know, so not being covered by anti-discrimination legislation and having – not being allowed to – not being covered by labour laws. Not being allowed to exist, essentially... (SWR Activist G, New Zealand)

These quotes list a number of material and structural changes that, it is argued, are needed to protect or promote sex workers' dignity while they continue to sell sex. Protection from violence, access to health care, the right to work/access to labour laws, and the right to a family life are all identified by these activists as key indicators of dignity for sex workers.

While SWR activists highlight potential dignity violations in the conditions in which sex is sold rather than in the exchange of sex for money itself, this does not mean that they ignore the sometimes harsh realities of life as a sex worker. The sex workers from the

DMSC, for example, state that “there is not much variation between the slave trade of yesteryears and the sex trade of today” (Pal et al. 1998: 202).²¹¹ The fact that sex work can be undertaken in the context of very difficult personal and structural conditions was also acknowledged by some of the SWR activists I interviewed. For example, one of the Canadian activists made this point:

I think it's very difficult under criminalisation. And, you know, there are a lot of sex workers who are forced by circumstances to engage in sex work when it's really the last thing they want to be doing. And those circumstances are beyond their control, so, you know, poverty and homelessness, addiction, all of those things. So, I think it's very difficult to feel dignified. And I know that the last eighteen months or so that I was doing sex work, when my addiction was really out of control, the sex work wasn't particularly dignified because I no longer had as much control over my work and my work environment and the types of clients I was seeing or sex acts I was engaging in. (SWR Activist B, Canada)

While this participant acknowledges that, for her and many other sex workers, experiences of sex work may not always feel ‘dignified’, she keeps the focus, as is common in SWR discourses, on the conditions in which sex work is undertaken; there is a resistance to any generalisation with regard to the impact on dignity of the selling of sex itself. While SWR activists position the decriminalisation of sex work as one of the key ways in which sex workers’ dignity can be better protected or promoted, this is not simply because they (the sex workers) are then no longer at risk of arrest but because it creates an environment in which sex workers are able to seek social and legal recognition.

²¹¹ They do, however, qualify this by noting “there is one difference though – the slaves were not marked as sinners, but we are” (Pal et al: 202).

6.4.1 Recognition claims and dignity

One of Rao's categorisations is "dignity as recognition", which "focuses on how a community values and validates the unique personality and choices of individuals and groups within society" and is centred upon "*respect* from the social and political community" (2011: 244; emphasis in the original). This recognition must come not just from other members of the community but "also from the state, as the embodiment of the community's legal and social norms" (ibid.: 249). There was a strong narrative link in many of the interviews with SWR activists between promoting dignity and the recognition of sex workers' value and worth, which was illustrated using some specific examples - most notably, the importance of access to the criminal justice system when sex workers were victims of crime. An activist from South Africa, for example, spoke about the need to ensure that sex workers have full access to legal systems and institutions to fight against the injustices they face, arguing that the ability of sex workers to "appear in court to speak as witnesses in cases and *to be respected in those spaces*" was an "aspect of dignity that we [the SW rights movement] need to claim" (SWR Activist D, South Africa; emphasis added). An activist from New Zealand touched on a very similar theme and discussed the importance of recognising the dignity of sex workers who are murdered, using the example of a case they had dealt with in Christchurch. They spoke about a discussion they had had with members of the murdered sex worker's family who were from the United States:

And they were talking about the fact that, in the States, if she'd been a sex worker there and had been murdered, the police would have been disinterested and would have given her no – I think they used the [word] dignity. Whereas here the police treated her as a human being with rights and responsibilities and with dignity and worked with sex workers and got the guy and they went through later – went through the legal system and it was treated

like any other murder, it wasn't sort of minimised. So, in that sense, I mean, that is about dignity; when you're a victim of something, you're treated as seriously as anyone. (SWR Activist H, New Zealand)

This quote is an example of the use of 'dignity as recognition', in its suggestion that having sex workers treated as equals, by state institutions like the police and criminal justice system, constitutes a recognition of their dignity (and worth), and is a sign of respect. This is particularly poignant (and important) given the devastatingly high incidences of violence, including homicide, faced by sex workers (Cunningham et al. 2018; Deering et al. 2014; Quinet 2011). The Robert Pickton case in Vancouver is just one example of a prolific serial killer who targeted sex workers and evaded capture partly because of failures by the police and criminal justice system, who were found to have minimised the crisis of missing women in Vancouver's street sex work areas and, as a result, had failed to conduct proper and thorough investigations (Oppal 2012).

Demanding that sex workers be 'recognised' as deserving of equal treatment by the police and criminal justice system is not just an example of the use of 'dignity as recognition', however, but also relies on the use of 'intrinsic dignity'. I discussed in Chapter 4 that, according to Rao, appeals to the notion of 'dignity as recognition' are often blended or conflated with the idea of 'intrinsic dignity'. She notes that, in certain contexts, "the harm of stigma is a consequence of a more fundamental deprivation of equality and individual rights" (ibid.: 267). What this means is that the act of misrecognition (or stigma) is rooted in *a deeper violation of rights* and the call for recognition may actually be a call to address this underlying rights violation rather than a standalone demand to recognise individuals or groups for who they are.

Sex workers' claims for recognition, for example, are often aligned with demands to address structural injustice and discrimination, as illustrated in the quotes from

activists above on the importance of access to the criminal justice system for sex workers. While taking crimes against sex workers seriously may send the message that sex workers are valued and respected by the community, it is not, then, just an act of recognition but also a response to a former injustice: namely, exclusion from the right to seek redress as victims of crime. In other words, it is being presented as also a matter of 'intrinsic dignity'. One of the Canadian activists, for instance, addressed the difference, to their mind, between addressing injustices faced by sex workers and ensuring that sex workers are given recognition, noting that these two processes are distinct:

...undoing criminal law isn't necessarily a measure, won't necessarily support dignity. It's like undoing, undoing an abuse; like, criminalisation is really an abuse of sex workers and so undoing that abuse doesn't all of a sudden make sex workers have dignity...there needs to be something implemented that actually recognises sex workers as, as sex workers, you know that, so, for me, that's why I'm saying, occupational health and safety standards, or regulations that sex workers design, or some sort of formalisation of the industry or recognition, that sex workers are labouring. (SWR Activist C, Canada)

In this quote, it is clear that recognition of sex work as a form of work is seen by this activist as a way for sex workers to "have dignity". They are seeking recognition from the state that sex workers are workers. This, I would argue, is more in line with Rao's own formulation of 'dignity as recognition', as this kind of demand goes beyond recognising sex workers' 'intrinsic dignity' and instead proactively constructs sex work as a form of labour that is deserving of social and legal recognition. This activist's call for such recognition is, moreover, not unique; in fact, as we shall now see, work-based discourses are extremely prevalent in SWR activism, and recognition of sex workers as workers is frequently demanded as a way to protect or promote their dignity.

6.5 How dignity is used by SWR activists, part II: dignity as workers

There are examples quoted above of discourses that propose that recognising commercial sex as a form of work would lead to greater dignity for sex workers. For example, the PONY (2005) statement, mentioned before, ends with the assertion that “sex workers feel that efforts to deny them of their livelihood are efforts to deny them of the dignity of earning a living”. This situates working and financially supporting oneself as a key aspect of a person’s dignity. Empower, a Thai sex worker organisation, develops this argument in a detailed report about working conditions in the Thai sex industry (2016) – to which we will turn our attention.

6.5.1 Dignity through decent work

The Empower report is focused around the concept of ‘decent work’, which is a term coined by the International Labour Organisation (ILO). The ILO defines ‘decent work’ as “productive work in conditions of freedom, equity, security and human dignity” (ILO 2008: vi). In other ILO materials, it is noted that the concept of decent work is “based on the understanding that work is a source of personal dignity” (ILO 2006: 1). This conceptual connection between work and dignity is a key feature of some SWR activism - and Empower’s report on decent work is a prime example. In their report, they conclude that the vast majority of sex workers in Thailand are working in sub-standard conditions that do not meet the ILO’s standards of decent work (Empower 2016: 87-88). Empower’s political demand, though, is not that sex workers be provided with other forms of decent work but that the working conditions within the sex industry are improved.

They call for access to labour rights and legal protections for sex workers as a way to

facilitate decent and dignified work. It is argued that “sex work is decent work” and that “by dismantling the old framework of criminal punishment of sex work we can create a new framework that enshrines all human rights and dignity” (ibid.: 12). Empower’s political discourse explicitly constructs a worker subject position for people who sell sex, and it is proposed that working in sex work, like any form of work, can be a source of personal dignity. They acknowledge that “people often worry over the relationship between sex work and human dignity” (ibid.: 62) but they counter the notion that sex work is incompatible with dignity by emphasising the role sex work can play in providing a source of livelihood for sex workers and their families:

In 1949 the League of Nations described sex work as being ‘incompatible with the dignity and worth of the human being and endangering the welfare of the family and community.’ We find that this premise is no longer true, if indeed it ever was. Looking at the latter part of the quote first, we can see that far from ‘endangering the welfare of family and community,’ sex work has proven to be a sustainable path out of poverty for many families, communities, and in some cases, entire nation states. We find it is the neglect, isolation and criminalization of sex workers that is ‘incompatible with the dignity and worth of the human being.’ (ibid.: 62-63).

Empower, therefore, frames the threat to dignity as the criminalisation of sex work and the “neglect” and “isolation” of sex workers, which is essentially a reference to stigma. Emphasising again that “work, including sex work, is often a source of self-esteem and self-worth, human dignity and family well-being”, Empower’s goal is to improve working conditions and help sex workers overcome exploitative situations (and challenge stigma), which will “restore their dignity” (ibid.: 64). They give concrete examples of some of the practices and exploitative situations that sex workers face working in the Thai sex industry and that impact negatively on their human dignity:

Human dignity and physical integrity is not honoured by employers who impose alcohol and customer quotas; or by the State that fails to protect their health and safety in their legal workplaces and penalizes their sex work as a crime. (ibid.: 88)

In another of their publications, the *Bad Girls Dictionary*, Empower provides their 'dictionary definition' of dignity as:

The feeling we have when we do a good job, with professionalism and skill; the feeling we have when we pay off our debt; the feeling we have when our daughters graduate from university; the feeling we have when we put a new roof on our family home; the feeling we have when our ethical standards are so much higher than those who criticize us; we always have our dignity. (Apisuk and Hilton 2017: 45)

The assertion that “we always have our dignity” performs two functions: it asserts and endorses a notion of ‘intrinsic dignity’; and, secondly, it presents a direct challenge to the political arguments that are made by abolitionist feminists (and others), that sex workers’ dignity is harmed or lost through participation in sex work. The remainder of Empower’s ‘definition’ of dignity is focused strongly on notions of work, and sex work is constructed emphatically as a form of labour that can be done with “professionalism and skill”. The strongest focus, however, taking up three out of the six statements in Empower’s ‘definition’ of dignity, is the fact that sex work enables sex workers to provide financially for themselves and their families. It is specifically noted that sex work enables Thai sex workers to pay for their daughters’ education,²¹² pay off debt, and take care of practical needs, like repairs to the family

²¹² It could be that the decision to choose paying for their daughter’s education as an example of what sex work facilitates is designed to respond to the assertion that sex work harms all of womankind. By doing sex work, a supposedly un-feminist act, sex workers are able to educate their daughters, a decidedly feminist act.

home. What is interesting about these examples is that the focus is shifted away from the actual sex work itself to what participation in sex work enables sex workers to do with their earnings. This may be an intentional tactic to address and transcend the social and moral taints that surround sex work, and which paint it in the popular imagination as a form of 'dirty work'.

6.5.2 Reframing dirty work

Hughes formulated the first sociological definition of 'dirty work', noting that work could be perceived to be 'dirty' in various ways:

It may be simply physically disgusting. It may be a symbol of degradation, something that wounds one's dignity. Finally, it may be dirty work in that it in some way goes counter to the more heroic of our moral conceptions. (1951: 319, as quoted in Ashforth and Kreiner 1999: 414)

Hughes' definition established the notion of certain forms of work as having some form of physical, moral, or social taint; and subsequent writing on the subject has remained consistent with this approach even while elaborating upon it. For instance, Ashforth and Kreiner note that "the boundaries between the physical, social and moral dimensions [of dirty work] are fuzzy" and many jobs are "tainted on multiple dimensions" (ibid.: 415). For them, 'physical taint' involves work that is "directly associated with garbage, death, effluent, and so on", while 'social taint' can include situations "where the worker appears to have a servile relationship to others" and 'moral taint' applies when the job is "regarded as somewhat sinful or of dubious virtue" (ibid.). Sex work is a clear example of an activity that is viewed quite consistently across contemporary social and cultural contexts as 'dirty work', and Ashforth and Kreiner specifically identify 'prostitutes' as workers who are tainted

both on a physical and moral dimension; I would, however, add that there could also be an element of 'social taint' in sex work, based on these authors' categorisation, as sex workers are often viewed as abject victims who are submissive to the will of their clients and 'pimps'. Of course, any notion of "'dirtiness' is a social construction" and "is not inherent in the work itself or the workers but is imputed by people, based on necessarily subjective standards of cleanliness and purity" (ibid.: 415).

Ashforth and Kreiner's contribution to the field focuses on the strategies adopted by those associated with 'dirty work' in constructing an "esteem-enhancing identity" (ibid.: 416). They argue that workers "often recast their dirty work in more positive terms" by using "occupational ideologies" that "moderate the impact of stigma" (ibid.: 421). The term "occupational ideology" describes "systems of belief that provide a means for interpreting and understanding what the occupation does and why it matters" (ibid.). Ashforth and Kreiner describe three techniques that, they argue, allow 'dirty workers' to "transform the meaning of stigmatized work": reframing; refocusing; and recalibrating (ibid.). It is the first two of these techniques that appear, from my research, to be most relevant to the case of sex work (as dirty work). Reframing is concerned with actively "transforming the meaning attached to a stigmatized occupation" and can be done in two ways, either by "infusing" - which involves imbuing the stigmatised work with positive value - or by "neutralizing", where "the negative value of the stigma is negated" (ibid.: 421-422). Refocusing, meanwhile, as another technique involves shifting attention away "from the stigmatized features of the work to the nonstigmatized features" (ibid.: 423). Crucially, and especially in work that is stigmatised to a high degree, refocusing attempts to emphasise "features that are extrinsic to the work itself" (ibid.).

Elements of both reframing and refocusing can be found in Empower's discussion of sex work and dignity. In the *Bad Girls Dictionary*, refocusing is deployed, as their 'definition' of dignity is tied to several of the extrinsic benefits gained by undertaking sex work - principally, in earning money and providing financial support for families (Apisuk and Hilton 2017). The Empower report on decent work similarly uses refocusing by, again, emphasising the financial benefits that sex workers gain from participation in sex work, which, it is said, provides a "sustainable path out of poverty" (2016: 63). There is, however, also some reframing apparent in Empower's *Bad Girls Dictionary*, in the use of terms such as "skill" and "professionalism" to describe sex work, which represents an attempt to challenge the negative stereotypes of sex workers as unskilled and exploited victims. In sum, the assertion that sex workers experience dignity when they perform their work with professionalism and skill is a strong reframing tactic.

These reframing and refocusing techniques are not only employed by the sex workers from Empower. One of the SWR activists I interviewed recounted a discussion she had had with sex workers in the Philippines, where, again, their ascriptions of dignity were centred on their ability to financially support families:

...one sex worker that we did a training with for the [project name], and really they're kind of killed with the word dignity, was like, 'what the heck is dignity? I raised my own children with the money I earned myself, that's my dignity.' (SWR Activist K, Netherlands)

Another activist from South Africa addressed the notion, as advanced by the ILO, that work, in and of itself, is a source of dignity for many in her country, regardless of the form of work undertaken:

And then for South Africans, work is a really important – I think it is everywhere, of course; the idea that you're employed, that you are working, is a very important one for so many people. I mean, we have an unemployment rate that's one of – you know, that is really, really high. And so, there's a lot of status...invested in the fact that you are working: 'I am a working person.' And a lot of dignity is implied in that, even if the work you are doing is not necessarily, you know, fabulous. (SWR Activist D, South Africa)

This quote makes clear that people doing work that is “not necessarily...fabulous” may still feel and ascribe dignity to their status as workers.

6.5.3 Dignity and dirty work

Ascriptions of dignity to work that may be culturally or socially perceived as dirty work is also not unique to sex work. In a qualitative study done with homecare providers in the US, Stacey observes how these low-waged and low-skilled workers ascribe dignity to their 'dirty work'. Specifically, she draws out three “sources of reward” that were talked about by her research participants and from which they “draw dignity” (Stacey 2005: 831). She identifies “practical autonomy” and “building skills”, as well as “doing dirty work” (which reflects a sense of pride in doing work that many refuse to do), as the three principal “rewards” that help homecare workers to ascribe dignity to themselves and their work:

Home care providers appear to draw significant reward from doing emotionally intense carework, even though the work is dirty and mundane at times. Fuelling the dignity of dirty work is the sense, among aides, that they alone take responsibility for tasks that few others will do; work that directly

impacts on the wellbeing of their clients. Combined with a new sense of autonomy – relative to previous work in the service sector – and the belief that they are building skills on the job, it becomes clear why some home care aides find dignity in the work of caring for an elderly or disabled adult. (ibid.: 851)

Newman (1999) writes about low-waged fast-food workers in inner-city America and observes how these stigmatised and devalued workers derive their sense of dignity primarily through their pride in being a working person (as opposed to being unemployed and receiving welfare benefits). As Newman writes, “[t]hey work hard at jobs the rest of us would not want because they believe in the dignity of work” (ibid.: xv). While the particular sources of dignity are different across the homecare aides, the fast food workers and Empower’s sex workers, what is consistent is that those doing devalued, stigmatised and so-called ‘dirty work’ find ways to frame their work in a way that ascribes it dignity.

Indeed, comparisons were drawn between sex work and other forms of ‘undignified’ work by some of the SWR activists interviewed, and some participants specifically identified the types of jobs addressed in the literature quoted above, including carers and fast-food workers. This quote, for example, from a Canadian SWR activist, questions why there is not the same level of concern expressed for the dignity of manual labourers or carers:

I mean we all use our body for money in – you know, some of us just use our brain, but lots of people are engaged in physical labour and nobody seems to be too concerned about the dignity of digging ditches or, you know, some of the backbreaking labour that men traditionally engage in or, you know, like some of

the other jobs I talked about, you know, looking after the elderly or the sick.
(SWR Activist B, Canada)

Another SWR activist from New Zealand, reflecting the findings made by Newman (1999), argued that those who undertake stigmatised work, like fast-food workers or sex workers, can experience a subjective sense of dignity through this work:

I mean, we would say, you know, sex workers work, so you are choosing...your job. You are choosing that job and some people find working at McDonald's undignified, but, you know, it's a job and people choose to do it, so – because it's very subjective of what you think as [being] dignified or not dignified. (SWR Activist G, New Zealand)

For the sex workers of Empower, financially providing for their families appears to be a key source for their personal sense of dignity; but other sex workers may focus on different aspects of sex work in their framing of sex work as dignified work. Crucially, however, these narrative processes create the possibility for sex work to be represented and signified as dignified work, contrary to the predominant view of the courts discussed in Chapter 4 (as well as that of abolitionist feminists). This directly contradicts, for example, the Indian Supreme Court's view that "sex workers obviously cannot lead a life of dignity as long as they remain sex workers".²¹³ It is also important to note that one of the few judges to reject the notion that prostitution violates dignity (South Korean Judge Cho) explicitly drew on the dignity of working and of avoiding the indignity of poverty as justification for his position: "...nothing harms human dignity more than a threat to survival".²¹⁴ One of the few countries in the world where sex work is regarded in law and policy as formal labour

²¹³ See Chapter 4, Section 4.2.2, supra note 123.

²¹⁴ See Chapter 4, Section 4.2.5, supra note 156.

is New Zealand. To conclude this chapter, I will now explore to what extent dignity-based discourses are deployed in this quite unique legal and political context where sex workers are *already* recognised as workers.

6.5.4 The example of New Zealand: dignity and 'sex work as work'

New Zealand is one of the few places in the world where commercial sex is fully decriminalised, with soliciting on the streets, running small collective brothels and operating larger commercial brothels all deemed legal activities. I was keen to explore if a dignity discourse took hold in this quite different legal and political context where sex work is formally recognised as a form of labour. The main and most striking finding from the interviews with activists in New Zealand was the distinct lack of a dignity discourse, with every single interviewee noting that the term 'dignity' was rarely, if ever, used to inform discussions on sex work there. As a result, many of the participants had never spent much time thinking about the connections between dignity and sex work because the concept was so alien. One of the interviewees summed this up when they said "it's not really a Kiwi word that's used, dignity" (SWR Activist H, New Zealand). Another activist agreed that 'dignity' was not a term invoked by SWR advocates or their allies in New Zealand, and stated that those who have become "attached to...this word in particular...are the people who don't really support sex workers" (SWR Activist F, New Zealand).

While this participant implied that 'dignity talk' was used by those opposed to sex worker rights, a striking feature about the New Zealand context was the notable absence of a powerful national abolitionist movement. The interview participants were clear that the argument that prostitution inherently violates dignity would not take hold there, partly because of this lack of a strong abolitionist presence. One academic respondent noted that this line of argument would require "quite a marketing

campaign” (Academic B, New Zealand), and another academic emphasised the lack of a “trafficking discourse” as a factor in dignity arguments not taking hold, emphasising, instead, the perception in New Zealand that sex workers make autonomous decisions to sell sex:

So those sorts of arguments never took hold really. But it's kind of, because we don't have that trafficking discourse, there's a common, I think, assumption that people work in the sex industry because they choose to work in the sex industry. And mostly that was supported by the research that we did, that even those who had very little choice in the matter still framed it as a choice. (Academic A, New Zealand)

Another factor highlighted by the academic participants in New Zealand, in terms of explaining why a dignity discourse has never taken hold, was the significant institutional weight that the New Zealand Prostitutes’ Collective (NZPC) carries. It was clear to me, from my time in New Zealand, that NZPC is respected as the organisation that represents the voices and interests of sex workers in New Zealand, with significant influence in policy and political circles. Radačić (2017) has written about NZPC as a “successful policy actor” and notes how it has overcome many of the challenges faced by the SWR movement (factors that some argue has led to the movement’s relatively limited success in advancing legal and political change; see Gall 2007; Mathieu 2003; Weitzer 1991). Among the factors that Radačić identifies as contributing to NZPC’s successes are its financial stability and longevity, as well as its “motivated and determined leadership” and the “diversity and solidarity” of its members (2017: 11).

Another explanation for NZPC’s success, according to Radačić, is “a supportive socio-political context”, in which sex worker rights arguments have been able to take hold (ibid.). She emphasises the existence of a socio-political context of equality and

fairness in New Zealand and a distinct absence of a constructed “trafficking problem” or political concerns about migration (ibid.: 10 - 11). This corresponds to my own findings on why dignity discourses have not taken hold. One of my participants, for example, addressed the socio-political context of ‘equality’ and ‘fairness’ in New Zealand, noting that rights-based discourses were strong there and that dignity was “not as accessible...in the way that rights are” (Academic B, New Zealand).

NZPC has a key role in setting the terms of the discourses around sex work in New Zealand and, it could be argued, it has been successful at promoting and normalising the view that sex work is a form of work as opposed to a form of abuse. One of the academic respondents remarked on the fact that NZPC’s influence would be key in preventing the idea that sex work was dignity-violating from taking hold in New Zealand. That NZPC would resist a discourse of this nature was without doubt, with one of their staff members saying, “we’d be very angry to have sex work defined as undignified work. We’ve come too far to put up with people saying that” (SWR Activist F, New Zealand).

The fact that New Zealand has decriminalised sex work and attempts to subsume the sex industry within existing structures and protections (e.g. occupational health and safety, human rights protections) seems to me to preclude the possibility that it could ever be regarded as an activity that, in and of itself, violates dignity. This point is evidenced, to an extent, in the *Montgomery* case (see Chapter 4), and I discussed this case with the participants I interviewed. The aforementioned SWR Activist F felt that the *Montgomery* case, where the plaintiff was compensated for loss of dignity after being sexually harassed by a brothel manager, “turns on its head” the idea that sex work itself is dignity-violating.

While SWR activists in New Zealand strongly resist, then, the idea that selling sex is

incompatible with dignity, there was, at the same time, a distinct absence of the kind of discourses referenced above (see section 6.5), in which the recognition of people who sell sex as workers is said to be a source of dignity. It is difficult to know whether the absence of such a discourse is because sex workers in New Zealand are already recognised as workers and so the argument need not be made, or whether it is due to a resistance to using dignity language in New Zealand political discourse more generally. Regardless, the New Zealand context provides more evidence of the diversity of engagement with the concept among the SWR movement - and a further reminder of the significant influence that local political contexts play in the decision to adopt, or reject, 'dignity talk'.

6.6 Conclusion

This chapter has explored the extent to which the SWR movement uses the concept of dignity in its advocacy and campaigning work. Having established that 'dignity talk' is used inconsistently by the movement, I began first by exploring activists' reflections on why this was the case. The data from interviews highlights the fact that there is a diversity of views in the SWR movement about the worth and value of using dignity-based discourses as an advocacy tool, and that a range of different factors influence decisions on whether to engage with the concept or not. As just observed in respect of New Zealand, the local legal and political context plays a significant role in the process of activist discourse formation. In this connection, I also explored the Canadian context in greater detail in this chapter, noting that the *Bedford* case had narrowed the focus of SWR discourses in Canada. I, similarly, reminded the reader of the importance of dignity as a constitutional value in South Africa, which meant it was embraced by SWR activists there. An interesting theme that arose in the interviews, and was also evident in textual sources, was the extent to which SWR activists may use 'dignity talk' as a way

to speak back to abolitionists, and 'reclaim' the concept of dignity, rather than using it to proactively structure their own political demands.

I observed that SWR activists never used 'substantive conceptions' of dignity in their discourses and explored to what extent 'dignity as recognition' was a feature. Rao maintains that 'dignity as recognition' is often blended or conflated with 'intrinsic dignity' and I concluded this applied to some SWR activists' use of the concept. In SWR discourses, seeking social and legal recognition was often posited as a way to address the underlying material and structural harms faced by sex workers. When 'dignity talk' was used to highlight these harms, it was most often used to represent 'intrinsic dignity' and, in this respect, the SWR movement's use of the concept was no different from the abolitionist movement's approach - although, of course, perspectives on the source of the harms and threats to dignity were radically different. 'Dignity-as-recognition'-based discourses were, however, also evident in SWR activism, particularly in the arguments made in which being recognised as workers was said to be a key source of dignity for people who sell sex. Using the example of the discourses produced by Thai sex worker group Empower, I explored how 'dignity talk', therefore, can be used to reframe sex work from 'dirty work' to 'decent work'.

My analysis in the previous three chapters shows the diversity of ways in which the term dignity is deployed in discourses related to sex work. There are examples of 'dignity talk', which can be seen to fall under each of Rao's three categories of 'intrinsic dignity', 'substantive conceptions' and 'dignity as recognition'. Having explored *how* dignity is used in discourses on commercial sex, I move on, in the final substantive chapter, then, to explore *what* dignity does, paying particular attention to the subject positions that are created for sex workers through the use of 'dignity talk'.

Chapter 7 - 'Dignity talk' and the sex working subject

Chapter overview

Having explored, in Chapters 4 to 6, how the concept of dignity is deployed in a range of legal and political discourses on commercial sex, I turn my attention, in this chapter, to analysing the effects that these discourses have on how people who sell sex are commonly represented. In the first instance, I divide the discourses into two broad categories: those that situate prostitution as 'fundamentally incompatible' with dignity; and those that rely on assigning a worker identity to those who sell sex, which I label 'dignity as workers' discourses. I contextualise this analysis within the existing stigma faced by sex workers and explore the close connections between notions of stigma, dehumanisation and dignity. I note that stigma may lead to dehumanising perceptions of the stigmatised and also, related to this, that dignity is a key indicator, in contemporary legal and political contexts, of *the human*. As such, I argue that 'dignity talk' can have a particular influence in both reinforcing and challenging the stigma faced by people who sell sex. I conclude that the 'fundamentally incompatible' discourses reinforce stigma, by framing commercial sex as a practice that is 'beneath humanity' and, by extension, creating a dehumanised subject position for sex workers. 'Dignity as workers' discourses, on the other hand, resist stigma by challenging the notion that people who sell sex are abject dehumanised victims, instead, representing them as complex and agentic subjects; however, I argue, these discourses have to be careful not to reinforce existing inequalities by arguing for simple assimilation into capitalist economic structures. Relying on Esmeir's notion of 'juridical humanity' (2006), I also caution against using 'dignity talk' in ways in which dignity is signified as a quality that can be given, or taken away, from subjects based on legal intervention, arguing that this creates possibilities for dehumanised subject positions to emerge.

7.1 Introduction

In the previous three chapters, I explored how the concept of dignity is used in sex-work-related discourses, focusing first on formal legal discourse in Chapter 4, through analysis of caselaw, and then on political discourse in Chapters 5 and 6, via an exploration of activist text and talk from both abolitionist campaigners and SWR advocates. The focus of this chapter is to explore how the various uses of ‘dignity talk’ discussed in this thesis may affect the cultural representation of sex workers. In this chapter, Laclau and Mouffe’s (1985) theory of the subject (as elaborated in Chapter 2) plays a central role; its epistemological assumptions concerning the discursive nature of subjectivity implicitly frame my analysis as I examine what kinds of subject positions are created and/or reinforced through the different forms of ‘dignity talk’ described in Chapters 4, 5 and 6.

It must be remembered that the dignity-related discourses explored in this thesis do not exist in a cultural vacuum, with no history, but add to layers and layers of previous representations of sex work and sex workers. Hesford notes that, in exploring the impact of different discourses, we must remain alert to “the material-rhetorical context into which the utterance or text is projected” (2004: 108). It is, therefore, important to begin this chapter with an exploration of the pre-existing ‘material-rhetorical context’ related to sex work, which is a context in which people who sell sex are subject to significant social condemnation and stigma. I introduced the concept of stigma in Chapter 1 but below I set out a more detailed theory of this phenomenon and discuss some of the existing literature specifically on stigma in sex work. It is important to foreground this chapter and the exploration of how dignity-related discourses may shape social and cultural attitudes towards sex workers in the context of this pre-existing stigma.

Stigma, as Goffman famously said, has a dehumanising effect on the stigmatised, where “we believe the person with a stigma is not quite human” (1963: 15); and, in this chapter, I seek to explore the connections between stigma, dehumanisation and dignity. Processes of dehumanisation, of course, are grounded in our conception of what it means to be human, and I will argue that the notion of dignity, particularly since the end of the Second World War, is thoroughly connected to contemporary ideas of humanness. I take this insight, the close relationship between dignity and the human, and apply it to the examples of ‘dignity talk’ explored in the previous three chapters. I divide these discourses into two categories: the first are those that situate prostitution as inherently incompatible with human dignity, which I label as *‘fundamentally incompatible’* discourses; the second type, meanwhile, resist this notion of incompatibility, by framing commercial sex as a form of work, and I label these as *‘dignity as workers’* discourses.

I conclude that ‘fundamentally incompatible’ discourses, through their framing of commercial sex as incompatible with dignity, signify it as a practice that is ‘non-human’ or ‘beneath humanity’, which, in turn, represents people who sell sex as dehumanised subjects. ‘Dignity as workers’ discourses, on the other hand, create more space for the recognition of sex workers as complex and agentic subjects but by grounding this in the notion of work, they run the risk of reifying free market economics and failing to appreciate the variety of gendered, raced and classed positions that different sex workers occupy. I introduce the concept of ‘juridical humanity’, based on the work of Esmeir (2006), in which humanity is constructed as something that is mediated via legal intervention. I explore how different forms of ‘dignity talk’, emanating from all sides of the sex work debate, can lead to the construction of a ‘juridical humanity’ for sex workers. This leads to my ultimate conclusion, which is a suggestion that care must be taken by all legal and political actors in terms of *how* they deploy the concept of dignity when creating discourses on sex work to ensure that, at all times, people who sell sex

are signified as having dignity, and, therefore, as the full human beings that they are.

7.2 Stigma, dehumanisation and dignity

Sex workers are keenly aware that they are commonly perceived and represented as degraded and debased through their work, as devoid of dignity. For example, Kempadoo notes that several of the sex workers she interviewed in the Caribbean island of Curacao “held the impression that they were viewed by the larger society purely as sex objects or drug addicts who were lacking dignity and self-respect” (1998: 136); and the sex workers of the Kolkata based Durbar Mahila Samanwaya Committee (DMSC) note that “though born as humans [they] are not regarded as such” (Pal et al. 1998: 200). In this vein, the theme of *stigma* has been present in the background of this thesis, with many references to how sex workers are perceived by their communities. It is stigma that the Indian Supreme Court are referring to when they urge society to “have sympathy towards the sex workers and not look down upon them”.²¹⁵ Abolitionist activists, too, are keenly aware of the stigma faced by sex workers, with one of the interview participants noting:

I think the stigma, for lack of a better word, the way that the prostituted are viewed in society...This understanding that the prostituted are different. You know, they're a different class of women. They're a different kind of women. And it's that kind of belief that motivates a lot of the violence and stuff that happens in prostitution. (Abolitionist Activist B, Canada)

Stigma is also a persistent theme in sex worker rights (SWR) discourse, with many organisations and activists framing experiences of stigma as a violation of sex workers' dignity, as discussed in Chapter 6. Goffman's theory on the dehumanising impact of

²¹⁵ See Chapter 4, Section 4.2.2, *supra* note 116.

stigma was mentioned above, and in order to evaluate how 'dignity talk' may impact on the stigma directed towards sex workers, I will explore the connections between stigma, dehumanisation and dignity. I begin that exploration by elucidating theories on stigma in greater detail.

7.2.1 Stigma

Goffman, in the 1960s, described stigma as a "deeply discrediting" (1963: 13) attribute that reduces an individual "from a whole and usual person to a tainted, discounted one" (ibid.: 12). Since then, other scholars have built on his work, proposing more developed and complex theories on stigma. Link and Phelan, for example, note that one of the key challenges in terms of sociological work on stigma has been its "decidedly individualistic focus" (2001: 366), with less attention having been paid to "the sources and consequences of pervasive, socially shaped exclusion from social and economic life" (ibid.). They develop their own, more intricate, theory on stigma in response to these insights. For them, "stigma exists when elements of labelling, stereotyping, separation, status loss, and discrimination occur together in a power situation that allows them" (ibid.: 377). This definition has a range of components. Importantly, they use the term *labelling* as a reminder that stigmas are "affixed" and are "the product of social processes" (ibid.: 368); the labels that are applied then connect "a person to a set of undesirable characteristics that form the stereotype" (ibid.: 369). For example, the labels 'prostitute', 'hooker', or 'whore' can connect to the undesirable characteristics of 'dirty', 'degraded', and 'debased', which forms a particular *stereotype* of people who sell sex.

Separation, for Link and Phelan, is the formation of an 'us' and 'them'; sex workers, for example, are the 'bad girls', who are different from 'us' (the non-sex-worker majority) and who pose a threat to 'our' social order. *Status loss* and *discrimination* refer to the

fact that the negative labelling and stereotyping faced by stigmatised persons results in them being positioned at the bottom of social hierarchies, which, in turn, has material consequences in terms of the life opportunities that are made available to them. This is an important consideration because it is a reminder that stigmas are not merely symbolic, and nor do they exist only in cultural representations; rather, they have concrete material impacts on the stigmatised person's life.

The final component to Link and Phelan's theory is "the dependence of stigma on *power*" (2001: 375; emphasis added). As an illustration of the importance of power in the process of stigmatisation, they discuss how the labelling and stereotyping of non-stigmatised groups, by stigmatised groups, never take hold because these groups "do not possess the social, cultural, economic, and political power to imbue their cognitions...with serious discriminatory consequences" (ibid.: 376). As Link and Phelan state, if stigma incorporated all forms of labelling and stereotyping without reference to power then "stigma becomes a very different and much broader concept that might be applied to lawyers, politicians, Wall Street investors, and white people" (ibid.: 376). Instead, literature on stigma tends to focus on marginalised groups of people, like those with experiences of mental ill health (e.g. Overton and Medina 2008; Corrigan ed. 2005), racial minorities (e.g. Lenhardt 2004) and LGBT people (e.g. Lewis et al. 2003; Hatzenbuehler 2009), as well as sex workers.

7.2.2 Stigma and sex work

As noted in Chapter 1, Weitzer argues that stigma is "omnipresent in sexual commerce" (2017: 1), and Benoit et al., based on a review of the existing literature on sex work stigma, claim that it is a "fundamental determinant of social inequality for sex workers" (2017: 460). Sex work stigma has been heavily studied in a range of different contexts, from how it is experienced at the individual level by sex workers of different

genders and in different geographical settings (Koken et al. 2004; Morrison and Whitehead 2005; Scambler 2007; Wong et al. 2011; Lazarus et al. 2012; Koken 2012), through to the group level and how sex worker organisations and collectives are trying to address it (Cornish 2006). Pheterson's influential work on the 'whore stigma' theorises the root of sex work stigma, proposing that "a woman who earns money through sex is defined as selling her honor" (1993: 43).

Bruckert notes that the "occupational stigma" related to sex working, unlike other "tainted" jobs, becomes a "personal attribute...beyond the sphere of work" so that it "is constructed as a master status that has permanence across social space...[and] time" (Bruckert 2012: 58). The 'whore stigma' then eclipses everything else about the sex worker "so that what the individual *does* is read as who she *is*" (Bruckert and Hannem 2013: 47; emphasis in the original). While Goffman's original articulation of stigma situated it as a phenomenon that was experienced at the individual level in interactions between stigmatised persons and 'normals', Bruckert and Hannem focus their attention on the notion of *structural* stigma, where it is also "embedded in societal structures and institutions and enacted on populations via regulatory and legal policy" (ibid.: 49). O'Connell Davidson notes that "the status of prostitutes (women in particular) as Other is often enshrined in law, and they have historically been and still are frequently subject to controls which would not be imposed upon full, juridical citizens" (1998: 129). The examples she gives include requirements to register with the police, being forced to undergo medical examinations, and having their freedom of movement restricted - all legal controls that remain commonplace for sex workers around the world (for examples of legal controls used against sex workers in a UK context, see Scoular and O'Neill 2007; Phoenix 2008; Sanders 2009; Scoular and Carline 2014).

7.2.3 Resisting sex work stigma

Weitzer notes that Goffman's work on stigma "says almost nothing about the possibility of *resistance*...nor does it consider whether stigma can be *reduced* or *eliminated* over time" (2017: 2; emphasis in the original). That is the focus of Weitzer's intervention and he sets out some strategies, which he argues will help the de-stigmatisation of sex work. These recommendations include calls to adopt neutral language to describe sex workers and their clients, as well as efforts to address the negativity bias towards sex work in the mass media in favour of a "more balanced portrayal" (ibid.: 4-5). Weitzer's recommendations for reducing sex-work-related stigma have received some criticism. Notably, Chapkis is concerned that the process of normalisation that Weitzer advocates could inadvertently benefit only the most privileged sex workers, "for those able to claim membership in the professional class", but that "unlicensed 'amateurs' would continue to suffer from whore stigma" (2017: 2). For Chapkis, the strategy of normalising sex work "relies on moving the line separating reputable and disreputable, not erasing it" (ibid.). Phoenix makes a similar critique to Chapkis and argues that Weitzer's de-stigmatisation strategies would have vastly different impacts for different sex workers, depending on where the individual is situated within gender, race and class hierarchies:

It seems too simplistic to claim that shared occupational status of, on the one hand, a white university educated, female sex worker selling sex via the internet in a major city to some of that city's business elite, and, on the other hand a 16-year-old, runaway, homeless, black drug addicted young woman selling sex from the streets in New York is politically and analytically *more significant* than their differences - both are fundamentally differently located in sexual commerce, and would be regardless of the stigma attached to sex work. (2017: 2; emphasis in the original)

She is also concerned that a de-stigmatisation or normalisation process as proposed by Weitzer, when undertaken in neoliberal capitalist societies, would not necessarily benefit the individuals who sell sex but, rather, those “who own and control the industry”, cautioning against a fight “for the right to non-stigmatized (neo-liberal and corporate) sexual commerce” (ibid.: 3; emphasis in the original). Instead, she argues that the “real fight” should be “against the profound material inequalities that mean that, when all else fails, money can be made from women’s bodies and against the gender-based ideologies that ensure that it is the women who are punished when they do sell sex for a living” (ibid.).

My own perspective sits somewhere between those of Weitzer and Chapkis/Phoenix. I accept that a de-stigmatisation process may not necessarily improve the situation of everyone who sells sex, given that sex workers are all positioned so differently within gender, race and class hierarchies. However, I do believe that some of the normalisation strategies proposed by Weitzer can be useful and helpful when done in conjunction with wider and more expansive fights for social justice that address gender, race and class inequalities. I do not think it has to be an either/or situation. Attempts to de-stigmatise or normalise commercial sex can be done in ways that acknowledge the inequalities that currently exist in the contemporary sex industry, which are, in any event, reflective of wider social inequalities. For example, addressing the negativity bias in the mass media could be done in ways that do not simply present a sanitised image of the ‘empowered’ white, middle class, internet-based sex worker but challenge the negative portrayal of all sex workers, including the most marginalised.

This debate on how best to address sex work stigma speaks directly to the analysis that follows, as my focus in this chapter is not just to explore what kind of subject positions

are created for sex workers through the use of 'dignity talk', but also whether these serve to reinforce or challenge the pre-existing stigma. Can 'dignity talk' help to de-stigmatise sex work or does it, instead, reinforce negative attitudes towards people who sell sex? If there is the potential for 'dignity talk' to have de-stigmatising effects, do the benefits disproportionately fall on certain classes of more privileged sex workers?

While there may be disagreement in the literature on how sex work stigma should be addressed, there is little doubt that sex workers *are* a stigmatised group, which is the context in which the impact of dignity-related sex work discourses must be examined. Goffman articulated a connection between stigma and dehumanisation back in 1963, and this has continued to be a feature of sociological theorising, with Link and Phelan noting that an effect of the "separation process" that takes place with stigma can, "in the extreme", mean that "the stigmatized person is thought to be so different from 'us' as to be not really human" (2001: 370). If stigma does indeed have such a dehumanising impact, then it would suggest that a key de-stigmatisation strategy would be to make attempts to emphasise that stigmatised groups *are* human. What role might 'dignity talk' play in this process of emphasising sex workers' humanity?

7.2.4 Dignity, the human and dehumanisation

Haslam (2006) proposes a detailed theoretical model of dehumanisation that he suggests is intended to develop Goffman's work on stigma and further examine the links between stigma and dehumanisation. It is argued that a robust theory on dehumanisation "requires a clear understanding of 'humanness'" and "that most theoretical approaches [to dehumanisation] have failed to specify one" (ibid.: 252). He proceeds to elaborate a theory of humanness, dividing this into two separate notions – 'uniquely human characteristics' and 'human nature' - arguing that they are "distinct

senses of humanness” that lead to “different forms of dehumanisation” (ibid.: 256). Uniquely human characteristics “define the boundary that separates humans from the related category of animals” and may generally include aspects such as language, refined emotions, higher level cognitive abilities and moral sensibilities (ibid.). Human nature characteristics, on the other hand, “link humans to the natural world, and their inborn biological dispositions” and, as a result, these should be “universal across cultures” (ibid.). Furthermore, human nature characteristics are described by Haslam as “deeply rooted aspects of persons” and “core properties that people share ‘deep down’” that are “viewed as fundamental, inherent, and natural” (ibid.).

Haslam’s theory of humanness was developed based on empirical research in the field of social psychology, and he acknowledges the role of social and cultural context in structuring ideas of ‘the human’. I rely on his work, not as a way to assert any concrete truths about what a human being is, but to elucidate a theoretical model on how the human may be conceptualised in a contemporary context. In line with his two theories of humanness, Haslam also proposes two distinct forms of dehumanisation.

‘Animalistic dehumanisation’ occurs when people are perceived as lacking uniquely human characteristics; maybe they are perceived as “coarse, uncultured, lacking in self-control, and unintelligent”, and on the basis that uniquely human characteristics also include moral capabilities, people deemed to be without them are seen as immoral or amoral (2006: 258). ‘Mechanistic dehumanisation’, on the other hand, attributes characteristics such as “inertness, coldness, rigidity, fungibility, and lack of agency”, representing its victims as “object- or automation-like” (ibid.). These two distinct forms of dehumanisation mean that those who are dehumanised may be “implicitly likened to unrefined animals *or* soulless machines” (ibid.; emphasis added). The emotional signatures of these two forms of dehumanisation are, then, quite distinct, with animalistic dehumanisation often revolving around emotions related to disgust, while mechanistic dehumanisation can be said to provoke more of a sense of indifference

(ibid.).

I would argue that both forms of dehumanisation are evident in terms of social, political and cultural attitudes towards people who sell sex. That sex workers experience a mechanistic form of dehumanisation is reflected in some of the abolitionist discourses - for example, when Barry describes women in prostitution as “‘throwaway women’ who are like no-deposit, no-return bottles or cartons disposed and unaccounted for” (1995: 44). To be clear, Barry uses this analogy to highlight how sex workers are perceived and/or treated by clients and society, and I am not arguing that *she* views women who sell sex as objects. Animalistic dehumanisation is also evident in some of the other discourses outlined in this thesis. For example, it appears that the Indian Supreme Court, perhaps inadvertently, compares sex workers to animals when they say, “we are of the opinion that sex workers obviously cannot lead a life of dignity as long as they remain sex workers. Sex among human beings is different from sex among animals”.²¹⁶

It is true to say that nowhere in Haslam’s writings does he address the concept of human dignity. Based on his theoretical model of humanness, however, I would argue that dignity could be an example of *both* a uniquely human characteristic and an element of human nature. The human-rights-law framing of dignity as a universal and inherent human attribute that transcends all superficial difference would situate it as an aspect of human nature that is “universal across cultures” (Haslam 2006: 256). However, as discussed in Chapter 3, this is just one of the many ways in which dignity is conceptualised. The version of dignity that grounds it in human cognition and refined behavior would tend to meet the criteria of a uniquely human characteristic. In the early writings on dignity (e.g. Cicero), we see an emphasis on the fact that having dignity is what separates the human being from the animal, rooted in its cognitive

²¹⁶ See Chapter 4, Section 4.2.2, *supra* note 123.

abilities of rationality. Kantian dignity is also grounded in the uniquely human characteristic of rational thought. Furthermore, in everyday language, assignments of dignity are often used to signify a human being who is able to transcend the more 'base' elements of their nature - for example, in controlling strong emotions.

Even though dignity does not feature in Haslam's account, I would argue that it is a concept that does indeed have strong rhetorical associations with humanness; and, as Malpas notes, "the question of human dignity is surely inseparable from the question of what it is to be human" (2007: 19). Dignity is recognised, in very many legal and political contexts, as one of those qualities that makes us uniquely human. This notion is reflected in the *Budhadev Karmaskar* case, where the Court notes that under Article 21 of the Indian Constitution, which protects life and personal liberty, that "the word 'life' has been interpreted...to mean a life of dignity, and not just an animal life".²¹⁷ Justices O'Regan and Sachs in the *Jordan* case similarly articulate this connection between dignity and humanness when they say that the South African Constitution "values human dignity which inheres in various aspects of what it means to be a human being".²¹⁸ It is being invested with 'dignity', according to the Universal Declaration of Human Rights, and a range of other human rights treaties, that makes human beings worthy of the protection afforded by *human* rights laws. There is no agreement on what grounds human dignity or what having dignity actually requires in terms of human behaviour but dignity has become very closely connected in legal and political discourses, especially since the Second World War, with our basic sense of what it means to be a human being. Sulmasy sums up the relationship between dignity and humanness when he says "[b]eing a somebody; being a human being, is the foundation of the notion of human dignity" (2007: 15). If dignity is recognised, in a particular social

²¹⁷ *Budhadev Karmaskar v State of West Bengal* [2011] 10 S.C.R. 577 (Order of 24th August 2011) at page 580.

²¹⁸ *S v Jordan and others* [2002] ZACC 22 at para 74.

and cultural context (such as the existing rights-based international order), as one of the defining characteristics of being human then what impact do the examples of 'dignity talk' set out in this thesis have on sex workers' perceived 'humanness'?

7.3 'Dignity talk' and the recognition of sex workers' humanity

The existing literature on dehumanisation, according to D.L. Smith, is dominated by psychological accounts that discuss the "processes unfolding in individual human minds" as a way to explain the "how and why" of dehumanisation (2016: 419). He acknowledges that one of the objections to the psychological approach is that it "ignores the causal significance of political and ideological forces" in the process of dehumanisation and "misleadingly individualizes what is in fact a collective, social phenomenon" (ibid.). He proposes that theories on dehumanisation must, instead, encompass both a political and psychological perspective, stating that dehumanisation is "elicited by political propaganda and nurtured by ideologically suffused social practices" but that these can "entrain human behavior only by meshing with human psychology" (ibid.).

While D. L. Smith's work, and much of the existing literature, focuses on the psychological elements of dehumanisation, my thesis attempts to address the other aspect: namely, the political forces that may work in conjunction with human psychology to engender dehumanising and stigmatising attitudes towards sex workers. This will, thus, be the focus of the discussion that follows. To be clear, I will not be attempting to establish any concrete, causal links between political representation and material experiences of stigma but, rather, I will explore in detail the political and ideological forces that create a discursive framework in which dehumanising perceptions and stigma may thrive and remain unchallenged. I aim to do what D. L. Smith suggests "a complete theory of dehumanisation" must do, which is "to address

the political forces that determine the content of dehumanising representations” (ibid.: 443). Before going on to evaluate how such ‘political forces’, through their use of ‘dignity talk’, affect the cultural representation of sex workers, it is first important to briefly revisit the content of the dignity-based discourses that have emerged within the thesis in the course of my analysis so far.

7.3.1 Revisiting ‘dignity talk’ in discourses on commercial sex

Based on my study of the various discourses advanced on dignity and sex work, I would categorise them broadly into two categories. The first I will label as the ‘fundamentally incompatible’ discourses, which frame commercial sex as a practice that, always and inherently, violates human dignity. This violation of human dignity can be conceived of at a more abstract level (the dignity of humanity) and/or at the individual level of those who sell sex. When commercial sex is viewed as incompatible with a more abstract/communitarian sense of dignity, this is an example of dignity being used in accordance with Rao’s category of ‘substantive conceptions’, whereas ‘intrinsic dignity’ is invoked when the argument centres on how prostitution violates the dignity of those involved in selling sex (see Chapter 5 for more on this). The second category of ‘dignity talk’ identified in this thesis concerns discourses that resist the notion that sex work, in and of itself, violates dignity and, instead, propose that it is the conditions in which sex work is practised - for example, in contexts of criminalisation and stigmatisation - that lead to dignity violations. These discourses frequently construct sex work as a form of labour, and the people who sell sex as workers, and I, therefore, label this second category as the ‘dignity as workers’ discourses. These discourses almost always focus on the ‘intrinsic dignity’ of the individuals involved in sex work, as well as the notion of ‘dignity as recognition’ (see Chapter 6).

Discourses that situate prostitution as fundamentally incompatible with human dignity are perhaps most evident in abolitionist campaigning, where this line of argument is universally adopted. Abolitionists are unequivocal with regard to the incompatibility of prostitution with human dignity. The European Women's Lobby, for example, argues that "prostitution is a violation of the fundamental human right to dignity" (EWL 2010: 8); and the Irish abolitionist organisation Ruhama maintains that "the prostitution system and the trade in human beings is a violation of the rights and dignity of humankind as a whole" (2007: 2). This type of rhetoric is also evident in a number of the court decisions discussed in Chapter 4, and it is clear that many of the judges who have considered the dignity of commercial sex adopt this position. The South African Constitutional Court, Indian Supreme Court, South Korean Constitutional Court and the Colombian Constitutional Court²¹⁹ all conclude that prostitution violates human dignity. For example, the Indian Supreme Court says that "sex workers obviously cannot lead a life of dignity",²²⁰ and Justices O'Regan and Sachs from the South African Constitutional Court found that "the dignity of prostitutes is diminished...by their engaging in commercial sex work".²²¹

Examples of 'dignity as workers' discourses were rare among the jurisprudence but there were some examples. Judge Cho from South Korea appears to endorse this perspective, when he challenges the majority's view, in the *Kim Jeong-mi* case, that prostitution violates dignity and states that "prostitution is the sale of sexual services and not the human body or personality".²²² It is in the talk and text of SWR activists, however, that examples of 'dignity as workers' discourses proliferate, with activists arguing that dignity is not violated by selling sex but by the conditions within which

²¹⁹ Although see Chapter 4, Section 4.3.2 for more on the Colombian Constitutional Court decision, which made some contradictory statements with regard to dignity and sex work.

²²⁰ See Chapter 4, Section 4.2.2, supra note 123.

²²¹ See Chapter 4, Section 4.2.1, supra note 95.

²²² See Chapter 4, Section 4.2.5, supra note 155.

they are forced to work. For example, in 2015, Fidelia Suárez, the then national coordinator for the Colombian-sex-worker-led organisation Asociación de Mujeres Buscando Libertad (ASUMBULI – Association of Women Seeking Freedom), said “[s]ex work is not undignified, what is undignified are the conditions under which we perform it. This is why we demand recognition of our work and equal rights, just like any other woman worker” (RedTraSex 2016).

While I have categorised the different discourses broadly into whether they find that prostitution is incompatible with dignity, or resist this notion by arguing that people who sell sex are workers who deserve legal rights, it is important to note that there is universal agreement, in terms of all the discourses I have examined in this thesis, that sex workers should be *treated* with dignity. Even those who make pronouncements on the undignified nature of commercial sex never go so far as to say that those who participate in it deserve to be treated with disdain and disrespect. For example, the South African Constitutional Court in the *Jordan* case makes clear that sex workers should be treated “with dignity by their customers”,²²³ and the Indian Supreme Court believes that sex workers “have a right to live with dignity...since they are also human beings”.²²⁴ Abolitionist activists do not believe that dignified treatment is possible while selling sex (only by exiting this work) but they never suggest that this is what women deserve. On the contrary, they frame people who sell sex as *victims* of larger oppressive forces. SWR activists are also keenly focused on ensuring that people who sell sex are treated with dignity but they, of course, differ from abolitionists in suggesting that this can be achieved through changing the conditions within which sex is sold and by having sex workers recognised as workers.

²²³ See Chapter 4, Section 4.2.1, *supra* note 100.

²²⁴ See Chapter 4, Section 4.2.2, *supra* note 114.

However, despite the differences in how these various legal and political actors propose that sex workers' dignity should be protected, there is never an expression of doubt, by any of them, that sex workers *are* human beings and deserve to be treated with dignity. Instead, the focus of these discourses is always on how the practice of selling sex may impact on dignity. Yet, even though the discourses are focused on the *practice* of selling sex, I believe that this still has an impact on how the *people* who undertake it are represented.

7.3.2 The 'fundamentally incompatible' discourses

The belief that sex work is incompatible with dignity tends to be rooted, as I have shown in Chapters 4 and 5, in particular understandings about an appropriate and 'dignified' expression of human sexuality or on a perception that prostitution is a fundamentally violent and harmful practice. Regardless of the beliefs that underlie it, the message communicated is essentially the same - that prostitution violates human dignity - and this, I will now argue, has a particular impact on how sex workers are represented within these discourses. In exploring how the 'fundamentally incompatible' discourses may impact on the cultural representation of sex workers, I take, as my starting point, Bruckert's and Hannem's aforementioned theory on stigma, where they argue that sex work stigma operates "so that what the individual *does* is read as who she *is*" (2013: 47; emphasis in the original). This means that the stigma directed towards sex workers is directly rooted in attitudes and perspectives on the *practice* of selling sex.

Discourses, therefore, that frame the practice of sex work in different ways can create varying subject positions for people who sell sex. For example, some see sex work as a spiritual calling or form of sexual healing (see Bell 1994; Hutchins 2002, 2011), and, in this type of discourse, sex workers are represented as healers or spiritual renegades.

As mentioned earlier, in much SWR discourse, commercial sex is constructed primarily as a form of work and, in those cases, the subject position of 'worker' is emphasised (as I will discuss in greater detail later in the chapter). Meanwhile, when prostitution is viewed as a moral outrage then the person who sells sex becomes a 'deviant' (Scoular 2015). And, again, as previously mentioned, in abolitionist discourse, prostitution is conceptualised as a violent and harmful practice and the women selling sex are then framed as victims (also see Chapter 5). These are just some of the examples of how the different ways in which the practice of commercial sex is articulated affects the available subject positions of those who undertake it.

In terms, specifically, of the abolitionist portrayal of women who sell sex as victims, and prostitution as an oppressive and violent practice, I note that other scholars have identified negative consequences associated with this discursive framing. For example, Scoular proposes that "equating prostitution with rape", as abolitionist feminists do, "makes a strong rhetorical statement" but, she argues, this is also a dangerous strategy as "it appears to condone the violence that [sex workers] experience, casting it as in some way inevitable, [as] an occupational hazard" (2015: 125). O'Connell Davidson makes a similar argument, noting that "if prostitution is rape, then it is logical to define prostitutes as women who are publicly available to be raped..." (1998: 122). The same analytical step must be taken with regard to framing prostitution as a violation of human dignity - what does this rhetorical statement about prostitution communicate about the people who undertake it? If calling prostitution 'rape' has the propensity to construct women who sell sex as "publicly available to be raped" then what does framing prostitution as a violation of human dignity potentially do?

I would argue that producing discourse that proclaims commercial sex as incompatible with dignity serves to represent sex workers as dehumanised subjects. When something is described as undignified or incompatible with human dignity, it is

effectively being signified as something incompatible with being a human being, given the rhetorical associations between dignity and humanness previously outlined. It invariably constructs the practice (and those who undertake it) as barbaric, uncivilised or animalistic, corresponding to Haslam's animalistic dehumanisation, or as "throwaway women" (Barry 1995: 44), in line with a more mechanistic dehumanisation. If sex workers are already viewed as social outcasts, then framing the practice of commercial sex as something that is beneath humanity may simply lead to the reinforcing of those pre-existing cultural attitudes that see sex workers as dehumanised and debased.

To be clear, I am not arguing that framing *any* activity as incompatible with human dignity will necessarily lead to the creation of dehumanising or stigmatising attitudes towards those who undertake it. Indeed, it is precisely because of the high levels of already existing social stigma around sex work that dignity rhetoric has such a powerful impact on the representation of sex workers. O'Neill (2010) charts the changes in how prostitution has been addressed in British law and policy over the years, from a focus on deviance in Victorian Britain, to a shift towards welfarism in recent years, where the woman selling sex is not necessarily viewed as a deviant but as a victim. What has remained consistent throughout, however, is that she is constructed as part of an "outcast group", as Other (ibid.: 212). Bell also remarks on how the "prostitute body" has been produced, through modern discourse, as "the other of the other: the other within the categorical other, 'woman'" (1994: 2). To reiterate, it is the fact that sex workers are already so socially and culturally excluded that means the 'fundamentally incompatible' discourses have such a negative impact, adding to the layers of already existing stigma.

Some may consider other activities to be undignified - for example, drunken public urination²²⁵ or even appearing on reality TV. Pinker (2008) mocks American scientist Leon Kass for suggesting that eating in public may in some way be beneath the dignity of human beings. I would argue that these practices cannot be compared to sex work, as the level of social condemnation is not equivalent and people who undertake them are not subject to the same degree or type of stigma as sex workers. Identifying drunken public urination, for example, as undignified may have a brief stigmatising or shaming impact at the point at which the behaviour is undertaken, but those who do it are unlikely to be *defined* by their behaviour: it does not adhere to the person. The logic of my argument, therefore, in terms of how the 'fundamentally incompatible' discourses have such an impact is as follows: sex workers are stigmatised; stigma leads to dehumanising perceptions of the stigmatised; the stigma faced by sex workers is based on what they do (i.e. selling sex); the 'fundamentally incompatible' discourses represents *what sex workers do* as incompatible with human dignity, which effectively represents it as behaviour that is non-human; if the sex worker is defined by what she does then this discourse may reinforce the dehumanising effect of the already existing stigma. The risk, then, is that the 'fundamentally incompatible' discourses simply feed the belief that "[sex] work renders [sex workers] inhuman. They are 'fallen women', and what they have fallen from is humanity itself" (Betts 2013).

- Abolitionism and dehumanisation

While abolitionist feminists would certainly not accept the notion that sex workers are 'fallen women', it is clear that framing prostitution as a specifically dehumanising practice is a strong recurring element in their advocacy and campaigning work. While I have argued that discourses that situate prostitution as incompatible with human

²²⁵ Thanks to the anonymous reviewer of my article that was published in the *International Journal for the Semiotics of Law*, for providing this example and provoking this thought process.

dignity may reinforce dehumanising perceptions of sex workers, I note that this sits alongside other abolitionist discourses, which *explicitly construct prostitution as a practice that strips women of their humanity*. Farley says that “prostitution always includes the dehumanisation...of the women” (2006: 134) and that “women are non-persons in prostitution” (ibid.). Leidholdt says that women are “denied” their humanity in prostitution (1993: 135), and Barry suggests that there is “an utter disregard for women’s humanity...in brothels, on streets, and in storefront windows...”(1995: 21). The South African Family Policy Institute, a key member of the Coalition to End Sexual Exploitation in South Africa, maintains that “prostitution strips women of their dignity and humanity” (Lowvelder 2016), while the abolitionist campaigner, Mia de Faoite, draws the very connection between dignity and humanity that I have articulated above:

Prostitution is, was and always will be an absolute affront to human dignity...in fact, to me it will always be a crime against humanity because it affects our very humanness; it attacks and destroys the elements of being human that separate us from all other living things... (de Faoite 2015)

I have previously argued that constructing the practice of prostitution as dehumanising is a concerted political tactic on behalf of abolitionist campaigners because it represents it as harmful and dangerous, which serves their ultimate political goal - the eradication of prostitution. Their primary motivation for pursuing these political tactics, I believe, is a genuine concern for the welfare and wellbeing of women involved in prostitution. That was very clear from my interviews with abolitionist activists and is also noted in some of the textual sources. Farley, for example, discusses the different terms used to describe women in prostitution. She suggests that the use of terms like “escorts” or “hostesses” are “attempts by women in prostitution to retain some shred of dignity”, and her critique of these terms “is not to remove women’s inherent dignity and worth, but to expose the brutal institution which harms them” (Farley 2003: 250).

This is a reminder that despite my argument with regard to *the effects* of abolitionist discourse in reinforcing stigmatising and dehumanising attitudes, such effects may be an unintended consequence of this particular discursive framing. The same can be said for those courts concluding that prostitution is incompatible with human dignity, many of which have expressed a desire to protect people who sell sex. Even though some of the courts and the abolitionist campaigners may be motivated by a desire to protect the dignity of women involved in prostitution and to recognise their humanity, the discourses they choose to proliferate may have the opposite effect, through the creation of a form of 'juridical humanity' (Esmeir 2006).

7.3.3 Juridical humanity

Esmeir explores the associations between international human rights law and "the human", arguing that "contrary to the claims of liberal theories of human rights, [this] is not a simple relation of protection" (2006: 1544). She proposes that law has a constitutive effect and, in this instance, the law's ambition is to "transform humanity into a juridical status, which precedes, rather than follows and describes, all humans" (ibid.). In other words, a person's humanity is constituted as something that "can be taken away or given back" (ibid.: 1545), and the law plays a mediating role in this process: "an equation [is established] between the protection of the law and the constitution of humanity, effectively granting the former a magical power to endow the latter" (ibid.: 1544). She discusses how this "transformation of humanity into a status conferred by the protective work of the law" (ibid.) is essential for "discourses of dehumanisation" to have any meaningful power or impact in human-rights-based campaigns:

An analysis that articulates violent subjection and oppression in terms of dehumanisation is more readily accepted when the declaration of a person's

humanity is a matter of (juridical) status, which is conferred and recognized, and no longer a condition gained at birth. Put differently, it is difficult to conceive of the dehumanisation of an oppressed person unless we first accept the idea that humanity can be taken away or given back. In our time the law, and human rights law more specifically, claims jurisdiction over the declaration of this status. (ibid.: 1544 - 1545)

Esmeir is critical of the use of “discourses of dehumanisation” by activists and campaigners who are attempting to draw attention to violence and harm. She argues that the assertion that subjects are dehumanised as a result of violence or oppression, and that this dehumanisation can then be remedied through legal intervention, reinforces the notion of ‘juridical humanity’. She gives the following as an example to illustrate the point:

Take...the assertion that Iraqis have been dehumanized by the regime of Saddam Hussein or by the American-led war and occupation of Iraq. This assertion is often followed by an invitation to institute a regime of human rights in Iraq. As such, the assertion carries with it the assumption that the Iraqis’ humanity can be redeemed by the work of legal reform and human rights. (ibid.: 1547)

What this assertion does, though, is to erase “all other humanities”, particularly that of the Iraqis’ “past existence before the law’s intervention” (ibid.). I believe that a similar pattern emerges when examining how the ‘fundamentally incompatible’ discourses are deployed. I have argued above that rhetoric situating prostitution as incompatible with human dignity has the effect of constructing prostitution as a practice that is non-human, and those who sell sex are then signified as dehumanised subjects. In the case of abolitionist discourse, this effect must also be taken into account alongside

abolitionists' concerted efforts to argue that women who sell sex are, in reality, dehumanised by the purchasers of sex, and by wider society. The abolitionist perspective, therefore, is that those (women) who sell sex are the victims of male violence and oppression and the law's intervention to criminalise the oppressors (which reduces demand, thus forcing women to exit prostitution) is therefore the *only* way to stop the dignity violation, and by extension, to 're-humanise' the victims. To state this another way: By framing prostitution as fundamentally incompatible with the notion of human dignity, and in some instances specifically constructing those who sell sex as dehumanised subjects, abolitionist feminists (consciously or unconsciously) suggest that the humanity of those who sell sex can be redeemed (their dignity restored) by legal interventions, such as criminalising the purchase of sex.

Esmeir warns that human rights advocates must be careful, in their attempts to draw attention to suffering and violence, that they do not end up "erasing subjects of violence" (ibid.: 1549):

Humanist critics of violent subjection call for the recognition of the human in each person and share the assumption that some subjects in this world are no longer recognized as human. These calls...accept the idea that humanity is a matter of endowment, declaration, or recognition. By writing against the dehumanisation of subjects of violence, critics wish to expose and to challenge the power that inflicts suffering and death, but they accept the notion that humanity can be taken away. They grant violence the force that it wages war to achieve...But aside from reproducing violence's power, these critical assertions also risk erasing subjects of violence, even while wishing to recognize the humanity of the dehumanized. (ibid.)

Oliver (2011) also reminds us that the ‘witness’ or ‘bystander’ is an active participant in processes of dehumanisation. Referring to the “atrocious triangle” of ‘victim’, ‘perpetrator’ and ‘observer’, Oliver notes that “the role of each is crucial to the logic of dehumanisation, for if all three perceive the victim as somehow in- or subhuman, then any possibility of an alternative narrative is excluded” (ibid.: 93). This means that those who produce discourse on commercial sex, the bystanders, must remain alert to the effects of their discursive choices and the possibility that these could represent sex workers as dehumanised, a situation which, in turn, intensifies stigma.

I am not arguing that abolitionist activists intentionally erase people who sell sex through their rhetoric on dignity and dehumanisation. I know from my interviews with abolitionists that their concern, like most human rights activists, is to recognise the humanity of the people who they see as the victims of violence and oppression. However, while abolitionists may themselves see the humanity of women who sell sex, and indeed may wish to emphasise this, they continue to signify these women in discourse primarily as dehumanised objects. ‘Sex object’ is the sum total of the ‘prostituted woman’s’ identity – she is depicted as a “non-person” (Farley 2006: 126); as the “ultimate anonymous woman” (Dworkin 1993: 6); as a “nonentity” (Leidholdt 1993: 135); or, even more viscerally, as a “human toilet” (Hoigard and Finstad 1986, as quoted in Farley 2004: xiii).²²⁶ This incredibly reductive rhetoric may be politically effective for abolitionist goals, but representing those they seek to help as dehumanised may, on the contrary, simply limit the political possibilities available to people selling sex. As Esmeir says, “when persons are declared dehumanized, what political possibilities exist for them, aside from being victims awaiting humanitarian interventions?” (2006: 1549).

²²⁶ The full quote reads “[s]he becomes ‘something for him to empty himself into, acting as a kind of human toilet’”. It is also worth noting that this quote presupposes that prostitution always involves heterosexual penetrative sex, when in reality sex work is undertaken by a range of different actors of varying genders and sexual orientations and includes a diversity of sexual acts.

Campaigns that seek to criminalise the purchase of sex, partly through reliance on 'fundamentally incompatible' discourses, represent a form of governance feminism, given their emphasis on the use of specifically criminal enforcement. Governance feminism is, however, critiqued on the basis that a range of unintended consequences can emerge due to the fact that "GF [governance feminism] tends to deny its own power, and consequently *systematically* overlooks the shifts in bargaining power, distributive consequences, and production of winners and losers yielded by feminist legislative reforms" (Halley et al. 2006: 361; emphasis in the original). I would argue that abolitionist use of 'dignity talk' prioritises "normative achievements" like "message sending...[and] changing hearts and minds..." (ibid.: 421) but does so at the expense of the people who sell sex, who are reduced in their representation to politically passive victims, that need to be rescued/saved by feminist legal intervention. This fails to recognise them as full and complex subjects, and reinforces the one-dimensional and stigmatising notion of the sex worker as the "abject Other" (O'Neill 2010: 221).

If 'fundamentally incompatible' discourses, then, have such a dehumanising and stigmatising effect as I have argued, this raises the question as to whether resistance to this version of 'dignity talk', in the use of 'dignity as workers' discourses, has the opposite effect. In other words, does this resistance serve to emphasise sex workers' humanity and de-stigmatise sex work?

7.3.4 The 'dignity as workers' discourses

In the discourses analysed in the thesis in which there is resistance to the assertion that sex work, in and of itself, violates dignity, it is most common to see commercial sex alternatively framed as a form of work. A common rhetorical tactic among those who have adopted this approach is to situate sex work as the sale of sexual services rather

than the direct sale of the human body or personality (which is sometimes the characterisation that grounds the idea that it violates dignity). Indeed, Judge Cho Yong-Ho, dissenting in the *Kim Jeong-Mi* case, says “since commercial sex involves the sale of sexual services, not the human body or personality...commercial sex is essentially the same as labor provided in other service industries”.²²⁷ In a similar vein, PONY (Prostitutes of New York), in their statement made at the Beijing+10 Conference on Women’s Rights, argue that “prostitution is not the purchase of a person, but of a person's services, as in other service occupations...” (PONY 2005).

The assertion that selling sex is a form of work is also clear in how the Thai sex worker organisation Empower define dignity in their *Bad Girls Dictionary* as “the feeling we have when we do a good job with professionalism and skill” (Apisuk and Hilton 2017: 45). The sex workers of the DMSC want to “earn a little dignity and respect” through “legal recognition of [their] profession” and for their “professional environment” to be “more humane” (Pal et al. 1998: 203). The use of the terms “profession” and “professional”, similar to the statement from Empower which uses “professionalism”, again constructs sex work as a form of labour, but also, I would argue, a form of labour that should be respected: we associate these terms with jobs that are particularly valued by society.

These attempts to frame sex work as a form of work that does not fundamentally conflict with notions of human dignity appear designed to challenge the prevailing stigma targeted towards sex work and sex workers. They attempt to recast prostitution from being a predominantly deviant or abusive/harmful practice into an economic activity, like many other forms of work. I discussed in Chapter 6 how the use of ‘dignity talk’ alongside themes of work, particularly the ability to financially support oneself and one’s family, was a key element of sex workers’ attempts to de-stigmatise

²²⁷ See Chapter 4, Section 4.2.5, *supra* note 155.

the 'dirty work' of sex work. I would further argue that framing sex work as a form of work, and constructing those who sell sex as workers, is an attempt to replace the "victim/abject identity" (O'Neill 2010: 230) that is devoid of dignity, with a 'dignified' autonomous working subject. These narratives invoke themes of autonomy, as sex workers are not cast as helpless victims but as people making active decisions in order to support themselves and their families. They are no longer "victims awaiting humanitarian interventions" (Esmeir 2006: 1549) but "articulate subject[s] laying claim to [their] rights" (Kapur 2000: 880).

Even in respect of contexts of widespread poverty and social inequality, like South Africa, the SWR activists interviewed emphasise that being a working person, including in work that may not be fulfilling or a person's first choice of job, is still a key aspect of dignity for sex workers: "there's a lot of status...invested in the fact that you are working...[a]nd a lot of dignity is implied in that, even if the work you are doing is not necessarily, you know, fabulous" (SWR Activist D, South Africa). In respect of New Zealand, where people who sell sex are constructed in law and policy as workers and not victims, the interview data highlights that notions of agency and commercial sex as an economic activity are key aspects of mainstream understandings of the sex industry, and they are given as reasons why a narrative situating sex work as violating dignity would not take hold there (see Chapter 6, section 6.5.4).

Furthermore, Scoular acknowledges that "sex worker narratives offer important counter-hegemonic insights" and that, in mobilising for labour rights, "sex workers are not simply affirming the essence of what it is to be a sex worker (there is no such thing) but constituting a strategic challenge to ideals of humanity based on fictions that separate work and affect" (2015: 132). I would argue that what sex worker advocates (and some judges) are attempting to do when they contest the notion that sex work is incompatible with human dignity, by drawing comparisons between sex work and

other forms of labour, is indeed to mount such a “strategic challenge”. I have argued in this thesis that discourses that position prostitution as a violation of dignity are sometimes grounded in particular “ideals of humanity”, particularly the notion that sexual contact between humans *should* be experienced as part of enduring relationships and not exchanged for money. The notion that prostitution violates dignity because sexual intimacy is a human experience that should not be commodified reflects the ‘separate spheres’ or ‘hostile worlds’ perspectives, in which there is a belief that money and markets corrupt the pure experience of human love, affection and intimacy (Zelizer 2009). Zelizer critiques this perspective and, through her own study of the relational spheres of “coupling, caring and households”, suggests that “the question...is not whether intimate partners can or should engage in economic transactions but what sorts of economic transactions match which intimate relations” (ibid.: 288). Commercial sex is perhaps one of the most blatant ways in which ‘intimacy’ becomes an economic transaction; and when the notion that sex work violates dignity is resisted, *because* it is said to be a form of work, it represents a direct challenge to these separate spheres/hostile worlds perspectives. The cultural denigration of commercial sex may be a reaction against, or denial of, our collective experience of commodification, where the sex worker, “the unacceptable face of exchange – helps us deny our own everyday commodification of each other” (Munro 1999, as quoted in O’Neill 2001: 145). Zelizer proposes that “we should stop agonizing over whether or not money corrupts, but instead analyse what combinations of economic activity and intimate relations produce happier, more just, and more productive lives” (2009: 298).

While representing sex work as a ‘dignified’ form of work has the potential to challenge existing stigmatising and dehumanising attitudes towards sex workers, as well as problematise broader normative perspectives on the split between intimacy and economy, it is not without its criticisms. As some interviewees have noted, the

conditions in which some sex workers operate may be perceived, by many, to be far from being 'dignified'. I referenced SWR Activist B (Canada) in Chapter 6, who acknowledges that at times the sex work she undertook "wasn't particularly dignified". Another SWR Activist notes that experiences of dignity "can be a long way from the reality for sex work in lots of environments" (SWR Activist H, New Zealand). These comments acknowledge the fact that sex work is undertaken in a range of contexts, and for diverse reasons, with sex workers (depending on factors such as race, gender and class) having varied experiences of sex work. Furthermore, the inequalities that are prevalent in capitalist economic structures, of course, affect sex workers, and may, in fact, lead many to make the decision to sell sex in the first place. In the call for labour rights, and the right to work *with dignity*, are sex workers simply asking for assimilation into the existing free market economy, which may perpetuate the inequalities that already exist in the sex industry (O'Connell Davidson 1998)? Is there a risk, then, in accordance with the concerns expressed by Chapkis (2017) and Phoenix (2017) about de-stigmatisation strategies in general, that 'dignity as workers' discourses simply serve a narrow, more privileged, subset of the sex working population?

7.3.5 Risks of the 'dignity as workers' discourse

SWR advocates (and some judges) call for sex workers to be given labour rights as a way of promoting or protecting their dignity. This was evident in the *Kylie* case from South Africa, for example, where the judge extended labour rights to sex workers as a way to ensure they are treated with dignity by their employers.²²⁸ There are also numerous examples from SWR discourse, including the demands of the Thai group Empower (2016), which situate labour rights as a route to more dignified and decent work. There are real benefits to this type of discourse, as I noted above, in terms of

²²⁸ See Chapter 4, Section 4.3.1, *supra* note 164.

resisting the notion that people who sell sex are abject victims and, instead, presenting them as more complex, agentic subjects. However, also as noted above, a major concern with the 'dignity as workers' discourses is that, in seeking assimilation within existing economic and employment models, that they represent an acceptance of the existing unequal structures that typify late capitalist economies (Weeks 2011; Cruz 2013; Scoular 2015). Weeks accepts that framing commercial sex as a form of work is done as a way for sex workers to "insist on their essential worth, dignity, and legitimacy" but that, in this process, there is an uncritical endorsement of "the traditional work-ethic discourse" (2011: 67). She goes on to note that this approach:

... usefully demoralizes the debates about the nature, value, and legitimacy of sex for wages in one way, but it often does so by problematically remoralizing it in another; it shifts the discussion from one moral terrain to another, from that of a suspect sexual practice to that of a respectable employment relation. (ibid.)

While the call for labour rights in SWR discourse is often expressed as a way of promoting sex workers' dignity, Cruz (2013) argues that labour rights within existing legal and economic structures may only ever offer very limited protections to workers. She explores the SWR movement's call for labour rights, noting that there are two broad approaches, the liberal and the materialist positions. The liberal approach to sex work and labour rights essentially proposes that mainstreaming into the existing labour market is the solution to address the difficulties faced by sex workers, which are created "because sex work has not been granted social, political and legal legitimacy as 'real', productive work" (ibid.: 469). This perspective is premised on "the liberal fiction of disembodied labour power", where the sex worker is commodifying their "freely alienable, and fully separable, bodily property" (ibid.: 468). The materialist perspective, on the other hand, argues that sex work is a form of embodied labour where "what is commodified in prostitution...is a complex blend of labour power, socially marked

bodies and individual attributes” (O’Connell Davidson 2014: 521). In this respect, materialists do not call for the simple absorption of sex work into the capitalist economy but, rather, that their activism is “informed by a wider politics of resistance” (Cruz 2013: 466). Cruz, aligning herself with the materialist perspective, proposes that SWR advocacy must bring two things together: “access to labour rights *and* protections and freedoms from the capitalist labour market” (ibid.; emphasis added). She rejects the liberal notion of sex work as disembodied labour power, observing that traditional labour relationships are not suited to sex work, or even desired by sex workers, where “the high level of autonomy demanded by liberal sex work activists and scholars is inimical to the structure of employee status” (ibid.: 478):

...sex workers have vigorously campaigned for the right *not* to be told how to do their work, whom to do (sic) for and under what conditions; sex workers want to remain ‘unmanaged’. (ibid.; emphasis in the original).

Cruz notes that materialist activists and academics “are not only demanding protections whilst within the capitalist labour market but asking what life might look like *outside* the wage relation” (ibid.: 482; emphasis in the original), giving the demands for a universal basic income as an example of such imaginings.

Scoular also rejects the liberal position that represents sex work exclusively as a form of work or service profession, which, she argues, ignores the complex and diverse experiences of people who sell sex and “misses the constitutive role of gender and the embodied nature of sexual services” (2015: 109). While rejecting the abolitionist equation of prostitution with slavery, Scoular nevertheless argues that there must still be space to recognise the gendered elements of sex work and the inequalities within the sex industry, cautioning against attempts to subsume sex work into existing economic structures where inequality will continue to thrive. Absorbing the sex

industry into the free market formal economy will benefit a narrow group of sex workers and “as many struggle to fit increasingly narrow models of citizenship...[they] are thereby left (sometimes further) outside of the ambit of formal legal recognition” (ibid.: 117). One of the ways to attenuate this risk is for sex workers to connect up with other precarious workers and join together in shared political struggles against wider material inequalities.

7.3.6 Dignity as precarious workers

The study on decent work, produced by Empower, challenges the narrative that sex work is incompatible with dignity by framing sex work as an economic activity and, in doing so, situates working/labouring as a key source of dignity. For example, the sex workers of Empower state that “[d]ignity in the context of work recognizes that labour is a human activity. Work, including sex work, is often a source of self-esteem and self-worth, human dignity and family well-being” (2016: 64). While this may appear to be an uncritical endorsement of “conventional work values” (Weeks 2011: 67), the document immediately goes on to situate people who sell sex as precarious and exploitable workers:

Sex workers are an active party in the labour market even when working in exploitative situations. No matter how difficult the situation, international experience and research show that like other workers, most sex workers strive to regain control over their lives, want to do away with the exploitation and restore their dignity. (Empower 2016: 64)

Of course, this kind of discourse may not satisfy those who want to imagine “what life might look like *outside* the wage relation” (Cruz 2013: 482; emphasis in the original), but it does deploy work-based discourses in a way that acknowledges exploitation and

inequality in the sex industry and that resists attempts to represent people who sell sex simply as workers empowered by free market economics. While emphasising that work is a source of human dignity, Empower never shies away from recognising the risk of exploitation faced by sex workers, and their demand for labour rights is situated as a way to overcome this exploitation. The “labour law violations” that sex workers routinely experience are documented in great detail (Empower 2016: 69 - 77) and it is noted that only 2% of the sex workers involved in the Empower research were employed in conditions that amounted to decent work (ibid.: 60). Crucially, they do not present the granting of labour rights as a simple and immediate solution to improve the situation for *all* sex workers, acknowledging that “although...a simple shift of legal framework will move hundreds of thousands of sex workers in Thailand closer to decent sex work, the reality is likely to be a slower process” (ibid.: 95). Empower also connects sex worker struggles for labour rights with those fought by other precarious workers, urging policy makers to learn from the Thai fishing industry, where “there has been a united response to solve the problems of exploitation and correct existing decent work deficits” (ibid.). Advocating for the right to decent work recognises the dangers of labour exploitation for sex workers; and simple absorption into the formal economy, without adequate workers’ protections, is never presented as a straightforward solution to protect sex workers’ dignity.

‘Dignity as workers’ discourses play an important role, in my view, in challenging stigma. Rather than constructing sex work as an activity that is ‘non-human’ or beneath the dignity of humanity, they represent commercial sex as a form of work, which means the people who sell sex are signified as autonomous subjects rather than abject or dehumanised victims. Nevertheless, activists must remain alert to the unintended consequences of this tactic, as discussed above, in terms of failing to address underlying structural inequalities by advocating the mainstreaming of the sex industry into the formal economy. However, there are examples (the Empower

document on decent work being one) of how it is possible to engage with ‘dignity as workers’ discourses while not simply reifying free market economics but, instead, by exposing the inequalities and exploitation that are perpetuated in the sex industry.

One solution to overcome the risk that ‘dignity as workers’ discourses may perpetuate inequality is to ensure that they are used as part of wider fights for social justice, with Nancy Fraser’s approach providing a potentially useful model (Fraser 1998, 2001; see also Scoular & O’Neill 2007 and O’Neill 2010). Fraser’s crucial contribution has been to urge that social justice “requires *both* redistribution *and* recognition” and that “neither alone is sufficient” (1998: 1; emphasis in the original). Redistribution refers to a fair and just distribution of material resources, while claims to recognition focus on how individuals and groups are represented and valued culturally. I demonstrated in Chapter 6 that the ‘dignity as workers’ discourses were frequently adopted as a way to fight for the recognition of sex workers, to challenge the stigma they face, and to improve their social standing. It is equally important, however, that these be combined with demands for fair distribution of resources. Fraser is critical of theories of recognition that rely on “a reductive culturalist view of distribution” (ibid.: 4). In such theories, Fraser argues, it is assumed “that economic inequalities are rooted in a cultural order that privileges some kinds of labour over others” and that “changing that cultural order is sufficient to preclude maldistribution” (ibid.).²²⁹ While there are clear advantages to using ‘dignity as workers’ discourses, the risk is that, when focused narrowly on recognition, more ambitious fights for the redistribution of wealth or the re-imagining of economic structures are precluded. Activists must ensure that, in their use of ‘dignity as workers’ discourses, they frame their demands as part of wider

²²⁹ Fraser is equally critical of those who advocate purely redistributive justice believing that “a just distribution of resources and rights is sufficient to preclude misrecognition” (1998: 4). She gives the example of the “African-American Wall Street banker who cannot get a taxi to pick him up” and notes that “to handle such cases, a theory of justice must reach beyond the distribution of rights and goods to examine patterns of cultural value” (1998: 4).

struggles against economic inequality and resist the temptation to fight for a simple assimilation of sex work into the free market economy.

Of course, many SWR advocates already highlight the inequalities and exploitation that exist in the sex industry, which they often argue are caused or heightened by criminalisation. Indeed, I noted in Chapter 6, that SWR advocates, when discussing the harms that they perceive are done to people who sell sex, use 'dignity talk' in a similar way to abolitionist campaigners - they make appeals to human dignity as a way to argue for legal intervention to change laws and practices that are constructed as harmful. Having shown above that abolitionist attempts to use dignity to construct prostitution as harmful leads to the creation of a "juridical humanity" (Esmeir 2006), is the same pattern as evident in SWR discourse?

7.3.7 'Juridical humanity' and SWR discourse

As discussed in Chapter 6, SWR campaigners make frequent reference to the dignity violations suffered by sex workers as a result of criminalisation and stigmatisation. For example, Canadian SWR group Stella talks about criminalisation and the "fear of arrest" as something that "deprives [sex workers] of [their] freedom and dignity" (2013: 2), while South African groups Sisonke and SWEAT argue that "criminalisation exposes sex workers...to massive indignities through their interaction with police and other state agents" (2012: 10). Oliver suggests that "violations of human dignity...exist on a continuum with dehumanization" (2011: 95) - and so, it could be asked, does the use of 'dignity talk' in SWR discourse also run the risk of constituting sex workers as dehumanised subjects? While I did not encounter the term dehumanisation being used in SWR discourses, there is talk of sex workers being viewed by society as "without dignity and...less deserving of the same human rights as others" (APNSW et al. 2011: 15) or "less entitled to their human rights than other categories of people" (GAATW 2007: 5). The sex workers of the DMSC want "to be accepted as human beings" (Pal et

al.: 203); and in a workshop with WONETHA, a Ugandan-based organisation, one of the sex worker participants said, “people should appreciate that sex workers are human and should enjoy equal protection” (WONETHA/UHRA 2010: 8).

While these are not necessarily explicit examples of “discourses of dehumanisation” (Esmeir 2006), there is an implicit suggestion that sex workers are treated as, or viewed as, less than human. A crucial difference, however, is that in SWR discourse, the recognition of sex workers’ humanity is not conditional on them exiting sex work; instead, the demand is for it to be recognised *while* they are selling sex. This distinguishes SWR discourse from the abolitionist use of “discourses of dehumanisation”, because, in the examples quoted above, SWR advocates imply that sex workers always retain their humanity while selling sex even if this retention of humanity is not recognised by wider society. In abolitionist discourse, on the other hand, humanity is ‘lost’ while selling sex and can only be restored by exiting sex work. I argued previously that framing dignity as something that can be taken away or given back, depending on the intervention of the law, served to construct a ‘juridical humanity’.

There are some (albeit limited) examples from SWR discourse where ‘dignity talk’ is used in such a way. For example, there is a reference in the Empower publication on decent work such that addressing issues of labour exploitation and granting labour rights would “restore [sex workers’] dignity” (2016: 64). In South Africa, sex worker groups Sisonke and SWEAT have said that the decriminalisation of sex work is “the only legal arrangement which offers dignity to women” (2012: 10). Framing the discourse in this way suggests that sex workers do not have dignity while sex work remains criminalised without labour rights protection. While this rhetoric is designed to draw attention to what these political actors view as the harms of sex work criminalisation, the emphasis is not placed on the fact that sex workers *have* dignity and *are* human

beings; dignity is instead framed as something that is (or can be) 'removed' as a result of criminalisation, discrimination and stigma. This is problematic for all of the reasons I advanced above in my exploration of Esmeir's work. A better way to frame the argument would be *sex workers always have dignity but the criminalisation and stigmatisation of sex work fails to recognise this*. Constructing the argument this way emphasises that sex workers *have* dignity; they are human beings and deserve to be treated as such. Activists must remain alert to the fact that by mobilising the concept of dignity in advocacy work as a human quality or characteristic that can be given or taken away depending on external circumstances creates the conditions in which a dehumanised subject position can emerge.

7.4 Conclusion

My aim in this chapter has been to examine what kind of subject positions are created for people who sell sex through the various forms of dignity-based discourses set out in this thesis. I divided the use of 'dignity talk' in discourses about commercial sex into two categories: 'fundamentally incompatible' discourses and 'dignity as workers' discourses. The chapter began with a fuller exploration of the stigma faced by sex workers and, in particular, different perspectives on how stigma can, and should be, resisted. I explored the close relationship between stigmatisation and dehumanisation, and presented a theory of dehumanisation based on the work of Nick Haslam (2006). Haslam makes clear that a theory of dehumanisation is only possible by first of all theorising the human, and I presented his two versions of humanness based on the notions of 'uniquely human characteristics' and 'human nature'. I argued that dignity could be a quality that meets Haslam's definition of *both* a uniquely human characteristic and an element of human nature, depending on which particular definition of dignity one considers. Regardless, my position is that, whichever version is considered, there is no doubt that having dignity is currently seen as a key indicator

of humanness. Given this connection between dignity and humanity, the question I sought to answer in this chapter is whether 'dignity talk' in discourses about sex work may serve to challenge or reinforce the stigma targeted towards sex workers and perceptions of them as dehumanised.

I concluded that the 'fundamentally incompatible' discourses do reinforce stigmatising attitudes and position sex workers as dehumanised subjects, as they frame the practice of selling sex as somehow non-human or beneath humanity. While the 'dignity as workers' discourses challenge and counter stigmatising attitudes, the reliance on a worker subject position must be used consciously and carefully to ensure that it: does not reinforce the material inequalities faced by people involved in sex work; acknowledges the risks of exploitation that persist under capitalist economic structures; and accepts that sex workers are all differently situated on race, class and gender hierarchies.

Relying on Esmeir's notion of juridical humanity (2006), however, I proposed that all legal and political actors should exercise caution in their use of 'dignity talk' when creating discourses on sex work. While it may have rhetorical power to argue that sex workers lose their dignity or that it is destroyed - either through participation in sex work, as abolitionists argue, or through the criminalisation of sex work, as SWR activists contend - the unintended consequence of these kinds of discourses is the creation of a dehumanised, and politically passive, subject position for people who sell sex. My call for caution does not mean abandoning 'dignity talk' in discourses on commercial sex but simply ensuring that the emphasis is always placed on the fact that people who sell sex *have* dignity, *are* human beings, and campaigns for law reform are about ensuring that their dignity is fully recognised by the law and wider society, rather than being 'restored' through legal interventions.

Chapter 8 - Conclusion

8.1 Introduction

I suggested at the beginning of this thesis that the use of the concept of dignity in legal and political discourses on commercial sex has a mysterious and enigmatic quality - it is frequently invoked but often without elaboration on exactly what is meant. I set out in this study to address this and provide the reader with a deeper understanding of, principally, *how* dignity is used in discourses on sex work, but also of what impact this has on the social and cultural representation of sex workers. As this thesis is grounded in a post-structural epistemology, I have approached the subject matter with an understanding that the discourses analysed are not simply representing the truth or reality of commercial sex but have a constructive force in influencing wider perceptions, not just of the practice of exchanging sex for money, but also of those who undertake it. Laclau and Mouffe's theory on subject positions has provided the central underpinning to the thesis - particularly within Chapter 7, where I explored what kinds of sex working subjects are created through dignity-related sex work discourses. To conclude the study, I now provide a summary outline of the substantive chapters in the thesis and highlight the key themes of my research and the main findings. I then end with some thoughts on ways forward for the use of 'dignity talk' in legal and political discourses on commercial sex.

8.2 Chapter summary

I began the thesis by setting out my motivation for pursuing this research, which was borne from a growing awareness of the prevalence of 'dignity talk' in discourses on commercial sex, as well as its opacity, and a curiosity to explore how the concept is used by different legal and political actors and what impact it has. I noted that existing

literature on dignity and sex work is limited, and tends to focus on normative explorations of whether prostitution violates human dignity, in addition to there being some academic comment on the *Jordan* case from South Africa. Despite the lack of literature that engages in any depth with the intersection between dignity and commercial sex, I did, nevertheless, note that prostitution is frequently identified in the literature on human dignity as an example of an issue that exposes the tensions that exist within the concept, providing further justification for my choice to pursue this study. I set out my underlying view on prostitution, which is a rejection of any essentialist perspective on the issue in favour of the understanding that it is a complex and multiple phenomenon that takes different forms depending on a range of factors, including social, economic and cultural context.

In Chapter 2, I explained why I had chosen to move away from a normative exploration of dignity and sex work in favour of post-structural discourse analysis. While there is nothing wrong with a normative approach *per se*, I was concerned that framing my research question in such a way may not necessarily constitute an original contribution to knowledge and could result in a thesis that simply rehashes the already exhausted theoretical debates on the rights and wrongs of commercial sex. Instead, I identified Laclau and Mouffe's Discourse Theory (1985) as the best fit for my study, given its theorisation of the constitutive nature of discourse (particularly in the formation of subject positions), which is essential to my attempt to explore how 'dignity talk' affects the representation of people who sell sex. I outlined the research methods chosen and ended this chapter with a discussion of researcher positioning, providing the reader with some information on my own position in relation to the thesis topic.

Human dignity was the focus of Chapter 3, in which I explored this concept in greater detail. This chapter established, at the outset of the thesis, that the concept of dignity has a variety of different meanings and, in accordance with the insights of Laclau and

Mouffe (1985), that its meaning will *always* remain contingent. I suggested that the search for dignity's 'true' meaning is an impossible task and that specific calls for the concept to be used, in law, in a narrowly delineated fashion (e.g. O'Mahony 2012a) are bound to fail, agreeing with others (Neal 2012a; Kidd White 2012) that this would ultimately impede the utility of the concept. Rather than using this thesis as an attempt to reach some understanding of what dignity *means* in the abstract, I have used it as an opportunity to document how dignity is actually *used* in the empirical context of legal and political discourses on commercial sex. I have done what Neal suggests, which is to advance knowledge by "'looking' - gathering examples of use-content and building from the bottom up, piece by piece, to arrive at an 'understanding' or *appreciation* of meaning" (Neal 2012a: 112; emphasis in the original).

In 'looking' at how dignity is used in legal and political discourses on commercial sex, I am indebted to the work of Neomi Rao (2011), particularly her taxonomy of ways in which dignity tends to be used in jurisprudence. Her delineated categories of 'intrinsic dignity', 'substantive conceptions' and 'dignity as recognition' have provided an invaluable anchor and framework for navigating the various discourses outlined in this thesis. She proposes that 'intrinsic dignity' is most often used to promote individual rights and that it prioritises personal autonomy, while 'substantive conceptions' seeks to uphold community norms and leads to prohibitions on behaviour. 'Dignity as recognition', meanwhile, acknowledges the relational aspect of dignity and the importance for individuals and groups to be valued and respected by the community. Her insight that these different versions of dignity are often in conflict with each other and are "based on how we choose to think about the individual and his relationship to society" (ibid.: 192) was especially useful and pertinent for this thesis, given that a similar clash of values is evident in much of the legal and political debates on prostitution. Many of Rao's observations on the use of dignity language in

jurisprudence are borne out when examined through the specific lens of legal and political discourses on sex work. For example, I demonstrated in Chapter 4 that judges do, indeed, rely on multiple different conceptions of dignity in much of the caselaw on prostitution, which Rao has observed in other judicial decisions.

I was able to map Rao's typology onto all the caselaw studied in Chapter 4, and I proposed that relying on different conceptions of dignity invariably affected the particular legal outcome of the case. I demonstrated that when 'substantive conceptions' is used, as a way to enforce community norms, this tended to lead to the upholding of the criminalisation of prostitution. The use of dignity as 'substantive conceptions' was also often predicated on particular moral and social values, in which emotional and relational intimacy is reified and prostitution positioned as a distortion of 'natural' human sexuality (Adler 2008). 'Intrinsic dignity', on the other hand, was most often invoked by judges when their judgments were focused on advancing or upholding the individual rights of sex workers to be free from exploitative labour practices or other harms. This appeared to support Rao's contention that 'intrinsic dignity' is most often used to advance rights, while the use of dignity as 'substantive conceptions' tends to lead to prohibitions on behaviour, with this version of dignity described as 'dignity as coercion'. While this general pattern was evident, to an extent, in the caselaw on commercial sex, the picture was more complex, and it remains the case that 'intrinsic dignity' can also be used as a way to support prohibitions on sex work. For example, the Canadian Supreme Court in the *Prostitution Reference* case and the dissenting judges Kim Yi-Su and Kang Il-Won in the South Korean Constitutional Court both support the criminalisation of prostitution (the South Korean judges suggest criminalising only the buyers) because of the perceived harm done to the individual dignity of those who sell sex. While 'intrinsic dignity' and 'substantive conceptions' were consistently used by judges, I noted that 'dignity as recognition' was a rare

feature in the caselaw, only being invoked by the New Zealand Human Rights Tribunal in the *Montgomery* case.

The majority of the court decisions concluded that prostitution was incompatible with human dignity, which is the position adopted universally by abolitionist feminist advocates and campaigners. Chapter 5 provided an analysis of how ‘dignity talk’ is used in discourses produced by this abolitionist movement. I charted how the use of dignity language became a feature of abolitionist campaigning around the late 1980s/early 1990s as part of the development of a specifically human-rights-based discourse, spearheaded by the work of Kathleen Barry. This view of prostitution as a violation of dignity has now been adopted by abolitionists worldwide, with the position becoming an entrenched feature of abolitionist campaigns. A recent example is provided by the newly created organisation CAP International (Coalition for the Abolition of Prostitution), which attempts to frame prostitution as a breach of international human rights law based on the claim that it is incompatible with human dignity (Théry 2016). I argued that ‘dignity talk’ was a key tool that abolitionists have used in framing opposition to prostitution as a ‘human rights issue’ and that, in this way, the concept becomes a gateway to rights-based laws and discourses. I also observed that the abolitionist movement had been successful in seeing their perspective on dignity and prostitution trickle down to be implemented in statutory law through the implementation of Canada’s Protection of Communities and Exploited Persons Act, which states in the Preamble that “discouraging prostitution” is “important to protect human dignity”.

The textual analysis of abolitionist discourses was supplemented with interview data obtained from abolitionist activists. This showed that while the political goal of the movement is to see prostitution legally prohibited, through the criminalisation of clients, there was, in fact, limited evidence of them using dignity exclusively in the form

of 'substantive conceptions'. To be sure, the instances of 'substantive conceptions' were highlighted - in particular, the presence, in some textual sources and interview data, of normative perspectives on a 'dignified' human sexuality that is said to be damaged through commodification. Nevertheless, I proposed that opposition to prostitution by abolitionists was not principally rooted in moral objections to sex work but based on a perception of the harm caused to the people (women) who sell sex. In this way, dignity was deployed in abolitionist discourse to represent 'intrinsic dignity' and, by arguing that prostitution violated dignity, attempts were made to construct it as a seriously harmful and abusive practice, akin to slavery and other extreme forms of violence.

In Chapter 6, I turned my attention to the SWR movement and its use of the concept of dignity in campaigning and activist work. I noted that contrary to the global reach that 'dignity talk' has in abolitionist campaigns, the concept was used much less consistently by the SWR movement; indeed, there was much more evidence, from my interviews with SWR activists, of an active resistance to the use of 'dignity' as a campaigning tool than there had been among abolitionist campaigners. There were several reasons advanced by activists to explain their ambivalence towards, or even suspicion of, dignity, including that the concept was too elastic, that it was inaccessible (as an essentially metaphysical concept), or that it acted as a proxy for moralistic arguments against sex work. Despite these suspicions, dignity-based discourses have been adopted by a number of SWR campaigners and I observed that this was often related to the particular social and political contexts in which activists were working. For example, it was very clear that in South Africa, with its constitutional culture of dignity, the concept was widely used by activists on all sides of the debate. Interestingly, while some SWR activists viewed dignity's elasticity as problematic and dangerous, others (particularly the South Africans) saw this as a huge benefit of using the concept, as it could be moulded to fit a variety of rights-based claims. Even among the SWR activists

who were more reticent about using 'dignity talk', they discussed a strategic use of dignity, as a way to access human-rights-based laws and discourses, in precisely the same fashion as I observed in the abolitionist movement.

I suggested that the use of 'dignity talk' in SWR discourses may have been precipitated by the abolitionist embrace of the concept, and that when SWR activists engage with dignity, this is frequently done as a way to speak back to, and resist, abolitionist narratives. As a result, when dignity discourses are used by the SWR movement, they are used to challenge the notion that there is anything inherently dignity-violating in selling sex and to argue, instead, that it is the conditions in which commercial sex takes place, e.g. under criminalisation, which threaten sex workers' dignity. One of the principal ways in which dignity discourses are deployed in SWR activism, then, is to construct people who sell sex as 'workers' and to argue that access to labour rights would address the dignity violations that they suffer. The focus on work-based discourses was significant: I observed that the concept of dignity was used by sex workers to reframe sex work, from being 'dirty work' into a form of 'dignified work' that enables them to support themselves and their families.

Having charted how the concept of dignity has been used by a range of legal and political actors in discourses on commercial sex, my focus for the final substantive chapter was to explore the effects of this 'dignity talk' on the cultural representation of sex workers. I explored sex work stigma and how stigma can lead to the perception that the stigmatised are somehow sub-human. With this insight in mind, I then examined the close connections between the concept of dignity and perceptions of humanness, arguing that dignity is a quality that is now deeply associated with contemporary ideas of 'the human'. Given these close connections between dignity and humanness, I explored to what extent dignity-based discourses may serve to

reinforce or challenge the perceptions of sex workers as a stigmatised and dehumanised group.

I proposed that the ‘fundamentally incompatible’ discourses, in which prostitution is said to violate dignity by its very nature, reinforce stigma by representing sex work as ‘non-human’, and thus positioning sex workers as dehumanised. The SWR movement’s response, ‘dignity as workers’ discourses, challenges stigma by representing sex workers as more complex, autonomous subjects; but caution must be exercised to ensure that emphasising work as a source of dignity, and seeking recognition of sex work as a form of work through its mainstreaming in the formal economy, does not lead to the implicit endorsement of the inequalities that exist under market-based economics. The danger of the ‘dignity as workers’ discourses is that they may serve the interests of only a small proportion of more privileged sex workers and fail to address the underlying issues of exploitation that exist in the sex industry. Finally, relying on Esmeir’s notion of ‘juridical humanity’, I suggested that all those who produce discourses on sex work should ensure that they use ‘dignity talk’ in a way that continually emphasises the fact that sex workers *have* dignity and *are* humans rather than by framing dignity (and humanity) as something that is mediated via legal interventions.

8.3 Key themes and findings

The culminating conclusion of this thesis - that care must be exercised in how the concept of dignity is deployed in discourses related to commercial sex - is grounded in a number of other key findings from my study, which are outlined below. These findings are relevant, and I hope useful, to all those who are involved in producing legal and political discourses on prostitution, including lawyers and judges engaging with the concept of dignity in cases related to sex work and all those active in campaigns to

reform laws on commercial sex. I situate the findings against the background of stigma faced by sex workers, and the consequent high levels of social exclusion and violence that they face (Benoit et al. 2017; Cunningham et al. 2018; Deering et al. 2014). The intention has been to build greater awareness of the role that ‘dignity talk’ may have in perpetuating sex workers’ marginalisation and, at the same time, its potential use as a way to promote greater social inclusion for people who sell sex. My research question had two key elements - the first sought to explore how the concept of dignity was used in sex work discourses and the second was focused on how different uses of ‘dignity talk’ affected the cultural representation of sex workers. I, therefore, present the key findings in the same way.

8.3.1 How is the concept of dignity used in legal and political discourses on commercial sex?

In terms of the use of ‘dignity talk’ in jurisprudence on commercial sex:

- I have affirmed previous work (Adler 2008; Fritz 2004; Hennette-Vauchez 2011), which demonstrated how the concept of dignity can be used by courts to enforce particular normative values on human sexuality, showing this to be evident in several other cases on commercial sex, beyond the *Jordan* case (which thus far has been the main focus of academic attention in this area).
- The judicial application of different ‘versions’ of human dignity tends to lead to distinctly different legal outcomes for sex workers but this is not a simple relationship of dignity as ‘substantive conceptions’ leading to prohibitions and ‘intrinsic dignity’ being used to expand rights. ‘Intrinsic dignity’, in the context of cases on commercial sex, is also used as a way to justify prohibitions on

prostitution, when selling sex is conceptualised as an abusive and violent practice.

In terms of legal and political activism on commercial sex, I identified both convergence and divergence in how the abolitionist movement and the SWR movement use 'dignity talk':

- **Convergence:** The abolitionist movement and the SWR movement pursue radically different legal and political goals but my analysis shows that there is a convergence in *how* they use the concept of dignity. Both movements use discourses grounded in 'intrinsic dignity' in order to highlight what they each perceive as the harms done to people who sell sex, even though perceptions on the sources of harm are quite different. For abolitionists, it is prostitution itself that is fundamentally incompatible with dignity, while for SWR activists it is the criminalisation of sex work, and the consequent stigma and discrimination that sex workers face, that violates dignity. The use of 'dignity talk' as a gateway to access the rights and remedies found in international human rights law is another point of convergence and this is a strategy that is evident in the work of both the abolitionist and the SWR movements.
- **Divergence:** Beyond this core convergence, there are also some key differences in how these different groups engage with the concept of dignity. First, there is a widespread adoption of 'dignity talk' in the creation of abolitionist discourses on prostitution and the argument that commercial sex, always and inherently, violates dignity is used consistently in their activism. The use of 'dignity talk' in the SWR movement is, on the contrary, inconsistent, with different activists holding different views on whether it is a concept that helps or hinders their legal and political goals. Furthermore, when the concept of dignity is invoked

by these groups beyond 'intrinsic dignity', the abolitionist movement is more likely to use 'substantive conceptions' to support their call for sex work to be prohibited, while the SWR movement uses 'dignity as recognition' to argue for the social and legal recognition of sex work and sex workers.

8.3.2 What impact does the use of 'dignity talk' have on the social and cultural representation of sex workers?

- Arguing that prostitution is fundamentally incompatible with the concept of human dignity positions people who sell sex as dehumanised subjects, in its construction of the practice of prostitution as something that is 'beneath humanity', and thereby reinforces existing social stigma against sex workers.
- The suggestion that sex workers gain dignity by being recognised as workers may serve to challenge stigma as it represents sex workers as agentic subjects who deserve to be respected by the state and society. At the same time, however, there is a risk that these discourses perpetuate inequalities in the sex industry, by focusing demands on assimilation within existing economic structures. The social and legal recognition sought, therefore, may only be granted to a more privileged subset of sex workers.
- All legal and political actors, in their use of 'dignity talk' in discourses on sex work, must ensure that they do not construct dignity as a quality that can be given or taken away but continually emphasise that people who sell sex *have* dignity and *are* human beings. Given the stigma, and levels of violence, that exist against sex workers, public discourses on sex work should resist attempts to represent people who sell sex in ways that position them as dehumanised.

8.4 Revisiting my original contribution

My thesis, as I discussed in Chapter 1, makes an original contribution to the multi-disciplinary literatures on both sex work and human dignity. In terms of the contribution to the *dignity literature*, I see this thesis as a distinctly empirical study that helps to illuminate more theoretical and abstract work on the meanings and uses of the concept of dignity. It is part of a recognised pattern of empirical scholarship that helps to develop greater understanding of how the term 'dignity' is actually used and understood by different social, legal and political actors.

My key contribution to *the literature on commercial sex* is in providing the first exploration of the use of 'dignity talk' in discourses on sex work. As noted in Chapter 1, existing work in this area tends to be focused on studies that ask normative questions such as 'does prostitution violate dignity?' My thesis, however, has taken a different approach and is rooted in an acceptance of the idea that the way we *talk* about sex work affects the lives of sex workers. While I do not draw any concrete, causal links in the thesis, I have explored the role that 'dignity talk' may play in creating the discursive conditions in which sex workers' experiences of stigma and social exclusion can be perpetuated, or, on the contrary, resisted.

This thesis, therefore, makes a distinctly *empirical* contribution to the theoretical literature on dignity, while also contributing to the sex work literature a *theory* on how 'dignity talk' may affect the stigma experienced by sex workers - stigma being a phenomenon that is already extensively documented in empirical research. Overall, I believe my most significant contribution (to both bodies of literature) is in finding that there are negative, and potentially unintended, consequences of using 'dignity talk' in discourses on sex work (see section 8.3.2 above). Having reached the conclusion that the use of 'dignity talk' has a range of potentially harmful consequences for people who

sell sex, I now want to end the thesis by making some suggestions on how the concept of dignity can be used in legal and political debates about sex work while avoiding these risks.

8.5 Ways forward: 'dignity talk' and commercial sex

My thesis has identified some negative consequences that lead from the use of 'dignity talk' in discourses on commercial sex, but in no way am I proposing that dignity should be eschewed from all political and legal debates on sex work. Indeed, any such call would be entirely unrealistic given how widespread the use of the concept of dignity is, in rights-based strategic litigation as well as in wider social justice activism, which is related to its place in international politics and human rights law. Furthermore, my analysis shows that judges *are* relying on the concept of dignity in their decisions on sex work and 'dignity talk' is already fairly entrenched in activism on the issue, so all those engaged in sex work law reform activities, I would argue, have no choice but to engage with it. And even if the decision to engage with 'dignity' is taken pragmatically, it can still be used, like other legal norms, critically and radically to achieve increased justice for people who sell sex (Scoular 2015: 154).

Therefore, rather than attempting to argue that 'dignity talk' should be reduced or limited in discourses about commercial sex, I, instead, suggest that all legal and political actors should remain conscious of *how* they use the concept of dignity. The negative consequences that I have identified in the use of 'dignity talk' are certainly not inevitable. The first overarching recommendation I make, based on Esmeir's (2006) theory of 'juridical humanity', is that lawyers, judges and activists must avoid using the concept of dignity in a way that makes sex workers' dignity, and therefore their humanity, a conditional status that is dependent on legal intervention of any kind. As I discussed extensively in Chapter 7, this creates the possibility for dehumanising subject

positions to emerge for people who sell sex and, ultimately, serves to limit their ability to engage, as equals, in legal, social and political life. In terms of the more specific forms of 'dignity talk' identified in the thesis, I make the following observations.

8.5.1 Fundamentally incompatible

In place of narratives, which situate prostitution as incompatible with human dignity, I believe that there must be an acceptance of the commercialisation of *sex as a part of humanity*. This does not mean embracing the view (fiction) that it is a harmless and benign practice, but simply that, in all its complexity, including experiences of violence and abuse, it is a thoroughly human phenomenon. Oliver proposes that we acknowledge the human being as an embodied subject that encompasses a range of experiences, including abjection and suffering. She particularly calls for an embodied understanding of dignity, in which it is "inclusive of pleasure and suffering, beauty and disease, strength and vulnerability, life and death" (Oliver 2011: 95):

To respect the embodied dignity of a human being, therefore, is first and foremost an act of recognition: to recognize as human every aspect of their experience, however abject and foreign it may seem, to acknowledge the specificity of their person, and by doing so to affirm the place of the other alongside the self within the human community. (ibid.: 96)

The concept of human dignity, then, can hold within it all the varied and complex ways in which human bodies experience the world, inclusive of suffering. In the introduction to the thesis, I rejected any essentialist perspective on what commercial sex may be, accepting that it is practised and experienced in a multitude of different forms within different cultural, social and interpersonal contexts. That means that I accept that it can be, and is, experienced, by some, as violent and abusive. In proposing that

commercial sex be recognised as a thoroughly human activity, I make no attempt to minimise the harms that can occur to people through participation in prostitution.

While I believe that people can exercise agency to sell sex, my suggestion here is not grounded in an embrace of the notion that selling sex is exclusively a symbol of female empowerment; nor am I trying to naturalise prostitution and deploy the ‘oldest profession’ trope that says it has always been with us and always will be. Critical perspectives on the commercialisation of sex, and the operation of the sex industry, are crucial, especially those that emanate from people with first-hand experience of how the industry operates and of the risks of exploitation and harm that are perpetrated within it. Re-imagining economic structures and opening dialogue about the complexities, fears and anxieties surrounding human sexuality and its commercialisation are all to be welcomed and encouraged, including conversations that envisage a world without commercial sex. What I am arguing, however, is that these visions of a world in which sex is not exchanged based on financial need should not be based on, explicitly or implicitly, representing prostitution as something that is unworthy of, or beneath, humanity. The consequences of discourses of this nature, the framing of sex work as incompatible with human dignity, and therefore as a ‘non-human activity’, are that people who sell sex remain ostracised on the fringes of our societies and communities.

8.5.2 Dignity as workers

The use by the SWR movement of ‘dignity as workers’ discourses is an attempt to ensure that sex workers are given social and legal recognition. Rather than being framed only as abject victims, which the ‘fundamentally incompatible’ discourses perpetuate, ‘dignity as workers’ discourses create viable subject positions for people who sell sex, in which they are no longer ‘dirty’ and stigmatised but represented as

complex and agentic subjects, as ‘dignified workers’. These discourses also have the potential to enhance legal and social inclusion, when they are used to support the granting of legal rights and remedies to sex workers, from which they were previously excluded.

While there are clear advantages to using the ‘dignity as workers’ discourses, the risk is that, when they are focused narrowly on recognition, more ambitious fights for the redistribution of wealth or the re-imagining of economic structures are precluded. Activists can attenuate this risk, in their use of ‘dignity as workers’ discourses, by framing their demands as part of wider struggles against economic inequality and resist the temptation to fight for a simple assimilation of sex work into the free-market economy. Fraser’s model of social justice provides an excellent framework for structuring these activist demands, while avoiding the use of ‘dignity as workers’ discourses exclusively as a way to fight for recognition. I note that I am not the first to highlight Fraser’s model as having great potential for sex worker fights for justice (O’Neill 2010; Scoular and O’Neill 2007).

8.6 Concluding thoughts

My aim in pursuing this thesis has been to provide some clarity on how ‘dignity talk’ is used in discourses on sex work and what role this plays in structuring the different legal and policy responses to the issue of commercial sex. My hope is that this work may, in some small way, lead to a greater consciousness about the consequences of their discursive choices, among those legal and political actors who use the concept of dignity in producing discourses on commercial sex. I believe that ‘dignity talk’ can be an effective tool in both litigation and wider activism on sex work, as long as there is an awareness of the unintended consequences I have outlined above. I do not have the space to outline a complete theory of how ‘dignity talk’ *should* be used in campaigns

for prostitution/sex work law reform beyond a plea that it is used in a way that reminds the world that people who sell sex always have, and will never lose, their dignity as human beings.



Participant Information Sheet for Interviewees

Department: The Law School

Title of the study: The concept of “human dignity” and its use in policy and activist discourse on commercial sex

Introduction

My name is Stewart Cunningham and I am a PhD student in the Law School at the University of Strathclyde. My PhD study seeks to explore how the concept of “human dignity” is used in legal debates about commercial sex.

What is the purpose of this investigation?

The purpose of this investigation is to explore the concept of “human dignity” with people who are active in policy-making and campaigning around the issue of commercial sex. My aim is to examine how the concept is used in policy documents and campaign materials, and the reasons why the arguments are framed using the language of dignity. The focus of my study is on exploring the political effects when the concept of “dignity” is used in legal debates on commercial sex.

Do you have to take part?

It is entirely your decision to take part in the study and you can change your mind and withdraw your consent to participate at any point in the process.

What will you do in the project?

You will be required to undertake a short interview with me that can be undertaken in person (depending on your geographical location) or virtually via skype. The interview should last no longer than one hour. Interviewing will take place between May 2015 and March 2017 and dates and times will be arranged around your schedule. If the interview is being conducted in person I will travel to a location that is suitable for you. I would like to record the interview on a voice recorder, but should you wish otherwise, I can also take notes.

Why have you been invited to take part?

You have been invited to take part because you are active in the political and legal debates on commercial sex and perhaps also because you or your organisation has used the concept of “human dignity” as part of your policy-making or activism in the past.

What are the potential risks to you in taking part?

There are no potential risks identified by taking part in this study.

What happens to the information in the project?

Your participation will be fully anonymous and you will choose how you would like to be

identified in the research. The audio recording will be stored on a secure, password locked computer and it will be deleted following transcription. All transcripts will be securely stored on a password locked computer and any hard copies locked in a filing cabinet within Strathclyde University.

The University of Strathclyde is registered with the Information Commissioner's Office who implements the Data Protection Act 1998. All personal data on participants will be processed in accordance with the provisions of the Data Protection Act 1998.

Thank you for reading this information – please ask any questions if you are unsure about what is written here.

What happens next?.

If you are happy to be involved in the study then you will be required to sign a consent form. If you do not want to be involved I want to thank you for taking the time to consider participation. The research gathered as part of this study will be used in my PhD thesis and potentially also in journal articles, book chapters and a monograph. Should you wish to be kept informed about any publications arising from this study then please contact me at stewart.cunningham@strath.ac.uk

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This investigation was granted ethical approval by the University of Strathclyde Ethics Committee.

If you have any questions/concerns, during or after the investigation, or wish to contact an independent person to whom any questions may be directed or further information may be sought from, please contact:

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Consent Form for Interviewees

Department: The Law School

Title of Study: The concept of “human dignity” and its use in policy and activist discourse on commercial sex

- I confirm that I have read and understood the information sheet for the above project and the researcher has answered any queries to my satisfaction.
- I understand that my participation is voluntary and that I am free to withdraw from the project at any time, up to the point of completion, without having to give a reason and without any consequences. If I exercise my right to withdraw and I don't want my data to be used, any data which have been collected from me will be destroyed.
- I understand that I can withdraw from the study any personal data (i.e. data which identify me personally) at any time.
- I understand that anonymised data (i.e. .data which do not identify me personally) cannot be withdrawn once they have been included in the study.
- I understand that any information recorded in the investigation will remain confidential and no information that identifies me will be made publicly available.
- I consent to being a participant in the project
- I consent to being audio and/or video recorded as part of the project

(PRINT NAME)	
Signature of Participant:	Date:

Appendix B - Interview schedule

1. What organisation do you work for?
2. What is your role in the organisation?
3. Tell me a bit about your involvement in policy-making / political activism on sex work/prostitution/commercial sex?
 - How long have you been involved?
 - What made you decide to get involved?
 - What do you get out of it?
 - What are the main challenges you face in your political work?
 - What do you hope to achieve as a result of your work?
4. What does the concept of “dignity” or “human dignity” mean to you as an individual/activist/policy-maker?
5. Is the concept of “dignity” or “human dignity” something you use much in your campaigning work? If yes, why? If no, why?
6. If yes, what are the benefits of using the concept of in your work? If no, can you see any benefits?
7. Are there any risks as far as you can see from using the concept of “dignity” or “human dignity” in political campaigns on commercial sex?
8. What do you think about how the concept of “dignity” or “human dignity” is used by other political actors in the legal debates on commercial sex?
 - Can you give me some examples?
9. In your view, is there any relationship between dignity and human rights? If so, what is it?
10. What legal/policy measures do you think will best protect/promote the dignity of people involved in commercial sex? Why?
11. Discussion of the Jordan case especially with South African based participants but also others. If no knowledge of case give some background and provide some quotes from the case where the judges comment on the dignity of sex work – record participants responses to the judge’s conclusions and discuss reflections.

12. Discussion of the Montgomery case especially with New Zealand based participants but also others. If no knowledge of case give some background and provide some quotes from the case where the judges comment on the dignity of sex work – record participants responses to the judge’s conclusions and discuss reflections.
13. Discussion of the Budhadev Karmaskar case. If no knowledge of case give some background and provide some quotes from the case where the judges comment on the dignity of sex work – record participants responses to the judge’s conclusions and discuss reflections.

Appendix C: Coding tree

Meanings of dignity

- Individual rights / individualism
- Made in God's image
- Economic security
- Empowerment
- Constraint on behaviour
- Equality
- Difficult to define
- Choice / self-determination / autonomy
- Means different things to different people
- Who defines dignity?
- Self-worth/value

Dignity as a legal / political tool

- Dignity as constitutional value
- Access to rights based tools and remedies
- Secular basis for campaigning / navigating religious faith using 'dignity talk'
- Labour rights
- Dignity and its connection to human rights
- Dignity *versus* rights
- Comments on the Jordan case
- Comments on the Budhadev Karmaskar case
- Comments on the Montgomery case
- What needs to happen to improve dignity / law and policy ideas
- Criminalisation of clients
- Competing claims on dignity
- SWR activists speaking back to the abolitionist use of the term
- Dignity appearing but not sure why
- Dignity and morality
- Dignity and religion
- Pragmatism
- Sexual norms
- Reframing the work of sex work
- Comparisons to slavery / genocide
- Dignity as 'empty signifier'

Benefits of using 'dignity talk'

- Flexibility
- Access to rights based tools and remedies
- Being heard / having space to talk openly
- Social and legal recognition
- Violence taken seriously - also form of recognition
- Strength / clarity of meaning
- Reclaiming dignity / power to change meaning
- Other benefits / explanations for why it is used

Dangers of using 'dignity talk'

- Sex work can be undignified
- Do sex workers respond to the concept?
- Metaphysical concept
- Can't 'measure' it
- Dignity as superiority / hierarchy / power
- Classism
- Limits on women's sexuality
- Who defines?
- Other dangers / risks

Individual country contexts

- Importance of local social and cultural context
- Antagonism between movements
- Organisational identities / powers
- Reflections of abolitionist activists on SWR use of term
- Reflections of SWR activists on abolitionist use of term
- South African context
- Canadian context
- New Zealand context

Other key themes

- Stigma
- Dignity and economics / financial freedom
- Dignity and rehabilitation / exiting
- Dignity and harm to womankind
- Harm to the dignity of humanity
- Comparison to other forms of labour

- Dehumanisation
- Reproducing stigma / dehumanisation through dignity arguments
- False consciousness
- Pity is undignified
- Resilience / strength
- Objectification

Appendix D: Breakdown of political/activist texts analysed: abolitionist sources and sex worker rights sources

Abolitionist

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