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## CHAPTER 7

# HUMAN TRAFFICKING AND SEX WORK

### *Introduction*

The 2018 Global Report on Trafficking in Persons states:

The vast majority of the detected victims of trafficking for sexual exploitation are females, and 35 per cent of the victims trafficked for forced labor are also females, both women and girls. At the same time, more than half of the victims of trafficking for forced labor are men.<sup>1</sup>

It is estimated that more than 20 million people are trafficked for forced labor, crimes, wars, or sexual exploitation. In 2016, 59% of trafficked people were trafficked for sexual exploitation, and 34% for forced labor. About 70% of trafficked people were women or girls; 83% of the women and 72% of the girls were trafficked for sexual exploitation and about 13% for forced labor, while the numbers are reversed for men.<sup>2</sup> Detection of trafficking of children, again girls in the vast majority, is increasing, not the least due to the rise of trafficking in armed conflicts. According to these numbers, human trafficking, the report emphasizes, occurs both nationally and transnationally,<sup>3</sup> and about 35% of traffickers are female. Although some have expressed suspicion about these statistics,<sup>4</sup> the numbers alone call for an ethical analysis that is able to address the challenges associated with human trafficking and sex trafficking in particular. The United Nations adopted the *Convention on Transnational Organized Crime* in 2000,<sup>5</sup> which is accompanied by three protocols, two of which address human trafficking and human smuggling. The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*<sup>6</sup> is often also referred to as the “Palermo Protocol”. It is comple-

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1 UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Global Report on Trafficking in Persons*, United Nations New York 2018, 10. [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf).

2 Ibid. 25–28.

3 The UN Report is cautious about the numbers, because the detection of trafficking has improved since the first report. The overall numbers must therefore be compared to the regional differences.

4 G. SODERLUND, *The Rhetoric of Revelation: Sex Trafficking and the Journalistic Expose*, in: *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 2/2 (2011), 193–211.

5 UNITED NATIONS, *Convention against Transnational Organized Crime*, New York 2000, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

6 UNITED NATIONS, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 2003, <http://www.osce.org/odihr/19223>.

mented by annual reports by the UN. The focus on women and on sex trafficking that this essay takes up is motivated by these reports, the latest being the above-quoted 2018 report. In addition to the UN reports, the International Labor Organization issues reports on forced labor, the latest one from 2017.<sup>7</sup> It estimates that about 40 million people live and work in conditions of modern slavery, hitting women most, namely in 71% of all cases or, in total, 29 million; if connected to migration, the number of forced labor by sexual exploitation rises to a staggering 74%.<sup>8</sup> The ILO defines forced sexual exploitation in this way:

[Forced sexual exploitation] refers to persons in forced labor and services imposed by private actors for sexual exploitation. This includes women and men who have involuntarily entered a form of commercial sexual exploitation, or who have entered the sex industry voluntarily but cannot leave. It also includes all forms of commercial sexual exploitation involving children.<sup>9</sup>

In this group, 21% were found to be children, but overall, women and girls accounted for 99% of all cases of sexual exploitation.<sup>10</sup>

In this chapter, I will turn to the argumentations of Catholic moral theology and the argumentation of (liberal) feminist ethics regarding sex work and (sex) trafficking. The second part of the chapter turns to a concrete narrative of human trafficking and abuse, followed by my own normative assessment. Finally, I will show why feminist ethics is indispensable for the renewal of Catholic sexual ethics that must be part of my overall reinterpretation of Christian social ethics as a critical political ethics.

### 1. Two Ethical Frameworks for Sex Trafficking

Without a doubt, the Vatican is hostile to feminist ethics and gender theory and does not seriously engage with scholarship in these fields from the last few decades.<sup>11</sup> Gender theory is seen as an ideology, which

[...] denies the difference and reciprocity in nature of a man and a woman and envisages a society without sexual differences, thereby eliminating the anthropological basis of the family. This ideology leads to educational programmes and legislative enactments that pro

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7 INTERNATIONAL LABOR ORGANIZATION, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, Geneva 2017, [https://www.ilo.org/global/publications/books/WCMS\\_575479/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm).

8 Ibid. 30.

9 Ibid. 39.

10 Ibid.

11 The latest evidence is the report issued by the Catholic Congregation of Education on Gender issues, CONGREGATION FOR CATHOLIC EDUCATION, “*Male and Female He Created Them*” – *Towards a Path of Dialogue on the Question of Gender Theory in Education*, Vatican City 2019, [www.educatio.va/content/dam/cec/Documenti/19\\_0997\\_INGLESE.pdf](http://www.educatio.va/content/dam/cec/Documenti/19_0997_INGLESE.pdf).

mote a personal identity and emotional intimacy radically separated from the biological difference between male and female. Consequently, human identity becomes the choice of the individual, one which can also change over time.<sup>12</sup>

Even though Catholic feminist ethicists have criticized this assessment of gender theories, and many Catholics object to the Vatican's doctrine on sexual morality and ignore it in their lives, I understand why many non-Christian feminist scholars regard Catholic ethics in general with suspicion: they see it as an enemy rather than an ally, mostly indifferent to the struggle against sexual violence while outspoken about a particular understanding of sexuality. One contested area concerns the focus on prostitution and sex work. In recent years, it has come to new attention of the Church because of its connection to organized crime and human trafficking. The question is whether it might be possible to overcome and if so, *how* the impasse between Catholic ethics and feminist ethics can be overcome.

Yvonne Zimmerman who has analyzed the (Protestant) theological agenda behind the US politics against trafficking, especially during the Bush Administration, states that sex trafficking has shaped the international anti-trafficking agenda disproportionately. The (Protestant) moral theology she discerns reflects a normative sexual ethics centered on heterosexual marriage, as is the case in Catholic moral theology. It may be justified, then, to speak of a Christian sexual ethics rather than of a Protestant and Catholic sexual ethics.<sup>13</sup> Here, however, I will focus on Catholic ethics.

### 1.1 CATHOLIC GENDER ETHICS

In a nutshell, the normative framework of Catholic gender ethics is centered on two main assumptions: first, theological anthropology emphasizes the givenness of human existence, elaborated in the theology of creation; second, relations between men and women include love – including the bodily, sexual love between a man and a woman. The latter is the human symbol of the self-giving, creative love of God. Sexual acts have a natural telos, namely procreation, but theologically interpreted, it is the gift of creation that fulfills (or completes) the love of spouses. Marriage is a sacrament that imitates the self-giving, creative love of God; it includes the care for each other but also, the mutual self-giving in sexual acts:

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12 POPE FRANCIS, *Amoris Laetitia. Post-Synodal Apostolic Exhortation*, Vatican City 2016, 56. [http://w2.vatican.va/content/francesco/en/apost\\_exhortations/documents/papa-francesco\\_esortazione-ap\\_20160319\\_amoris-laetitia.html](http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia.html), quoted in: CONGREGATION FOR CATHOLIC EDUCATION, “*Male and Female He Created Them*”, 3.

13 Y. C. ZIMMERMAN, *Other Dreams of Freedom: Religion, Sex, and Human Trafficking*, Oxford/New York 2013. For a good summary of “Evangelist” sexual ethics see K. EDGER, *Evangelicalism, Sexual Morality, and Sexual Addiction: Opposing Views and Continued Conflicts*, in: *Journal of Religion and Health* 51/1 (2012), 162–178.

As a rational and free being, man is called to transform the face of the earth. In this task, which is essentially that of culture, man and woman alike share equal responsibility from the start. In their fruitful relationship as husband and wife, in their common task of exercising dominion over the earth, woman and man are marked neither by a static and undifferentiated equality nor by an irreconcilable and inexorably conflictual difference. Their most natural relationship, which corresponds to the plan of God, is the “unity of the two”, a relational “uni-duality”, which enables each to experience their interpersonal and reciprocal relationship as a gift which enriches and which confers responsibility.<sup>14</sup>

Because procreation is woven into the relationships between the sexes, the “complementarity in difference” paradigm of gender theology simultaneously transcends and constrains the freedom of individuals. The family is not merely a private institution, rather it is the “germ” of society, i. e. of social and/or societal freedom. If one understands this theological foundation of gender and sexual ethics, it becomes clear why it is defended so fiercely: the sexual difference between the marital partners is not only grounded in “nature,” it *also* represents the order of creation that theology argues is the normative and metaphysical premise of human flourishing, happiness, and self-fulfillment.<sup>15</sup> Within the order of the two sexes, different sexual identities and different social roles for men and women arise, and while there is some space for changes in the assumptions about what constitutes masculinity and femininity, these changes are normatively limited by human nature. The “genius of women” is often associated with their capability for service:

Necessary emphasis should be placed on the “genius of women”, not only by considering great and famous women of the past or present, but also those ordinary women who *reveal the gift of their womanhood by placing themselves at the service of others in their everyday lives. For in giving themselves to others each day women fulfill their deepest vocation.* Perhaps more than men, women acknowledge the person, because *they see persons with their hearts.* They see them independently of various ideological or political systems. They see others in their greatness and limitations; they try to go out to them and help them. In this way the basic plan of the Creator takes flesh in the history of humanity and there is constantly revealed, in the variety of vocations, that beauty – not merely physical, but above all spiritual – which God bestowed from the very beginning on all, and in a particular way on women.<sup>16</sup>

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14 POPE JOHN PAUL II, *Letter to Women*, Vatican City 1995, No 8. [https://w2.vatican.va/content/john-paul-ii/en/letters/1995/documents/hf\\_jp-ii\\_let\\_29061995\\_women.html](https://w2.vatican.va/content/john-paul-ii/en/letters/1995/documents/hf_jp-ii_let_29061995_women.html).

15 This theology of gender is reflected in multiple Church documents. One notable example from the twentieth century is John Paul II’s *Letter to Women: POPE JOHN PAUL II, Apostolic Letter Mulieris Dignitatem on the Dignity and Vocation of Women*, 1988, [http://www.rcan.org/evangelization/mulieris\\_dignitatem.pdf](http://www.rcan.org/evangelization/mulieris_dignitatem.pdf). It serves as the reference point to the more recent statements. For a thorough analysis, cf. L. S. CAHILL, *Sex, Gender, and Christian Ethics*, Cambridge/New York 1996. For an explicit critique of the concept of choice in the context of sexuality, cf. POPE BENEDICT XVI, *Christmas Address Dec. 20th, 2012, 2012*, [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2012/december/documents/hf\\_ben-xvi\\_spe\\_20121221\\_auguri-curia\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2012/december/documents/hf_ben-xvi_spe_20121221_auguri-curia_en.html).

16 POPE JOHN PAUL II, *Letter to Women*, No. 12 (my emphasis).

Among other things, women's (paid) labor has only been recently acknowledged as compatible with the role of women in (modern) societies. Before that, her role was mostly considered in line with 19<sup>th</sup> century, Western, bourgeois concepts of (unpaid) labor in the household.<sup>17</sup>

Over against the slow correction process about the role of women, the dominant Catholic gender imagery sees men as primarily providing the financial means for a family, while women provide the emotional care *within* the family. The ethical theory of gender and human sexuality explains how sexuality is tightly connected to one's overall identity: sexuality is but one way to express the bond between a man and a woman; but this bond, as the symbol of God's love, entails the unconditional and lasting commitment between them. This explains why the official Catholic moral theology is opposed to most of the sexual practices modern societies embrace, for in redefining the unconditional commitment of partners as conditional and therefore reversible, the Catholic Church depicts individuals at risk of losing their moral identities, and modern culture at risk of losing its moral sources.<sup>18</sup> It is important to note that Catholic moral theology since the 1960s has replaced the hierarchical order of the sexes in favor of the model of equality in complementarity, and furthermore it has replaced the derogatory understanding of sexuality as a (necessary, yet potentially sinful) means to reproduction with the "personalist" understanding of the "self-giving" love of the (heterosexual) partners.<sup>19</sup> Since, however, sexual encounters outside of this normative framework are considered *morally illicit*, there is no way that sex work could ever qualify as morally acceptable or "just another kind of work," as Martha Nussbaum, one of the influential liberal feminist philosophers standing in direct opposition to the Catholic sexual framework, has argued.<sup>20</sup> From the standpoint of the Vatican's sexual ethics, sex work contradicts two traditional (gendered) religious imageries: as sex work, it is at least in tension with the ideal of the feminine

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17 Cf. for an analysis H. HAKER, „So rühmen sie sich stolz, eine Befreiung der Frau vollzogen zu haben.“ *Feministisch-Theologie und Ethik – Skizze eines Profils*, in: *Theologie und Glauben, Themen zur Theologischen Frauenforschung* 2 (2012), 261–274; M. HEIMBACH-STEINS, „... nicht mehr Mann und Frau“: *sozialethische Studien zu Geschlechterverhältnis und Geschlechtergerechtigkeit*, Regensburg 2009.

18 It is important to see that this interpretation is more radical than the "mere" rejection of sexuality that is often associated with Catholic sexual ethics. In the approach to sexual relationships, not only sexuality, but rather one's whole identity, or even more precisely one's *moral* identity, is at stake.

19 A. BARNHILL, *Bringing the Body Back to Sexual Ethics*, in: *Hypatia* 28/1 (2013), 1–17; B. TOTH, *Love between Embodiment and Spirituality: Jean-Luc Marion and John Paul II on Erotic Love*, in: *Modern Theology* 29/1 (2013), 18–47.

20 M. C. NUSSBAUM, 'Whether from Reason or Prejudice'. *Taking Money for Bodily Services*, in: J. SPECTOR (ed.), *Prostitution and Pornography*, Stanford, CA 2006, 175–208.

role as caring wife and mother, and as sex work, it contradicts the moral order of sexuality within the limits of marital love.

Until a few years ago, the Vatican rarely addressed sex work in a way that went beyond statements that it is not in line with this overall theological ethics. With the international struggle against human trafficking, however, sex trafficking has come into the focus of Catholic social ethics. Pope John Paul II, for example, points to violation of human dignity:

The trade in human persons constitutes a shocking offense against human dignity and a grave violation of fundamental human rights [...] Such situations are an affront to fundamental values which are shared by all cultures and peoples, values rooted in the very nature of the human person.<sup>21</sup>

Academic Catholic ethics, too, mostly emphasized the violence associated with sex work and prostitution.<sup>22</sup> In Catholic ethics, prostitutes are predominantly viewed as passive victims who are *involuntarily* engaged in sex work. This view is echoed, for example, in the final document of the *First International Meeting of Pastoral Care for the Liberation of Women of the Street*:<sup>23</sup>

#### 4. Who is the victim?

She is a human being, in many cases crying for help because selling her body on the street is not what she would choose to do voluntarily. She is torn apart, she is dead psychologically and spiritually. Each person has a different story, mainly one of violence, abuse, mistrust, low self esteem, fear, lack of opportunities. Each has experienced deep wounds that need to be healed. What are they looking for? They seek relationships, love, security, affection, affirmation, a better future for themselves and for their families. They want to escape from poverty and lack of opportunities and to build a future.

The premise that “women of the street” are passive victims who must be liberated raises many questions, some of which I will address below in light of the feminist debate. The document pretends to know what these women seek – a pattern that can be found in most of the Vatican’s documents addressing women – and it calls

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21 POPE JOHN PAUL II, *Letter on the Occasion of the “Twenty-First Century Slavery” Conference*, 2002, Para. 2. [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/letters/2002/documents/hf\\_jp-ii LET\\_20020515\\_tauran\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/letters/2002/documents/hf_jp-ii LET_20020515_tauran_en.html).

22 For example, in her influential book on sexual ethics, Margaret Farley does not dedicate a separate chapter to sex work, although she sets up minimal norms that would render sexual practices such as prostitution or any traded sex morally illicit. M. A. FARLEY, *Just Love: A Framework for Christian Sexual Ethics*, New York 2006.

23 PONTIFICAL COUNCIL FOR THE PASTORAL CARE OF THE MIGRANTS AND ITINERANT PEOPLE, *First International Meeting of Pastoral Care for the Liberation of Women of the Street*, 2005, [http://www.vatican.va/roman\\_curia/pontifical\\_councils/migrants/documents\\_1/rc\\_pc\\_migrants\\_doc\\_20210605\\_linc-past-don-strada-findoc\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/migrants/documents_1/rc_pc_migrants_doc_20210605_linc-past-don-strada-findoc_en.html).

for the Church to provide the help which women are looking for. Most importantly, however, the document simply presupposes that a woman would not *voluntarily choose* to sell her body on the street – and thereby dismisses the (feminist) debate over the last few decades that raised the question whether this is really the case.

In November 2013, the Pontifical Academies of Sciences and Social Sciences held a working group to address trafficking again.<sup>24</sup> Here, the participants took up the analogy of trafficking as slavery, refocusing the ethical assessment to social ethics. The final document of the conference states that “trafficking in all forms, and in particular trafficking for sexual exploitation and prostitution”, must be considered as a “crime against humanity”. However, can sexual exploitation and prostitution be equated, as the statement does? Liberal feminist ethics disagrees.

#### 1.2 FEMINIST ETHICS AND THE DEBATE ON SEX WORK

Fighting for the liberation and autonomy of women, the international women’s movement over the last century has engaged in critiquing a normative gender order that not only denied women their political rights but also rendered them as the “second sex”<sup>25</sup>. This does not only mean that men come first in sexual affairs, but it means that their views, their experiences, and judgments are the normative foil against which women are perceived and defined. It is in this respect that sex and gender are seen as socially constructed. Feminist scholars critiqued the normative gender order represented in traditional marriages, in the essentialist understanding of women’s roles as wives and mothers, and in the socio-economic structures that cement women’s inequality. Feminist ethicists argued that women’s liberation means the empowerment of women as subjects, including their moral agency to have authorship over their own life.<sup>26</sup> Others argue that it is necessary to “undo” the normative (social) construction of gender.<sup>27</sup> Sexual autonomy, too, was tied to the overall understanding of women’s liberation or freedom. With respect to sexual practices, liberal feminists therefore regarded *mutual consent* as the central condition for any morally justified sexual encounters and as an

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24 THE PONTIFICAL ACADEMIES OF SCIENCES AND SOCIAL SCIENCES, *Statement of the Working Group on Trafficking in Human Beings: Modern Slavery*, 2013, <http://www.casinapioiv.va/content/accademia/en/events/2013/trafficking/traffickingstatement.html>.

25 S. DE BEAUVOIR, *The Second Sex*, London 1960.

26 Cf. among many others, S. BENHABIB, *Situating the Self: Gender, Community, and Postmodernism in Contemporary Ethics*, New York 1992; For a summary cf. H. HAKER, *Feminist Ethics*, in: G. RITZER/CH. ROJEK (ed.), *The Blackwell Encyclopedia of Sociology*, New York 2019, online resource.

27 J. BUTLER, *Undoing Gender*, New York 2004.

important step towards women's freedom and agency. Were these to take place in contractual consensual relations, including those based on sex work, it was held, a liberal society should tolerate them.<sup>28</sup>

Since feminism is first and foremost a historical – and hence ongoing – struggle for women's rights, it has tremendously contributed to (political and legal) frameworks intended to set up safeguards against those structures that violate the conditions of mutuality and freedom. Feminist theory and ethics therefore never opposed constraints on sexual liberty when acts and practices were regarded as harming women. With analyzes of the intersecting categories of class and race, sexual violence is now much better understood. Moreover, again and again, feminist scholars have struggled with the question of whether prostitution and sex work should be considered as sexual violence or as an expression of a person's autonomy. As the discourse on prostitution and sex work continued at the beginning of the new millennium, it became clear that the concepts of force and coercion were too complex to be merely countered by pointing to women's consent as a litmus test for the absence of force, coercion, or exploitation, which the UN Convention identifies as criteria for forced labor. For even in the context of slavery, historical research has shown that coercion was not the only way *into* slavery. Rather, as in trafficking today, historians now speak of "voluntary slavery"<sup>29</sup>, stressing that the mere presence of consent is not the decisive moral criterion for rendering a practice free and therefore a part of a just society that grants everyone the equal choice to pursue their own idea of a good life. In the context of trafficking, voluntariness certainly does not mirror the "free choice" of contractual interactions presupposed by liberal theory, hence requiring further analyzes of the background motives and conditions. The question that haunts feminist ethics today is therefore whether sex work can be defined *within* the framework of voluntary, free interaction and outside of forced labor so that it could be tolerated – and hence legalized – by liberal societies, or whether, and if so when it falls into the category of forced labor, which must be rejected. It is exactly this question that is radicalized when asked in the context of sex trafficking.

The ethical debate on sex work was framed in the 1980s.<sup>30</sup> On the basis of the tradition of modern liberalism, several feminists argued that prostitution and/or

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28 C. PATEMAN, *What's Wrong with Prostitution*, in: J. SPECTOR (ed.), *Prostitution and Pornography. Philosophical Debate about the Sex Industry*, Stanford, CA 2006, 50–79. The phrase "sex work" is part of the normalization policy and therefore often meant as a political statement.

29 K. A. APPIAH, *The Honor Code. How Moral Revolutions Happen*, New York/London 2010.

30 For a good summary of the discussions in the 1980s and 1990s and the authors engaged in it, see J. SPECTOR, *Prostitution and Pornography*.



sex work should be regarded as “just another kind of work”<sup>31</sup>. Martha Nussbaum compares prostitutes with six other groups who all “trade” their bodies on the market: a factory worker, a domestic servant, a nightclub singer, a philosophy professor, a masseuse, and a (fictitious) colonoscopy artist. The comparison is intended to show that there is no *categorical* difference between prostitution/sex work and other forms of labors. Nussbaum does argue, however, that the social stigma and the social imaginaries of sexuality construct it as radically different. The difference in degree is in fact, Nussbaum holds, due to the lack of social and economic opportunities, and these, rather than other moral considerations, should guide the ethical evaluation. Nussbaum’s analysis is valuable for the “mapping” of different forms of labor, and of trafficking in general, and sex trafficking in relation to other forms of sex work.<sup>32</sup> Her position is liberal insofar as it is morally indifferent to the kind of labor or object of exchange: in a liberal society, the decision which products or which services are commodified is left to the parties of trade or commerce as part of their freedom of action. As Julia O’Connell Davidson and Bridget Anderson explain this position, sex work is a “mutual, voluntary contractual exchange between adults”<sup>33</sup>. Of course, it all depends on the *imageries* one has of the sex worker, and what one *knows* or *speculates* about sex work. If one thinks of sex workers as free agents or employees who enjoy the advantages that come with prostitution, one is more likely to level out the differences between sex work and other kinds of work. When one considers sex work in connection with sex trafficking, however, the point of reference becomes forced labor – and this obviously does not fulfill the criteria as “just another kind of work”<sup>34</sup>.

Opponents of the liberal position argue that sexuality is exactly not just a “property” that can be traded, and stress the exploitative nature of sex work under the conditions of the twentieth-century sex industry. And, as Alison Jaggar states, feminist philosophers who would emphasize the equal right to enter into commercial and contractual transactions could nonetheless distinguish between the negative right an individual can claim towards the “value-neutral” state, on the

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31 M. C. NUSSBAUM, ‘*Whether from Reason or Prejudice*’.

32 Surprisingly, however, Nussbaum considers it possible to distinguish between the body used in labor and the self. I will come back to this point below.

33 Quoted in: H. WIDDOWS, *Border Disputes across Bodies: Exploitation in Trafficking for Prostitution and Egg Sale for Stem Cell Research*, in: *International Journal of Feminist Approaches to Bioethics* 2/1 (2009), 5–24, 8.

34 Depression and post-traumatic stress disorder are common side effects in the lives of prostitutes. Cf. V. CARTER/E. GIOBBE, *Duet: Prostitution, Racism, and Feminist Discourse*, in: J. SPECTOR (ed.), *Prostitution and Pornography*, 17–39. This alone is an indicator that sex work has different effects on women than other kinds of work.

one hand, and the *ethical or moral* critique of prostitution, which raises concerns about the potential subordination of women in sexual interactions, on the other.<sup>35</sup>

If the extremes in both traditions, Catholic and (liberal) feminist ethics, are considered, they offer two mutually contradictory normative positions. On the one hand, the Christian/Catholic position argues that sex work can never meet the standard of a morally justifiable practice, and that sex trafficking in particular must be considered as a crime against humanity. On the other hand, feminist scholars who argue from the tradition of liberalism claim that sex work does no harm as long as it respects the freedom and autonomy of the persons involved and coercion is excluded.<sup>36</sup>

The alternative position that I want to pursue in the remainder of the essay is situated equally in the Christian tradition as in the feminist tradition. However, it modifies both the Vatican's framework of morally good sexuality constrained to (heterosexual) marriage as well as the abstention from moral judgments in matters of sexual practices as long as these are based on mutual consent. In the last chapter, I have argued that a contextual analysis is a necessary step in ethical judgments. Without these, the debates become abstract exchanges of theoretical arguments without being open to shifts and changes that may be warranted when the contexts of practices are not merely corollary but central to the overall judgment. Those who are affected by trafficking are the only experts in their own cases: on the one hand, they are trafficked persons who are forced into all kinds of labor, and on the other hand, they are sex workers who may or may not be connected to sex trafficking. Both groups' narratives can be – and in fact have been – used and abused for different political agendas; yet there is no way to control the ethical debates other than turning to their stories.

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35 A. JAGGAR, *Prostitution*, in: A. SOBLE (ed.), *The Philosophy of Sex*, Totowa, N.J. 1980, 348–368. The relation between political ethics as an ethics of the (legally) right and social ethics as an ethics of the good *and* (morally) right requires close attention because the reduction of ethics to political ethics only reduces the reflection to the democratic requirements of tolerance and respect. Both Catholic social ethics and moral theology argue – in line with feminist scholars – against this narrowing of ethics to the public and political sphere. Political liberalism, it has long been argued, reinforces the separation of the public and the private sphere in the name of the political and the moral – something feminist theory has long fought to overcome.

36 J. O'CONNELL DAVIDSON, *Prostitution*, in: *The Blackwell Encyclopedia of Sociology* (2007), 1–4.

## 2. *Trapped in Trafficking*

I am fully aware that *any* narrative one takes up in ethical argumentation serves a particular purpose that must therefore be revealed: my purpose *here* is to show how difficult it is to draw the line between choice and coercion when concrete experiences are taken seriously, and, furthermore, to show that even the line between paid sex work and sex in abusive relationships is not so clearly to be drawn as one may want it to be possible. Thus, my aim is *not* to draw immediately normative conclusions from the experience I want to turn to, but to include a narrative as an account that informs and guides the further normative reflections.<sup>37</sup>

Valentina is a Moldovan mother of two children who was trafficked to Romania and forced to sell stolen goods on the market. She told her story to German theologian Maria Katharina Moser who interviewed her for a TV documentary.<sup>38</sup>

What could I have done here in Moldova at that time? There just wasn't any work. That's the long and short of it: not enough jobs. So I decided to take off somewhere else to earn some money. I had two children, my mother was ill, and we needed cash. I thought it would work out.

Someone I knew said: "The wages are good. You'll earn a respectable amount. You don't have to go to Moscow or anywhere that far away. It's quite close to us here and after all the people there speak Romanian, like us here in Moldova. It'll all work out, you'll see." I went home feeling good about it. I would be able to send money home. We could see to the house. Plans, plans galore. And I'll be able to send the children to a good school. I was happy to go because I wanted to work and earn money.

But when I got to Romania, they took my passport away from me. And my earrings, all my jewelry [...] They took everything I had, even my clothes [...] They looked at me and one of the men pointed at me and said to one of the others: "She should sell things. She's too fat to put to work on the street." They hit me and didn't give me anything to eat but just let me starve. It's absolutely true. It was terrible what I went through. We had to sell stolen goods on the black market. We had to go to the market every day, and when we got back home in the evening they took everything from us. They took it all, everything [...] We had to sell and earn a set sum every day. If you didn't bring the money back they would beat you up.<sup>39</sup>

Valentina is lured into forced labor *after* her voluntary agreement. Taking her consent as the only criterion, she might as well be called a migrant. In this case, however, even though she consents to *some kind* of labor abroad, she does not give her consent to the force and violence, or to the deprivation of legal rights she experi-

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37 For my own methodological account of narrative ethics, see H. HAKER, *Narrative Ethik*, in: *Zeitschrift für Didaktik der Philosophie und Ethik* 2 (2010), 74–83.

38 I take the written account from an issue of *Concilium*, which addressed human trafficking from multiple perspectives. H. HAKER/L. CAHILL/W. WAINWRIGHT (ed.) *Human Trafficking*, London 2011. M. K. MOSER, *Valentina's Story: Trafficking in Women in Moldova*, in: H. HAKER/L. S. CAHILL/E. M. WAINWRIGHT (ed.), *Human trafficking*, in: *Concilium* (2011), 64–72.

39 M. K. MOSER, *Valentina's Story*, 64.

ences later on. Although Valentina is considered for sex work by her traffickers she is 'discarded' because she does not fit into the assumed expectations of potential clients. So what happens here, as in so many other cases where women are deceived into trafficking, with or without sex work?

Valentina sees no way to flourish in Moldova: there is no work, and she needs cash. Her choice to go to Romania is free only on the surface. Rather, for her it is a lesser evil, a sacrifice for a better future for herself, and a sacrifice for her family – after all, this is all too familiar to many women of all cultures. Her choice does not exactly fall into the same category as a writer's choice, as Nussbaum has argued.<sup>40</sup> As she would certainly agree, forced labor is not comparable to the employment of a professor who is paid for her intellectual scholarship and teaching. To fall into the hands of (transnational) traders takes away one's human rights in ways that "other kinds of work" do not, or at least should not: the right to move freely, to end the contract, to negotiate the wages, or even the basic right to physical integrity. As we can see from Valentina's case, a clear line between (voluntary) migration and (coerced) trafficking may be difficult to draw, with major consequences for policies in both areas. The UN Protocol defines cases like Valentina's as trafficking and turns explicitly to the concept of consent:

Art 3: (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.<sup>41</sup>

The statement on consent in the *Trafficking Protocol* has ramifications going far beyond the actual objective it addresses. For if consent may conceal the fact of an asymmetric relation between the trader and the traded person, consent itself does not provide us with a sufficient criterion to determine whether an action or practice is based on force, coercion, or exploitation of another's vulnerability. Put differently, *consent does not prevent or undo human rights violations*. Rather, we need to take a closer look at the underlying structures of the relations, the institutional and social contexts, and the nature of the vulnerability that trafficked persons face, in order to understand what is happening – and we need to do this case by case.

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40 M. C. NUSSBAUM, 'Whether from Reason or Prejudice'.

41 UNITED NATIONS, *Convention against Transnational Organized Crime*.

While the philosophical tradition of liberalism conceives the citizen as a free *man* who has the means and the opportunities to socially cooperate via economic exchanges, Valentina is *not* free in this sense. The absence of freedom, however, does not at all render her a passive victim.<sup>42</sup> Instead, ethical analysis must scrutinize *which* human rights may have been violated and *how* they were violated, as well as *when* and *where* the violations took place and *who* perpetrated them. While Valentina's *civil and political* rights are not violated at first, her *socio-economic* rights were never secured at her country of origin. She had few choices to sustain her family and, in a way, decided to trade her own well-being for that of her mother and children. In a country where a third of the population lived below the poverty line, and 40% of citizens lived abroad at the time of her departure, Valentina's choice was far from irrational or irresponsible. She acted as a moral agent, and she certainly went voluntarily to Romania. However, she was also a member of a society that offered her few chances to make a living above the poverty line, and it is exactly this lack of structural and institutional support that made her an easy target for – and in this respect, a *victim* of – traffickers. Applying the criteria of the Palermo Protocol to Valentina's story, we can say this: she is recruited by deceptive means, in a relationship of abuse of power on the one hand, and a position of vulnerability on the other, to secure her consent.

Once in Romania, Valentina's passport, among other things, is taken, and with this the condition for claiming any *civil* rights. Among others, civil rights concern the freedom to return to her family or move freely. Valentina's initial illusion that she would be able to handle the situation turns out to be naïve given the nature of organized crime. The gendered imagery of female victims and male traffickers is, however wrong: traffickers often use women at the “bottom” once they are working for them. For example, they are used for the recruitment and control of other victims: “Bottoms collect the money from the other girls, discipline them, seduce unwitting youths into trafficking, and handle the day-to-day business for the trafficker.”<sup>43</sup> It should not come as a surprise that many “bottoms” are women, who, because they are as trapped as the women they recruit or control, become complicit in the perpetuation of the structures of violence. Valentina is not ‘chosen’ for sex work, because her ‘market value’ is considered too low for this kind of work. Instead, she must sell goods and hand the earned money over to her traffickers.

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42 K. Moser emphasizes this, too, in her analysis of Valentina's account: M. K. MOSER, *Valentina's Story*.

43 A. WALKER-RODRIGUEZ/R. HILL, *Human Sex Trafficking*, in: FBI Law Enforcement Bulletin 80/3 (2011), 3.

In her desperate situation, Valentina looks for help. First, she turns to the police, but the officers turn her away – without papers, she has lost the right to *claim* rights, as Hannah Arendt famously phrased it.<sup>44</sup> Then she manages to escape. Far from being safe now, she ends up in an abusive relationship that includes physical violence and domination by a man who violates Valentina's *basic civil* human right, namely her right to physical integrity. Again she is trapped because she can think of no other chance than living with a man who promises her to help her go home.

But it didn't work out like that. I started living with him and said to him: 'I want to go home, I've got children!' Then he hit me. He drank a lot, and he took the money that I'd earned. And he wouldn't let me call home. It was just the same as before. I don't know which one was worse. I lost an awful lot of weight until I weighed only 52 kilos, although I was 80 beforehand. He beat me black and blue.<sup>45</sup>

Under these conditions of a coercive, violent relationship, Valentina gives birth to a child. Ultimately, however, she manages to return to Moldova. Here, she is helped by the NGO La Strada to re-integrate into her own society. Valentina, who told Maria-Katharina Moser her story in an interview for a TV documentary, tries hard to tell us a "happy end", but in fact, her story ends where it began: "At home it's [...] how can I put it [...] well, of course, it's much better at home. [...] I'm back here again, and I'm back with my children. I've had to get down to work instead of feeling sorry for myself." She agrees with her children: "life goes on, even if things are difficult,"<sup>46</sup> although nothing in her society has really changed. She is still left with the question how to care for her children and her mother, and left with the psychological burden of raising a child originating from rape.

Valentina's story offers a glimpse into the realities of a whole web of human rights violations that is hidden behind the statistics of trafficking. Yet numbers matter, too. Trafficking has become one of the fastest growing businesses of organized crime, and it is the third-largest criminal enterprise in the world. One may certainly claim that Valentina's story is only one among many, not representative, and not an example of sex trafficking (though one may assume that it included sexual violence); furthermore, it is true that 'victims' narratives' are highly politi-

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44 For a thorough and helpful analysis of the "rights of others" see S. BENHABIB, *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge/New York 2004, 49–70. Here, she quotes Arendt's statement on rights: "We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation." H. ARENDT, *The Origins of Totalitarianism*, New York 1968, 177.

45 M. K. MOSER, *Valentina's Story*, 70.

46 *Ibid.* 71.

cized in the ideological minefield of sexual ethics.<sup>47</sup> And yet, without stories like the one from Valentina we cannot even begin to unfold what exactly the *Trafficking Convention* means by its criteria. Who decides – and who has the authority to decide – *whose* story and *what* narrative counts?<sup>48</sup>

### 3. Sex Work: Abolition, Regulation, or Self-Governance?

#### 3.1 ABOLITION

Human trafficking has by now, for the better or worse, been identified as a modern form of slavery.<sup>49</sup> Just as slaveholders in the nineteenth century slowly lost the social standing they once enjoyed while abolitionists received more support, today, the new abolitionists hold, the clients, the traffickers, and the corporations need to lose the social standing as “honorable men” or businesses.<sup>50</sup> For those who consider sex work as the new kind of slavery, its prohibition and/or abolition is the only feasible goal for social activism. Unsurprisingly, the engagement for the abolition of sex work and sex trafficking is observed with a lot of suspicion by feminist scholars: Christian conservatives, including the Catholic Church, have long and vehemently argued against sexual rights (especially women’s reproductive rights) that are central claims of the women’s movement. Furthermore, scholars suspect that the new ‘abolitionists’ are more interested in promoting an overall conservative moral agenda that is tied to Christian sexual morality.<sup>51</sup> The almost exclusive focus on (sex-)trafficking, they argue, is hypocritical given the global economic structure that rests upon numerous kinds of forced labor that are not attended to with the same rigor as sex work is: the argument to prevent harm and protect vulnerable groups may therefore serve a dual goal, adding to

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47 Y. C. ZIMMERMAN, *Other Dreams of Freedom*.

48 Valentina not only agreed but also *wanted* to tell her story, and wanted her story to be shared publicly. Ethics must pay attention, among other things, to the way and for what purpose narratives are being told. For further information on the context of the interview, cf. M. K. MOSER, *Valentina’s Story*.

49 For a critique of this conflation from a legal point of view, arguing that it may heighten the threshold for convictions of traffickers, cf. J. A. CHUANG, *Exploitation Creep and the Unmaking of Human Trafficking Law*, in: *American Journal of International Law* 108/4 (2014), 609–649. Chuang is also critical of some of the NGOs that come with their own agenda, be it the abolition of any prostitution or the strong belief in the global capitalist market that merely needs to be cleared from bad actors. Acknowledging that the abolitionist movement has managed to call attention to trafficking, Chuang argues that the distinction between forced labor, trafficking, and slavery must be maintained in international law.

50 Kwame Anthony Appiah has shown in his study of slavery that honor (or in Hegelian terms, social recognition) is a decisive factor of social value changes. Cf. K. A. APPIAH, *The Honor Code*.

51 G. SODERLUND, *The Rhetoric of Revelation*.

the condemnation of sex work the partisan moral understanding of sexual morality. Several groups argue for the right to sex work when those who voluntarily engage in it wish to have the freedom to work. Sometimes, the hardening of the two positions creates the binary of an either (prohibition) or (freedom of choice) position that is well known from the debates on abortion. Clearly, however, the liberal position argues for consensual sex work, and for sex trafficking.

Several scholars (and legislators) argue that improving the working conditions of sex workers is the first priority of good governance. Furthermore, they claim that this is the better political-ethical strategy: the abolitionist strategy may undermine the freedom rights of those who work voluntarily in the sex industry, while the radical liberal position may not prevent harm being done to those who are forced into sex work (or forced to stay in it). Both effects, however, are unacceptable. Regulatory measures that are concretely targeting criminal activities therefore seem to be more in line with political liberalism *and* a realist ethics that dominates political philosophy in Western countries.

### 3.2 LEGAL REGULATION:

#### PROSTITUTION AND SEX TRAFFICKING LAWS IN THE NETHERLANDS

Two regulatory models have emerged in recent decades concerning sex work: the *legal model* that sets up a structure allowing some kinds of prostitution, and the *self-regulation model* which calls for voluntary efforts to improve labor conditions.<sup>52</sup> The Netherlands provide an especially interesting case study for the legal regulation of prostitution and sex trafficking, because they reformed the century-old ban on prostitution in 2000. It is, however, important to note that the ban had not really been enforced before 2000. The “Lifting the Ban on Brothels Act” may therefore be regarded as a way to reestablish some governance rather than liberalizing a practice that had been handled in a very liberal way certainly since the 1980s. Still, the Netherlands was the first European country to legalize prostitution (Germany followed in 2001). The law considered sex workers as normal workers, yet requiring some special protections. Brothels, for example, were required to seek permission in a decentralized licensing system.<sup>53</sup> In contrast to voluntary, licensed sex work, the Dutch Criminal Code still prohibits sex trafficking

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52 Often, these are centered on “soft” self-regulations that have no legal force but rather count on the necessary social acceptance of labor conditions: the best-known governance strategies concern codes of conduct or different models of corporate social responsibility.

53 For an overview of the history of prostitution and an analysis of the governance in the Netherlands since 2000, cf. the thorough study by CH. POST/J. G. BROUWER/M. VOLS, *Regulation of Prostitution in the Netherlands: Liberal Dream or Growing Repression?*, in: *European Journal on Criminal Policy and Research* 25/2 (2019), 99–118.



and sex work that can be connected to trafficking, forced prostitution, and prostitution of minors. While the Dutch law has been regarded as a major victory for the liberal view on sex work, critical observers have pointed to the fact that the legal distinction between voluntary sex work and forced sex work in connection with trafficking has created new injustices: for example, non-European sex workers are excluded from the granted legal protection, and the law distinguishes between the legally protected sex worker, on the one hand, and the criminalized and therefore legally unprotected sex worker whose status is often meshed together with (illegal) immigration.<sup>54</sup> Given the *transnational* dimension of trafficking, in part resulting in sex work, it is held that the legal framework does not have much to offer to the victims of sex trafficking who are, nevertheless, dependent on their work. According to a Justice Department Report in 2007, the new law has not resulted in the expected or hoped-for results: “abuses, such as involuntary prostitution and sexual exploitation, were still extensively part of the prostitution sector.”<sup>55</sup> According to a study by Post, Brouwer, and Vols, the public view of prostitution in the Netherlands has shifted again since 2000, not the least due to reports on sex trafficking, prostitution rings, and media coverage.

This shift has resulted in two important amendments of the liberal turn towards sex work: one amendment of the prostitution law was introduced in 2009, including a stricter and now centralized regulation of prostitution, as laid down in the “Bill Regulation of Prostitution”. It requires “a mandatory and uniform licensing system for sex businesses, a rise in the minimum age to work as a prostitute from 18 to 21 years, the criminalization of clients who use the services of a prostitute under the age of 21, and an obligation on the part of the local authorities for prostitutes to register themselves.”<sup>56</sup> Regarding sex trafficking, legal regulation has also changed: the “Bill Penalizing Abuse of Prostitutes Who Are Victims of Human Trafficking” was introduced in 2014, penalizing the clients who knowingly engage or could suspect that they engage with sex workers who are forced into prostitution. This means: even the “showcase” example of liberalization of sex work has run into problems, because the line between voluntary and involuntary sex work, and between prostitution and forced labor cannot be neatly drawn.

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54 Interviews with the licensed sex workers about their social position in Dutch society showed that it has not improved since the introduction of the new law. Cf. D. SIEGEL, *Human trafficking and legalized prostitution in the Netherlands*, in: TEMIDA (2009), 5–16.

55 CH. POST/J. G. BROUWER/M. VOLS, *Regulation of Prostitution in the Netherlands*, 110, quoting from the Report.

56 *Ibid.*, 111.

## 3.3 FORCED LABOR VS. DECENT WORK

A different strategy to prevent harm and violence in sex work, i. e. the *self-regulation* model, was proposed by the *International Labor Organization's Decent Work Agenda* which has become part of the *UN Sustainable Development Goals*. Its strategy falls under the category of self-regulation or self-governance, although the ILO certainly tries to implement as many elements as possible into national regulations.<sup>57</sup> One premise of the ILO's overall position is that work is an essential characteristic of human existence, and as such it is tightly related to one's identity. Work, the ILO states, is important for the freedom of choice, for the welfare of the family, and the stability of the society. Work is an important social practice that generates not only material security but also social recognition.<sup>58</sup> Applying the *Decent Work Agenda* to the context of sex work, a central goal is to establish conditions for sex workers that meet the standards of human rights. It is important to note, however, that in the view of the ILO, "decent work" and "forced labor" exclude each other – and the ILO strongly promotes the *abolition* of the latter.<sup>59</sup> Some cases clearly fall into one or the other category. Others, however, are more ambiguous. For example, one can assume that *trafficked* sex workers are not free to tell their clients about their background while other sex workers do their work voluntarily. Many sex workers will not neatly fall into the one or the other category.

Feminist theologian Thia Cooper has suggested to use criteria for sex work that she takes from the Fair Trade movement, which are close to the ILO *Decent Work Agenda*.<sup>60</sup> Taken together with the ILO criteria, one could indeed argue that certain standards ought to be met in any case, including licenses and working permits, health care provisions, age thresholds, audits of working conditions, possibilities for establishing unions, fair wages, and a standard of living above the poverty line. This list is certainly not exhaustive but could serve as a guide to improve the current system of sex work. Calling for better working conditions for those who are engaged in sex work, and implementing the ILO *Decent Work Agenda*, is an important reference for the demands entailed in this. In the political and legal context, both the legal and the self-regulation model follow the framework of political liberalism: as John Rawls, one of the most important theoreticians of this tradition, famously argued, political liberalism offers a theory of justice as political, not moral foundation of liberal societies. This position is not shared by

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57 Cf. <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>.

58 S. WAHL, *The Decent Work Agenda*, in: H. HAKER/L. CAHILL/E. WAINWRIGHT (ed.), *Human trafficking*, in: *Concilium* 47/3 (2011), 84–93.

59 INTERNATIONAL LABOR ORGANIZATION, *Global Estimates of Modern Slavery*.

60 T. COOPER, *Fair Trade Sex: Reflections on God, Sex, and Economics*, in: *Feminist Theology* 19/2 (2011), 194–207.

those who believe that sex work as such is a violation of human dignity, as the Catholic Church argues. Leaving this question to the “private” considerations of the parties is impossible if trafficking were indeed a new kind of slavery. It is short-sighted to claim, then, that it is politically tolerable as long as the trafficking practices meet the standards of autonomy and consent. It was exactly the dilemma that the Palermo protocol addressed. Moreover, as I will show now, it subordinates ethical judgments to a political theory of tolerance, constraining it to transform too easily into legal or governance considerations. This neutralizes any critical force ethics may otherwise have for a political order. Critical political ethics, in contrast, must be critical of any framework that does not address the root causes of structural (global) injustice.

#### 4. Sex Work as violation of human dignity

I am critical of Catholic sexual ethics as understood in the tradition of John Paul II (whom both Benedict XVI and Francis have followed) for two reasons. First, it promotes one exclusive model of sexual identity (heterosexuality) and sexual relationships (marriage), and condemns any other model of “good” sexuality; second, it dismisses the critique of the normative gender order discriminating against women and all forms of gender non-conformism, as captured in the LGBTQI+ movement. And yet, I will now argue that Catholic sexual ethics points to something that liberal (feminist) ethics dismisses too easily. My goal in this section is to constructively reinterpret the link between sexuality (and sexual practices) and a person’s identity. One important tradition to support this analysis is the phenomenological tradition of the embodied self.<sup>61</sup> Modifying Kant’s concept of autonomy as moral agency that serves as the foundation of human dignity and rights with this insight from phenomenology, I will show why sex work is indeed problematic from an ethical point of view.<sup>62</sup>

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61 M. MERLEAU-PONTY, *Phenomenology of Perception*, New York 1962. J. B. STEEVES, *Imagining Bodies: Merleau-Ponty’s Philosophy of Imagination*, Pittsburgh, Pa. 2004. My reference to the tradition of phenomenology should not be confused with the specific interpretation John Paul II offered in his “phenomenology of the body”. However, Catholic sexual ethics certainly needs to discuss this approach in light of alternative approaches within the same tradition. Cf. JOHN PAUL II, *Man and Woman He Created Them: A Theology of the Body*, Boston, MA 2006.

62 I. KANT, *Groundwork of the Metaphysics of Morals*, Cambridge, U.K./New York 1998. An important reference for this reinterpretation is Christine Korsgaard’s work. She also links Kant’s concept of normativity with practical identity CH. KORSGAARD, *Self-Constitution. Agency, Identity, and Integrity*, Oxford 2009. For a more thorough discussion of the concept of moral identity, see H. HAKER, *Moralische Identität. Literarische Lebensgeschichten als Medium ethischer Reflexion. Mit einer Interpretation der „Jahrestage“ von Uwe Johnson*, Tübingen 1999. The philosophical foundation of dignity does not contradict the theological understanding – rather, theology links the normative concept back to the existential question of the unconditional love of God.

The phenomenological tradition describes the relation between one's body and oneself as embodiment: one's body is not only biological material that can be used for whatever purposes one wants to use it for, but in using one's body, one affects, at the same time, one's embodied identity. Gender and sexuality are dimensions in which individuals express their embodied identities as agents. Through interacting with others, sexual acts in particular reveal a radical human vulnerability: sexual experience is tied to the dialectic of activity and passivity, the act of exposing oneself and/or perceiving the exposure of another person.<sup>63</sup> Different cultures develop different patterns of how to deal with sexual experiences: while some cultures emphasize the private and intimate character of sexuality, other cultures consider sexuality as part of the public and social life.<sup>64</sup>

Sexual acts are performed in many different ways, from the affective attention to the other's desires or affective reception of sexual acts, to the mutual experience of sexual arousal, to violent abuse such as rape. However, in any case, sexuality, like pain, cannot be detached from the person experiencing it; it has an affective dimension that cannot entirely be controlled. As a practice, sexuality can be realized not only in better or worse ways (both in the ethical and non-ethical sense of the terms 'good' and 'bad'), but it can also be practiced in *morally* right or wrong ways, i. e. respectful or disrespectful ways. Hence, sexual practices may be discerned and (descriptively) analyzed; but because people are vulnerable to violence or are actually harmed, as is the case in many cases of sexual violence against women,<sup>65</sup> sexual practices require normative criteria. In this assessment, it matters whether the criterion for ethical respect is autonomy in the liberal sense or moral freedom in the Kantian sense. Even though Kant is not known for his appreciation of the embodied self, it is in fact Kant who offers the best description of what constitutes a violation of human dignity: actions that use another person as a *mere* means to an end that an agent pursues violate the other's dignity. Whether that is the case, however, cannot be decided by merely looking at the act; quite to the contrary, Kant holds, rather than merely considering the act itself or even its consequences, it is the agent's "will" or intention that informs the judgment whether an action is morally justified.<sup>66</sup> Without going into the depth of justifica-

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63 Cf. chapter 5 in this volume for a further explanation of what I call the vulnerable agency that is at stake in any interaction.

64 M. A. FARLEY, *Just Love*.

65 WORLD HEALTH ORGANIZATION, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence*, Geneva 2013, <https://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>.

66 This does *not* mean that consequences do not matter for Kant or Kantian ethics; it merely means that they cannot be taken as justificatory reasons, as is the case in the proverbial saying

tion theory in ethics, we can summarize the result of Kant's thorough argumentation: dignity, as Kant conceives it, is grounded in autonomy as the freedom to moral self-governance (or, to use his term, to self-legislation, giving oneself moral laws that guide one's actions in analogy to the laws that are imposed by a legislator); the universalistic categorical imperative demands not only self-respect as part of one's moral agency but also the respect for the freedom (and dignity) of every other agent.<sup>67</sup> Interestingly, a feminist scholar who is not at risk to falling for the Catholic natural law theory agrees with Kant on his interpretation of freedom: no other than Simone de Beauvoir integrates Kant's moral principle into her existential ethics: "Moral freedom is the conscious affirmation of one's ontological freedom."<sup>68</sup> Whether it is in the Kantian terms of using another person for one's own ends, or de Beauvoir's language of the impossibility of rejecting one's own freedom and agency, ontologically *and* also morally, we have distinguishing markers for the types of actions that morally violate a person's agency, integrity or dignity. Whatever formulation we may use, moral respect requires the affirmation of one's own agency and moral identity as well as the affirmation of any other person's agency.

In recent years, affect theory has embraced the phenomenological tradition and offered a new way to connect affect with moral and political reason.<sup>69</sup> Affect theory complements the rational description of moral agency insofar as it emphasizes the co-enactment and intersubjectivity, and the inter-affectability of self and other. But Kant's normative point still remains in place: as long as a person is treated not *only* as a means but also as an end in herself, acts that affect another person as well as oneself are morally justified. In order to clarify what sex work means phenomenologically, and whether sex work violates the dignity of a person in the sense of her moral agency that goes beyond consent, it is therefore necessary to examine the relationship between client and sex worker more closely, especially when voluntariness is at stake. Sex work, understood as labor that is es-

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'the end justifies the means'. Instead, Kant would hold that if agents are aware of the adverse consequences of their actions, they cannot (morally) intend to pursue them. If, for example, men or clients can know that sex work is associated with trauma and depression, they cannot morally want that indifference towards suffering becomes a rule.

67 For a thorough argumentation of the necessity to universalize the claim to be respected as an agent and the implication for the human rights regime, see A. GEWIRTH, *Reason and Morality*, Chicago/London 1978. A. GEWIRTH, *Human Rights: Essays on Justification and Applications*, Chicago 1982.

68 S. DE BEAUVOIR, *The Ethics of Ambiguity*, New York 1962, 2.

69 Cf. for a promising study L. M. G. ZERILLI, *The Turn to Affect and the Problem of Judgment*, in: *New Literary History: A Journal of Theory and Interpretation* 46/2 (2015), 261–286; L. M. G. ZERILLI, *A Democratic Theory of Judgment*, Chicago 2016.

tablished and organized according to the rules of capitalist societies, is dependent on clients who seek the services of sex workers in exchange of money. Sex work, Carole Pateman argues, is “not the mutual, pleasurable exchange of the use of bodies, but the unilateral use of a woman’s body by a man in exchange for money.”<sup>70</sup> From this it is clear that the analysis of the interaction taking place under the condition of sex work has a phenomenological layer that is embedded in the context of two practices, namely sex and work or labor. There are certainly many constellations that are possible within the intersection of these two practices. However, here is how Vednita Carter and Evelyn Giobbe, two former prostitutes, describe their work:

The process of becoming a prostitute entails the systematic destruction of an individual woman’s ideas, beliefs, feelings, and desires which are replaced with a compilation of values lifted from the texts of various pornographic paperbacks. A good prostitute is devoid of a unique and personal identity. She is empty space surrounded by flesh into which men deposit evidence of their masculinity. She does not exist so that he can. Prostitution done correctly begins with the theft and ends with the subsequent abandonment of self. What remains is essential to the job: the mouth, the genitals, anus, breast [...] and the label.<sup>71</sup>

This description, while perhaps not echoed by those who emphasize their autonomy, stresses the “emptying” of a woman’s individual self-identity as a prerequisite for her service. In contrast, the client may rather look for the experience of sex; from that perspective, the service ought to resemble the ideal of interpersonal sexuality, namely the reciprocal interaction between the client and the woman whose service he purchases.<sup>72</sup> Both partners, however, must navigate the overlap of sex and work: “A prostitute can’t very well tell a trick the truth: ‘I really just want your money – I don’t want to touch you or have you touch me’, if she’s to have any business.”<sup>73</sup> Even though her own conception of her self-identity does not matter, a sex worker must still create and maintain the illusion of an authentic interpersonal, sexual encounter. While she may consider her work purely as instrumental to make a living or comply with the rules of her employer, *the core of her work* requires giving her body over to the man. By emphasizing that someone does so voluntarily without attending to this particular dynamic, one may easily overlook that sex becomes a good that is exchanged according to the norms of economic exchange. The emphasis on consent certainly creates a minimal stan-

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70 C. PATEMAN, *What’s Wrong with Prostitution*, 57.

71 V. CARTER/E. GIOBBE, *Duet: Prostitution, Racism, and Feminist Discourse*, 27.

72 Even though sex work is not only provided by women and not only demanded by men, I will here narrow my perspective to this constellation.

73 J. GAUTHIER, *Prostitution, Sexual Autonomy, and Sex Discrimination*, in: *Hypatia* 26/1 (2011), 166–186, 173, quoting Peggy Morgan’s “Sex Work”.

dard, but it may not suffice. It carries the risk to merely reiterating the client's perspective that confuses consent to instrumentally use another person's body with a person's self-realization in sexual encounters. If we follow Carter's and Giobbe's description, sex work is not an authentic experience for the prostitute but alienating her to the point of threatening her self-identity. Whereas working conditions may well be improved, the transformation of an individual with a particular biography, personal and social life, personal relationships, ideas, values and concerns into the "empty space surrounded by flesh into which men deposit evidence of their masculinity" is neither prevented by better working conditions nor by pointing to the voluntariness of the exchange.

One ethical question therefore concerns the effect that sex as *work* has on the subject; the other concerns the intention of the client who, in Kantian terms, *merely* uses another person for his ends. As we have seen, the Dutch laws tried to separate voluntary prostitution from involuntary prostitution in the context of organized crime, i. e. sex trafficking and forced labor. It turned out that it not only created new injustices among sex workers but also has put the burden of deciding whether a sex worker works voluntarily or is forced to serve her clients on the consumers or clients who buy their services. It does not, however, address the underlying disrespect. Furthermore, seen from a political-ethical perspective, it individualizes the responsibility for the structures of sex work in a way that is insufficient, unrealistic, and problematic.

##### 5. *Sex Work and the Structures of Exploitation*

While traditional forms of prostitution prevail, they are certainly complemented, if not outnumbered, by the international sex industry that functions within the globalized capitalist market. Many women experience exploitation and a 'second-class' status in their societies – in fact, the experience of being held back by the social, economic, and cultural conditions that all contribute to women's lack of opportunity to flourish are one reason why sex work seems to promise a way out. Sex work may indeed come with financial independence that alleviates the economic injustices of patriarchal societies. Still, even those who are not forced into the sex industry but enter it voluntarily may trade one social injustice with another: women like Valentina struggle against structural violence and economic structures of injustice in their homes and in their home countries; it is for this reason that they become easy victims of organized crime networks. Once they have entered the market, the structures of their work often reiterate the structures the women want to escape, and for many, the harm they suffer becomes worse.<sup>74</sup>

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<sup>74</sup> M. BECKA, *Trafficked Women and Reification*, in: H. HAKER/L. CAHILL/E. WAINWRIGHT (ed.), *Human Trafficking*, in: *Concilium* 47/3 (2011), 73–83.

Moreover, sex work reifies a woman's body in a way that goes beyond many other kinds of work. Since the sex industry is *also* entangled with global economic and financial institutions, the individual-ethical analysis of human dignity must be connected with the political-ethical perspective, which focuses on structures and institutions. In part, this is important because the social conditions, contexts, and conceptualizations of practices influence the self-understanding of the participants. Marx famously developed the theory of commodification as part of capitalism, and he emphasizes its effect as alienation:

Finally, there came a time when everything that men had considered inalienable, became an object of exchange, of traffic, and could be alienated. This is the time when the very things which till then had been communicated, but never exchanged; given, but never sold; acquired but never bought – virtue, love, conviction, knowledge and conscience, etc. – when everything, in short, passed into commerce. It is the time of general corruption, of universal venality.<sup>75</sup>

One does not need to follow Marx's materialism all the way to the thesis that the social conditions (*Sein*) determine the self-understanding (*Bewusstsein*) to see that the sex industry does affect the way sexuality is perceived and enacted in those environments where it is indeed ubiquitous, and these are mostly found in Western countries. Marx's theory of alienation has two sides. On the one hand, it describes (and critiques) the transformation of communication and interaction into commercial exchange and commodification. On the other hand, however, Marx analyzes the disparity between labor value and market value, which creates the structures of exploitation. While the first claim is echoed in the new theories of alienation, for example, by Rahel Jaeggi,<sup>76</sup> or in the re-interpretation of reification in light of the broader recognition theory by Axel Honneth,<sup>77</sup> the theory of exploitation must be seen exactly in this context, too: alienation and reification are the social, cultural, and economic background conditions for the exploitation of workers, including those who are trafficked for the purpose of sex work.

Some sex workers may say that their use of their body does not threaten their self-identity in the way as Carter and Giobbe claim it does, and I would in fact hesitate to contest their views. My point, however, is a different one: the concept of the embodied self, together with Kant's understanding of what the violation of dignity entails and with Marx's analysis of alienation, serves as a normative framework for understanding reification and commodification in the practice of sex

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75 R. JAEGGI, *The Market's Price*, in: *Constellations* 8/3 (2001), 400–412, 400, quoting Marx: *The Poverty of Philosophy*.

76 R. JAEGGI, *Alienation*, Columbia 2014.

77 AXEL HONNETH, *Reification: A New Look at an Old Idea*, with comments by: Judith Butler, Raymond Geuss, Jonathan Lear and Martin Jay, Oxford/New York 2007.



work. My analysis provides me with a normative argument that is linked to an experiential interpretation but that is not identical with it. One can assume that client-sex worker relations exist that do not fall under the description of disrespect and self-alienation, but feminist ethics can certainly acknowledge that the notion that women altruistically give what men desire is a well-known patriarchal stereotype. Furthermore, arguing with the experiential accounts of sex workers who claim that their work is indeed a free exchange of sexual services is as problematic when used as an argument that does not account for the social and economic mediations. Hence, while phenomenology provides an insight into how the concept of embodied identity unfolds, among others, in sexual relations, experiential accounts will either confirm or question these findings. Feminist ethics must therefore analyze the elements, functions, and effects of the blurred lines of freedom and coercion on the one hand, *and* voluntary work and exploitation in the sex industry on the other hand. The concept of dignity that informs not only negative but also positive rights provides a moral language to discern the requirements of respectful interactions. It therefore allows to conceptually determine what constitutes humiliation or violations of dignity.<sup>78</sup>

A feminist ethics that applies the concept of dignity to sex work and (sex) trafficking goes beyond the threshold of autonomy and consent. It certainly will strive to hold agents accountable for their actions. Most importantly, however, it will critique the unjust institutional structures of labor, especially in connection with organized crime networks, although not exclusively there. It would be a mistake to separate organized crime too strictly from the legal labor market. Just as there is a grey zone between forced labor and decent work, and consensual and coerced sexual encounters, there is a grey zone between migration and trafficking that impacts domestic and transnational labor. Ending the discussion where it must necessarily begin, namely with the most vulnerable persons in these practices, is a serious mistake. It ignores that responsibility is the other side of human rights and a consequence of our moral freedom. Given this responsibility that concerns any agent, ethics must attend to the conditions that prepare the ground for men and women who are so desperate that they have nothing to lose and rather believe in the promises they are told by traffickers than giving in to poverty and

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78 Ethics relies upon a dialectical correction process between facts and norms. Hence, empirical analyzes may also lead to a correction of the normative assumptions; the concepts of dignity, agency, and human rights are as much subject to re-examination as the interpretations of our experiences are. This is the reason why the human rights regime is a historically situated framework that is open to critique, correction, and further concretizations. However, it is also the reason why the rights framework is vulnerable to being watered down in the transition process to legally binding regulations.

oppression they experience. Western societies need to accept how deeply they are contributing to and/or upholding structures that allow for the sexual subordination of women.

As is often the case, in order for change to happen, legal frameworks must change. Yet, whatever legal frameworks nation-states establish regarding human trafficking, none of them are sufficient to address its transnational character.<sup>79</sup> It is therefore necessary that international law and non-governmental institutions establish an international regime not only to *prosecute* traffickers and *protect* women who have been trafficked but also to *prevent* all forms of human trafficking from prevailing or even increasing.<sup>80</sup> If *this* is the goal instead of promoting a sexual ethics that cements the inequality of a patriarchal gender order and disregards women's rights, Catholic social ethics and feminist ethics can indeed become close allies: together, they will critique the global economic order that perpetuates injustices especially towards women and girls, and they will support those political actors who hold individuals and organizations accountable for their human rights violations. Most importantly, however, they will engage in new strategies to prevent women, men, and children from falling prey to human traffickers in the first place.

#### *Conclusion*

I agree with the Vatican that sexuality and (moral) identity cannot be separated. I object, however, to its silence surrounding the gender order that feminist ethics has analyzed and deconstructed, and which exacerbates the injustices girls and women are faced with, especially regarding poverty, violence, and unpaid and/or forced labor. I agree with feminist ethics that this order produces norms that conceive of women either as selflessly giving beings or passive subjects while doing far too little to create the conditions for their personal, social, and political agency. In the traditional, neo-scholastic Catholic framework that still dominates the official teaching in sexual ethics, sex work cannot be conceived other than as sin or cooperation in sin. A judgment that focuses on the women who sell their body to others – or are forced to do so by their employers – either renders them the passive victims or merely adds moral blame to the underlying injustices. Those

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79 For a very extensive study of the history and current landscape of international regulation, and an empirical analysis of available statistics up to 2006 cf. M. LEHTI/K. AROMAA, *Trafficking for Sexual Exploitation*, in: *Crime and justice* 34/1 (2006), 133–227. Taken together with Chuang's study, the Herculean task ahead is unquestionable.

80 As Janie Chuang shows, prosecution and protection have so far failed to be successful strategies, while prevention is more and more pushed to the background. Cf. J. A. CHUANG, *Exploitation Creep and the Unmaking of Human Trafficking Law*.

among them who are indeed autonomous agents as depicted by liberal feminist theory do not require the solidarity of others, but those who are trapped in forced labor are indeed dependent on solidarity in their struggle for justice.<sup>81</sup> Critical political ethics as I envision it must examine the *structures of injustice* in order to define the terms of responsibility and accountability. Neither sex work in general nor human trafficking in particular would be lucrative businesses unless there were ever-new and ever-more clients, traffickers, and companies profiting from the trafficked persons' exploitation. Structural analyzes are therefore crucial. However, historical analyzes are important, too: as Lehti and Aroma point out with their view on Europe and the USA, the first wave of international prostitution between 1840 and 1918 coincided with European and US industrialization and 19<sup>th</sup> century colonialism; the second wave, in Asia, coincided with the Vietnam war since the 1960s, and in Europe, it coincided since the 1970s with urbanization and the growth of big cities. Since the 1990s, the collapse of the Soviet Union increased international prostitution again.

Race studies are also needed, in order to understand the wounds of the past generations: "It is estimated that in the first half of the twentieth century, 90 percent of all victims of global trafficking for prostitution were non-white women. The main roads of the trade ran between and inside the European colonies in Africa and Asia."<sup>82</sup> Even though women and girls make up almost 80% of all trafficked persons for sex work and prostitution, *sex* trafficking does not account for the vast majority of *human* trafficking – this concerns much more regional and transnational trafficking of men who are forced into labor in factories, sweatshops, or agriculture. These historical facts should caution anyone to confuse all trafficking with sex trafficking, and sex trafficking with all sex work. Moreover, when the focus is on sex work, it is not helpful to focus entirely on male or female sexuality instead of looking at the social-ethical structures that make sex work possible or, at least in many cases, necessary as a means to survive. While it may be easier to consider sex workers as "others", as "women of the street", or as "victims", in need of a strong (male or female) "savior", the paternalistic "othering" of women that Catholic sexual morality has exercised over centuries is ill-informed and must be rejected. The underlying gender imageries that Catholic ethics promotes up to today may in fact even contribute to the hypocrisy of consumers in industrialized societies who publicly condemn prostitution while ignoring how much 'sex sells'. In fact, sex and/or sexualized commerce is an important factor of capitalist consumption. Although it is hardly ever mentioned in the context of sex work and prostitution, celibate clerics are in no way immune to the offers of

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81 Cf. chapter 13 in this volume.

82 M. LEHTI/K. AROMAA, *Trafficking for Sexual Exploitation*, 214 f.

the sex industry. Rather, the taboo around sexuality may even exacerbate the secrecy and code of silence and, as a result, foster an environment that systemically tolerates sexual violence rather than being honest about the effects of forced celibacy. This at least is one lesson to be learned from the sexual abuse scandal of the Catholic Church. Over the last years, many have lost faith in the Catholic Church's ability or willingness to change its sexual ethics that has harmed and is harming so many people. However, it is time to make some radical changes, and Catholic ethics must finally take up the insights of Catholic feminist ethics.

Catholic feminist ethics contributes to changing the gendered "honor code". It advocates for women's rights and against their (sexual) exploitation. This, then, may serve as the moral litmus test of Catholic ethics. In my view, in order to be ethically sound, the following steps must be taken: *First*, the Vatican and the local bishops must overcome their suspicion and mistrust that any feminist or gender theory aims at undoing the Church's religious-ethical foundations. *Second*, they must study the arguments of feminist theologians in order to understand why we broadly reject the theological sexual ethics and phenomenology developed by John Paul II. *Third*, the Church needs to accept that not everyone will (or can) embrace the normative concept of the heterosexual marriage ethic that the Vatican promotes as the exclusive model guiding its sexual ethics. As the Vatican II Council has demonstrated already, it is indeed possible to reinterpret the Christian tradition without being committed to one exclusive model of "good" sexuality or the ideology of gender complementarity.<sup>83</sup> *Finally*, with respect to the context of sex work and sex trafficking, the Church needs to acknowledge that sex workers who have been or who are victims of the different forms of human rights violations, including the violation of their social, economic, and cultural rights, do not need men to come to their rescue; rather, the Church should finance and support women-run initiatives and women religious in their work. Furthermore, not every woman is able or willing to just walk away from her source of income that they need to survive or to care for their loved ones. Sex workers do not deserve the moral blame by the same institution that has looked away for so long when women's rights have been violated on multiple levels: the men of the Church must step back and let women lead when it comes to sex work and sex trafficking, both practically, ethically, and theologically.

Which responses to human trafficking work best in different contexts must be explored together with the UN, the ILO, and the different non-governmental groups. Yet, local churches have much to offer in the prevention and protection of those who are at risk to be trafficked. In addition to the practical "social work on

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83 T. A. SALZMAN/M. G. LAWLER, *Vatican II and Sexual Ethics: Past, Present, Future*, in: Toronto Journal of Theology 32/2 (2016), 297–313.

the street”, Catholic feminist ethics may join the non-Catholic feminist ethics in advocating for legal and political changes: as part of the women’s rights movement, we need to critique the entanglement of our global economy with trafficking and forced labor. The role of Catholic feminist ethics is critical and constructive: it must address and confront the Church on all levels, in order to contribute to the paradigm shift within Catholic ethics. Catholic ethics must indeed be centered on the principle of human dignity, but this does not exactly come at the price of women’s human rights. It will, as I have shown in this chapter, be consistent with a turn to a critical political ethics. In light of the pandemic of violence against women, *any* gender theory and *any* sexual ethics that does not attend to, critique or engage in the struggle for women’s rights is complicit with one of the most radical structural sins of our time, namely sexual violence.

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