Control by Proxy:
The Regulation of Indigenous Peoples and Settler Labour via Canadian Anti-Sex Work Laws, 1865-2016

Tierney Kobryn-Dietrich, Bachelor of Arts

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This thesis is dedicated to the thousands of missing indigenous women across Turtle Island and to their families.

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Abstract

This study examines Canada's history of anti-sex legislation from 1865 to 2016 and demonstrates that these laws exist primarily to maintain the ideological boundaries between whiteness and indigeneity. The study forwards a theory that accounts for the ways in which anti-sex work legislation assists in a) the appropriation of land through the removal and/or isolation of indigenous peoples and b) maintaining hegemonic control over settler labour. To this end, three time periods are identified in which violent settlement and the production of white, middle-class personhood were features of the regularization of capitalist-colonial rule, and where anti-sex work laws played a vital role in the management of instabilities manifested by indigenous activism and labour discontent: the consummation of the Canadian colonial system (1850 - 1900), industrialization (1900 - 1920) and neoliberalism (1970s - current). By examining the current and historical legislative framework regulating sex work, this study aims to demonstrate how both the legal framework and its enforcement act as proxies for controlling land and labour.

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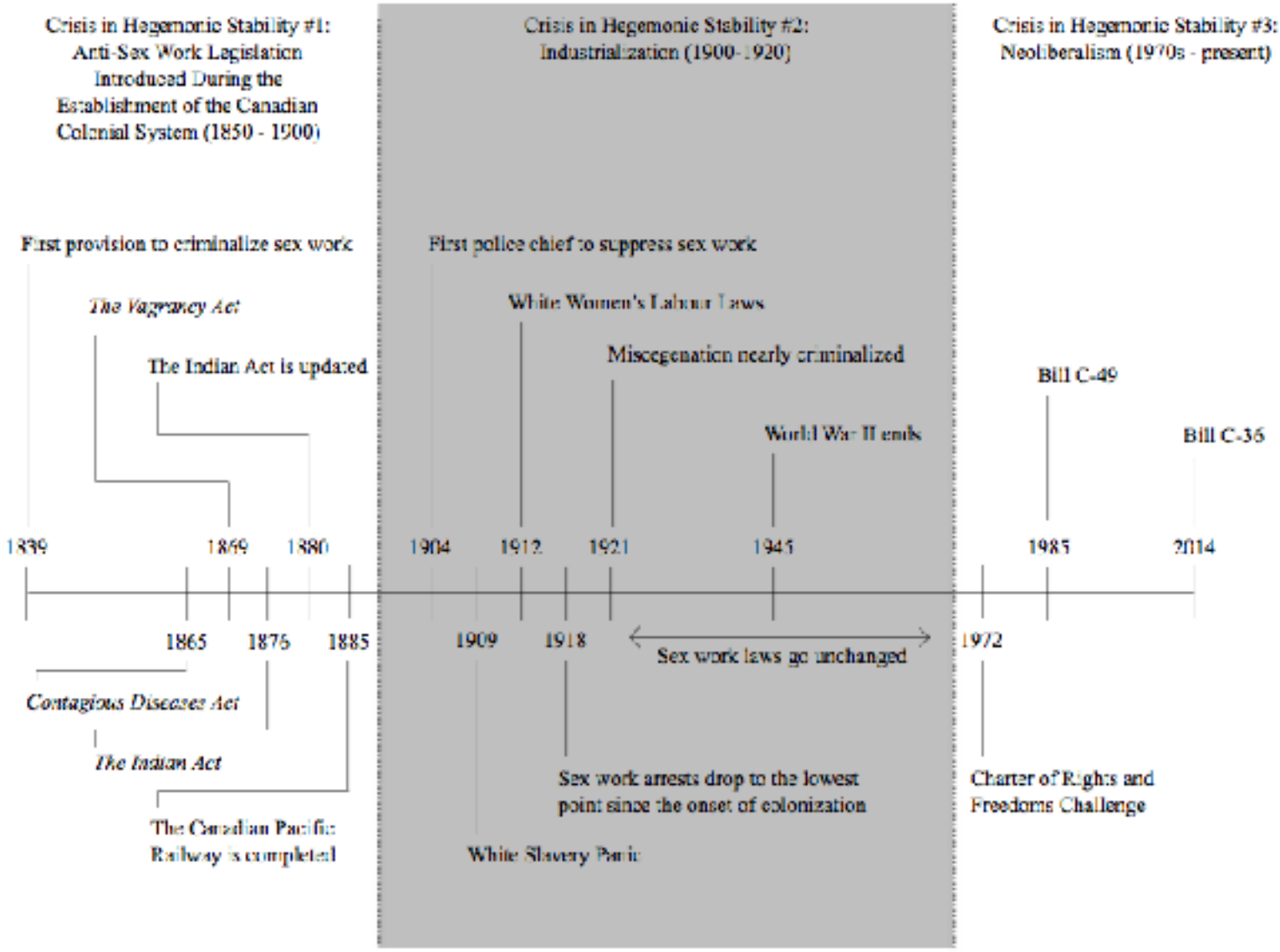
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Introduction: The Case for Reconceptualizing the Regulation of Sex Work

At first glance, the Canadian state's interest in criminalizing sex work seems primarily about the regulation of gender and sexuality. As such to most researchers, anti-sex work legislation appears to be concerned with the regulation of morality in private relationships and the promotion of the nuclear family form. I agree with the majority of sex work research which asserts that the regulation of sexuality through anti-sex work legislation is key to maintaining patriarchal social relations (see Backhouse 1986; Bright 2003; Strange and Loo 1997; Chambliss 1964; Helps 2007; Lowman 2011a; Ranasinhe 2010, 2012). Such work highlights how anti-sex work laws subordinate women, contributing to the unequal social relations that naturalize the superiority of men as well as the existence of the capitalist-colonialist system more generally. This study, however, makes a substantive departure from the monistic preoccupation with gendered relations of ruling. I assert that anti-sex work legislation is also rooted in the regulation of indigeneity and the social control of labour. This contribution to the literature on sex-as-work derives, in part, from engaging with the work of the few authors to examine Canadian sex work legislation from a feminist-indigenous perspective (Hunt 2013; Sayers 2016). By establishing a tri-partite relationship between the ruling relations of gender domination, capitalism and its imperative to regulate labour and land and resource expropriation essential to settler colonialism this study asserts that these laws exist primarily to maintain the ideological boundaries between whiteness and indigeneity in ways that sustain capitalist exploitation. While the regulation of sexuality plays an important role in anti-sex work legislation, this study reveals that the state's desire to regulate sexuality is rooted in the complex and dynamic interaction between ableism, colonialism, heteronormativity, imperialism, sexism and racism.

In view of this, it comes as no surprise that Canada's violent transformation into a settler colony has been intimately linked with the regulation of sex work. As this study demonstrates, anti-sex work laws are enforced in Canada during periods of colonial instability with the aim of sustaining hegemonic dominance of capital accumulation and white superiority. These are periods in which violent settlement, the production of white, middle-class personhood and the concretization of the nuclear family were features of the regularization of colonialism, capitalism and nationhood. This study accordingly examines three major periods where anti-sex work laws were a major imperative used to manage instabilities manifested by indigenous activism and labour discontent: the consummation of the Canadian colonial system (1850 - 1900), industrialization (1900 - 1920) and neoliberalism (1970s - current) (See figure 1).

Beginning with the arrival of Canada's first settlers, this study explores how unions between white settlers and indigenous women were common (Carter 1997; Anderson 2000). Canada's first settlers forged strong relationships with indigenous communities and benefitted greatly from their knowledge of botany, medicine, agriculture, and so forth (Van Kirk 1996). As a result of U.S. independence, transformations from a staples economy to one of agriculture and the emergence of nation-building, the presence of indigenous-settler relationships eventually began to pose a threat to the capitalist-colonialist system (Carty 1999). The state feared, for example, that the children of indigenous-settler unions would gain legal ownership of property (Erickson 2011; Carty 1999) in ways that would contest white settler domination and the Crown's monopoly over land.

These issues were concretized by a moral discursive formations that centred that sexualized the already negatively raced and gendered bodies of indigenous women (Barman 1997;

McClintock 1995; Carter 1997). Indigenous women needed to be ideologically degraded and sexualized in order to construct moral hegemonic superiority of newly immigrated white women and that of the patriarchal and socio-political dominance of white men. In effect to anchor nuclear domesticity as the province of respectable White women, and hence a metaphorical mimesis of White men's control of public colonial sphere, the presumed moral turpitude of indigenous women begged for rigorous state control. As much as the 'wilderness' was imagined as an unruly space to be tamed, so too were indigenous women emblematic of 'savage' cultures that needed, equally, to be tamed by military force and a regime of legal containment. The anti-sex work legislation introduced during this time played an important role in this shift by setting clear ideological and spatial boundaries between indigenous peoples and settlers (Strange and Loo 1997). The *Contagious Diseases Act* (1865) and the *Vagrancy Act* (1869), for example, were both used at the discretion of police as a means of harassing and surveilling indigenous women. The *Indian Act* (1876), moreover, introduced laws and punishment specific to indigenous women who sold sex and those who would purchase their services.

Following this historical account, the study then moves to examine Canada's transformation from a mercantile-staples economy to an agricultural and industrial capitalist system during the turn of the nineteenth century (Lawrence 2003; Bright 1995; Brodie 1989). At this time, there was concern about what these changes might mean for existing race and gender relations, and, more generally, for Anglo Saxon racial superiority. The state feared that the establishment of urban centres would encourage white settler women to work outside the home; that the recent influx of immigrants would threaten the safety of white women; and that the anonymity of urban life would enable widespread, and presumably degenerative, miscegenation (Valverde 2008). The

state imagined that these social transformations would threaten the stability of colonial rule by blurring the distinction between white Anglo Saxon and Frankish peoples, indigenous peoples and people 'of color' (inclusive of non-Nordic European peoples). The state responded by abandoning its lenient attitude towards anti-sex work laws and by enforcing discriminatory immigration and labour policies — a period that would later be referred to as the 'White Slavery Panic' (McLaren 1986).

Much of the anti-sex work provisions introduced since the onset of colonization remained in place until the mid-1970s, when the profitability of the capitalist-colonialist system began a noticeable decline (Porter 2012; Smith & Butovsky 2016). In another and more recent attempt to secure economic, political and social stability through moral regulation, the Canadian State intensified its criminalization of sex work. These actions culminated in the implementation of Bill C-36: *The Protection of Communities and Exploited Persons Act* (2014), which is shown to further physically endanger the lives of individuals who have been sexualized and dehumanized over a century and a half of colonialist rule. The criminal law, accordingly, is shown to be used during times of capitalist crises and colonial instability as a tool to help reinforce control by capitalist elites and the hegemonic superiority of white settlers, while simultaneously subjecting indigenous women to disproportionate amounts of violence.

This thesis accordingly seeks to develop a theory that accounts for the ways that anti-sex work legislation assists in the advancement of the mutually imbricated projects of Canadian capitalism, colonialism, patriarchy and racism. This research examines the hegemony of 'ruling relations' in two discrete, but related analytical categories: a) the appropriation of land through the removal and/or isolation of indigenous peoples and b) hegemonic control over settler labour.

Toward developing such an account, this thesis constructs an analytical framework that relies on theories of class, gender and racialization, while my method of interpretation uses critical discourse analysis to examine legislative discourse and coercive practices that support capitalism, colonialism, patriarchy and racism: the *Contagious Diseases Act* (1865), the *Vagrancy Act* (1869), the *Indian Act* (1876), the 'White Slavery Panic' and *An Act to Prevent the Employment of Female Labour in Certain Capacities* (1912), revisions to the Criminal Code (1972), Bill C-49 (1985) and Bill C-36 (2014). By examining the current and historical legislative framework regulating sex work, I aim to show how both the legal framework and its enforcement act as a proxies for controlling land and labour.

This is a wide-ranging and speculative project calculated to theorize the ways that both indigenous peoples as well as settler colonial labour are subject to different regimes of control through moral regulation. To this end, I use a combination of insights from Marxist-feminism, critical race theory and critical race feminism, Gramsci's theory of hegemony and indigenous concepts of land to construct my theoretical framework. The study contends, firstly, that the body of the indigenous woman is a metaphorical topography upon which raced and gendered oppressions are both constructed and mobilized for war and conquest by colonizers. The cultural sexualization of indigenous women's bodies results in the repression of their self-determination and ontological autonomy, despite resistance, by a process in which the settler-colonial state's monopoly on force is used to 'identify, ostracize, concentrate, confiscate and annihilate'[1] indigenous populations in order to appropriate both their lands and resources. The racialization and sexual-

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[1] See Raul Hilberg's *The Destruction of European Jews* for a discussion of the 'chain of destruction' (Hillberg 1985); see also David Stannard's historical account of British and French consciously genocidal conquest settler practices in North America (1992).

ization of this group on the other hand, though not exclusive to them, is also used to obscure the (albeit lessened) exploitation of settler-colonial labour by the state. The presumption that indigenous peoples, particularly women, are identified as targets of control is a vital ideological tactic toward gaining the consent of settler-colonial labour toward their own pacification through a shared anti-indigenous animus calculated to persuade their loyalty to the capitalist-colonialist-racial state. The sexualization and racialization of indigenous women, women 'of colour' and poor white women, for example, placates working class male settler-colonizers who are fearful for the devaluation of their own labour (Federici 2004). The legimation of the sexual abuse of indigenous women, most evident in their genocidal disappearing and murdering, incentivizes settlers to abandon any prospect of collective resistance to their radically different but collective domination. The derogation and targeting of indigenous women, particularly through what W. E. B. Du Bois called 'the wage of whiteness' allows discontents felt by, most notably, white working-class settlers toward capital and the state to be re-directed toward indigenous women as both scapegoats and targets of displaced aggression of the sort demonstrated by Robert Picton.

The speculative theoretical work proposed by this study is valuable for a number of reasons. Much work has been done on the social constructions of gender and race (Laslett and Brenner 1989; McClintock 1995; Connell 1989; Davis 1991; Fanon 1967; Goldberg 1990) and how these colonialist discourses and practices are used to control labour (McClintock 1995; Lugones 2007; Carty 1999; Stoler 2002; Backhouse 1996; Valverde 2008). Research has also explored how these constructions are drawn upon to legitimate state regulation of sex work (McLaren 1986; McClintock 1993; Backhouse 1986; Razack 1998). An approach, however, has yet to be developed by way of theory that specifically conceptualizes the extent to which the reg-

ulation of sex work serves to control labour and sustain settler colonial land expropriation during times of colonial instability.

Second, by conceptualizing anti-sex work legislation as a tool for perpetuating capitalism and colonialism, the motivations behind the Canadian state's recent revival of laws criminalizing sex work can be specified. Beginning in the late 1970s, the capitalist-colonialist system entered a period of crisis. I suggest that in this context the resurgence of anti-sex work laws is brought on by the rising influence of neoliberal and neoconservative ideologies. Sex workers are now persecuted under legislation that is remarkably similar to that which existed a century earlier, when nation-building was of primary importance. In light of this, upsurges in the creation and enforcement of anti-sex work legislation can be correlated with periods of capitalist crisis and colonialist instability that require the state to intensify hegemonic control over labour and land. Relatedly, though this point will not receive substantive attention, the state seeks to eliminate all forms of competitive labour, such as that implied by both sex work and illicit narcotic entrepreneurialism because, as noted by Todd Gordon (2006), they are beyond the exploitative and disciplining effects of capitalist wage control.

Third, the indigeneity and race-based focus of this study allows it to both incorporate and transcend the parameters inherent in current debates and research about sex work. By extending the work of authors like Sarah Hunt (2013), Naomi Sayers (2014) and other critical race scholars who understand sex work to be a form of labour, this study rejects the dichotomy that sex work is either 'coerced' or 'chosen'. This dichotomous method acknowledges classed and gendered factors at most, but completely overlooks the experiences of indigenous women in particular and women 'of colour' generally. More importantly, however, this polarizing debate does not disrupt

the socially constructed binary that depicts indigenous women as promiscuous degenerates and white (middle-class) women as chaste beings that are worthy of respect. This study contends, accordingly, that both arguments need to be synthesized if progress is to be made battling the social and material relations responsible for the subordination of sex workers.

i. Statement of Research Questions and Summary of Chapters

This research project is guided by two central and related questions. First, how and in what ways does anti-sex work legislation reproduce colonialist 'ruling relations' (see D. Smith) that cohere around land and resource appropriation? Second, is sex work a proxy for the control of indigenous women and the management of settler labour?

Chapter 1 provides an overview and assessment of approaches that are dominant in sex work research. This includes the prohibitionism, which advocates for the abolition of sex work; the sex work as labour approach, which emphasizes how sex work and labour are alike in the way that they both involve the selling of labour-power; and anti-colonial approaches, which explore how the regulation of sex work is part of an ongoing process that strips indigenous peoples of their autonomy and control over their bodies, lands and resources. The chapter then moves on to examine the current debate between researchers who conclude that sex work ought to be imagined as a form of labour and should be treated as such and researchers who conclude that sex work should be conceptualized as an act that is performed under coercion. As a way to map out the contributions of indigenous and critical race scholars. The chapter concludes by citing the arguments of scholars who understand sex work to be a form of labour that is raced, gendered and classed (Hunt 2013; Sayers 2016). I go beyond this literature, however, to establish the premise of a dynamic interaction with the criminalization of labour forms that are competitive

and parallel with the capitalist mode of production. Capitalism, colonialism, racism and sexism cohere, I suggest, through the regulation of sex work to achieve the control of indigenous peoples and the regulation of settler labour.

Chapter 2 examines the theoretical approaches and perspectives employed in this study. The chapter gives a summary of the main principles of Marxist-feminism, critical race feminism, Gramsci's theory of hegemony and indigenous-feminist concepts of land and body sovereignty. The chapter then moves on to explain how these insights are used to examine the role anti-sex work legislation plays in reproducing white middle-class personhood, and, capitalist and state hegemony more generally. The chapter concludes by forwarding a theory which suggests that the bodies of indigenous women are a topography upon which raced and gendered oppressions are both constructed and mobilized for war and conquest by colonizers. By using the body of the indigenous woman as the study's focal point, the connections between anti-sex work legislation, the appropriation of land and the control of settler labour can be examined in ways not yet established in the scholarly literature, though Robyn Maynard makes a somewhat similar case in *Policing Black Lives* (2017).

Chapter 3 provides an overview of the methodology used in this study. Critical discourse analysis (CDA) is used to highlight the role discourse plays in the reproduction of dominance and the social structures that promote dominance (Van Dijk 1993). By focusing on the "structures, strategies, or other properties" of text and talk, CDA is used to tease out how the discourse used in anti-sex work legislation reproduces dominative practices and social structures (Van Dijk 1993:250).

Lastly, Chapter 4 examines key pieces of anti-sex work legislation implemented throughout Canada's history to demonstrate the discourses of dominance that support colonial rule over indigenous peoples and land and settler-colonial labour. The chapter begins with a brief summary of the generally egalitarian and matrilineal social relations common to some First Nations communities before predatory settler contact. Seeking to avoid essentialist tropes that homogenize and mythologize indigenous ethnic groups and nations, I suggest there is both complexity and heterogeneity of social organization across Turtle Island. I point out, nevertheless, that those social formations marked by matrifocality and matriliniality were particular targets for intensive ideological and military intervention. The chapter moves in chronological order to examine the *Contagious Diseases Act* (1865), the *Vagrancy Act* (1869), the *Indian Act* (1876), the 'White Slavery Panic' and *An Act to Prevent the Employment of Female Labour in Certain Capacities* (1912), revisions to the *Criminal Code* (1972), Bill C-49 (1985) and Bill C-36 (2014). By no means is my examination of these texts intended to be exhaustive, but rather suggestive of my thesis that sex work is a proxy for the control of indigenous peoples, control of land and the management of settler labour.

ii. Notes on Terminology

This purpose of this study is to highlight the power of discourse in the criminal law and its ability to maintain unequal social relations. This study respectively strives to dismantle the hegemonic position of the criminal law and expose its colonialist nature. A part of this effort includes critical reflexivity on the language included in the study itself. This section, accordingly, provides brief explanations concerning the use of the terms 'sex work', 'prohibitionism', 'indigenous', 'First Nations' and 'Turtle Island'.

a) 'Sex work' versus 'prostitution'

Throughout this study, the term 'sex work' will be used in place of 'prostitution'. The term 'sex work' is an umbrella term that represents the provision of money for variety of sexual services, including stripping, escorting, erotic massage, BDSM, phone or webcam sex, as well as sexual intercourse (van der Meulen et al. 2013). The term emerged in the late 1970's as the result of dedicated work from sex worker activist groups like COYOTE (Call Off Your Old Tired Ethics), Maggie's and Big Susie's (Grant 2014). This study uses the term 'sex work' over 'prostitution' for four main reasons.

First, the term 'prostitution' is loaded with bourgeois morality, is imbued with stigma and has historically been used to marginalize sex workers (van der Meulen 2013:2; Ferris 2015:xvii). Previous to the nineteenth century, an English noun that specifically describes the selling of sexual services did not exist (Parent et al. 2013). This is because sex workers were not always stigmatized. In some cultures, such as ancient Greece, highly revered goddesses were sex workers (Budin 2006). In others, such as ancient Rome, sex workers faced no restrictions in where or when they could practice their trade[2] (McGinn 2006). It follows, nevertheless, that 'prostitution' and the stigma associated with it was created during the era of British colonial expansion as a way to systematically disparage the generally high social status of indigenous women. By attacking the egalitarian social relations of many but not all indigenous communities, settlers improved their chances of imposing their own hierarchical relations. From its onset, therefore, 'prostitution' has been associated with indigeneity, promiscuity, poverty and filth.

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[2] The ancient cultures like Mesopotamia, Greece and Rome that did not stigmatize sex work were also highly patriarchal. The fact that these cultures did not discriminate against sex work is not intended to negate, what by today's standards, would be their heterosexism and patriarchalism.

Second, because of its role in the ideological subordination of indigenous women and other undesirable populations, 'prostitution' has traditionally been stereotyped as a female activity. Sex work, in contrast, is a gender-neutral term that can be used to denote female, male, transgendered and otherwise non-binary workers. 'Prostitution', therefore, is a social construction that reflects the raced and gendered meanings imposed on it by outside agents (Jeffrey and MacDonald 2008; Lowman 2011a; Durisin 2010). This is why Wendy Chapkis states that "there is no such thing as a 'prostitute' – only the meaning attached to him/her by others" (1997; as qtd. in Jeffrey and McDonald 2006:315).

Third, the term 'sex work' helps to encourage the re-conceptualization of this work as a regular form of labour deserving of the same benefits and protections, including the right to be protected from exploitation and danger. Not only does framing sex work as labour promote more equitable attitudes towards sex work, it challenges the hegemonic ideologies initially responsible for subordinating sex workers. The term does this by situating sex work within broader social relations of production that allow comparisons to be drawn between the regulation of sex work and current socio-economic trends, as well as between sex work and different forms of labour. From this perspective, sex workers and women wage earners can become allies in the fight for better working conditions (Durisin 2010). What this term cannot denote, and what will be discussed in more detail later in the study, are differences between sex workers, including race-related differences. In a radical sense, also, to think of sex work as labour helps us to think about how labour becomes a commodity, given that liberal democratic theory contends that persons are property in and of themselves, thus the disposing of their labour-power ought not to fall within

the purview of the state coercive control on behalf of capital. This issue is elaborated in detail where I discuss the political theory of 'possessive individualism' (McPherson).

Lastly, the term sex work helps to prevent freely performed labour from being conflated with sex trafficking. Sex trafficking requires that someone be forced into the sex trade through violence or threats of violence, extreme and immediate coercion, lying and/or the restriction of mobility. Sex work, in contrast, is not performed under any condition of duress save that of a capitalist system that requires the necessity of personal income arising from commodification of labour through the sale of labour-power because the means of production are privately controlled. The term 'sex work', therefore, represents a political intervention against the social relations that subordinate sex workers who alone among labourers control their labour because they possess the means: their bodies.

b) 'Prohibitionism' versus 'abolitionism'

Following the work of van der Meulen et al. (2013), this study uses the term 'prohibitionism' in place of 'abolitionism' to describe social movements in support of eradicating the sex trade. This is done to disassociate abolitionism with more positive social movements such as the abolition of slavery. Indeed, 'abolitionists' refer to themselves as such because they believe that sex work is a form of gendered slavery. Their willingness to conflate two distinct forms of oppression suggests that those who call themselves 'abolitionists' are either ignorant or apathetic to the distinct struggles faced by countless African women, who in addition to being kidnapped, were kept as slaves, sexually abused, and compelled to produce children for their masters in addition to being objects of sexual slavery (Barbara Bush; Angela Davis; Sublette and Sublette 2015; Vincent Warren).

Despite its rhetorical connection to the emancipation of African descended peoples and the abolition of transatlantic slavery more generally, the policies prohibitionists support actually function to maintain socially constructed racial divisions. By promoting the complete elimination of the sex trade, prohibitionists demonstrate that they are not concerned with the systemic poverty plaguing many indigenous, immigrant and communities 'of colour'. Without access to the money provided by the sex trade (and other illicit trades), many indigenous and communities 'of colour' would face additional financial hardship. prohibitionists desire to eradicate the sex trade also means they advocate for heightened police surveillance in indigenous and communities ‘of colour’; the segregation of the sex trade into desolate areas where sex workers are more likely to be victimized; and for an increase in the incarceration and deportation of women, and, especially indigenous, immigrant and women ‘of colour’. For these reasons, this study uses the term ‘prohibitionism’ to distinguish the ideology and moral politics of self-proclaimed ‘prostitution’ ‘abolitionists’.

c) 'First Nations' and 'indigenous' versus 'Aboriginal' and 'Indian'

This study also acknowledges the problematic nature of terms such as 'Aboriginal' and 'Indian'. These terms are both colonial constructs which ignore the multiple identities and nationalities of indigenous people. These pejorative terms purposefully overlook the unique characteristics distinguishing the hundreds of different indigenous communities across Turtle Island. Because of this, the first occupants of what has come to be known as Canada are referred to by their specific nation or communities whenever possible (e.g., Anishinaabe, Ojibway). In cases where this is not possible, the terms 'indigenous', 'First Nations' or ‘native’ are used. Following the work of Bourgeois (2014), ‘indigenous’ is purposefully not capitalized so as to reflect its use as an ad-

jective describing generalizations about indigenous people across Turtle Island. While these terms are still problematic, they are meant to remind the reader that the traditions, culture and social systems of one particular community cannot be transposed onto other communities.

d) 'Turtle Island' versus 'Canada'

Lastly, where appropriate and possible, this study will be use the term 'Turtle Island' to refer to the period of time that preceded the arrival of settlers and Confederation to what is now called North America. By adopting this language, it is hoped that that the hegemonic notion that English and French settlers were the first 'rational' inhabitants of this land can be destabilized. My intention is that it will persuade the reader to consider that the land was occupied before the arrival of settlers, and that its occupants had complex systems of language, religion and politics. Indeed, it was the Haudonosanee Confederate system of government, not Greece, that genocidists such as George Washington and Thomas Jefferson 'borrowed' to establish the U.S.'s political system (Stannard 1992). The term 'Canada', in this study, refers not simply to a geographical area, but also to a historical period (that continues today) where colonial social relations are imposed on indigenous communities for the purposes of land appropriation.

Chapter Two: Literature Review

The Politics of Sex Work: The Choice Vs. Coercion Debate

A review of the literature on sex work indicates that the scholarship is broadly divided into three approaches: prohibitionist, labour and work and race and postcolonialism. While these approaches reflect decades of research and a multitude of different authors from various theoretical backgrounds, an analysis of these perspectives indicate they often lead to the same two — albeit diametrically opposed — conclusions. One understands sex work to be inherently violent and oppressive, while the other understands sex work to be an opportunity for women's economic independence. This study contends, however, that both arguments need to be synthesized if progress is to be made battling the social and material relations responsible for the subordination of sex workers. Sex work needs to be simultaneously understood as a form of legitimate work *and* as a social construct whereby racial, gendered and classed relations combine to create a disproportionate risk of violence for certain groups of people (Razack 1998b; Meil-Hobson 1990; Hunt 2013). This section will first explore the main arguments undergirding the prohibitionist, sex-work-as-labour and race-postcolonial perspectives on sex work. The chapter will then examine how these insights can be put to productive use without contradicting one another. Lastly, the current study will be framed using this combination of insights.

i. Prohibitionism

The earliest analyses of 'prostitution' are rooted in the prohibitionist approach, which was introduced in Canada by moral purity groups during the Victorian era (1837-1901). Simply put, the prohibitionist approach understands all sex work to be a form of gendered slavery that is imbued with violence (see Barry 1984; Dworkin 1997; Farley 2005; McKinnon 1993; Schotten

2005). Prohibitionists assert that the act of 'prostitution' reaffirms men's socially entitled access to the bodies and sexual services of women. Women who 'prostitute', therefore, are simultaneously depicted as colluders with male violence at the same time they are subject to it. These women are ultimately perceived in prohibitionist literature as victims, be that complicity forced by the false consciousness of patriarchal liberal individualism or more directly through the incapacitation of their agency. In a patriarchal social system that oppresses women by objectifying their sexuality, prohibitionists argue that women cannot exercise power – not least in the context of 'prostitution'. Prohibitionists, accordingly, call for the total abolition of 'prostitution' through the criminalization of its activities. They intend, ironically, to use the repressive power of the (patriarchal) law to benefit 'prostituted' women who are perceived to be incapable of helping themselves.

Prohibitionism can be broken into three key themes. First, since 'prostitution' is understood as a form of gendered violence, prohibitionists argue that women working in 'prostitution' cannot benefit from their own labour. They will in fact, moreover, be physically and emotionally scarred by the experience. Melissa Farley, for example, claims that "70% to 95% [of 'prostitutes'] were physically assaulted" during their work, and that "65% to 95% of those in 'prostitution' were sexually assaulted as children" (2008:13). Such statistics, which say more about sexual assault against girls and women than telling us anything meaningful about sex workers, are questionable since there is no reliable method of obtaining accurate information on the lives of 'prostitutes' as different from other women (Weitzer 2005). The marginalized nature of 'prostitution' means that researchers often have a difficult time finding participants for their research, and are often only left with a handful participants to draw conclusions from. The lack

of data may lead prohibitionist researchers to jails and rehabilitation programs to recruit sex worker participants, resulting in heavily skewed data (Weitzer 2005). Despite these problems, these 'facts' are reported by prohibitionists as universally valid to justify their claims. These prohibitionist arguments were later taken up by the state to support false statistics on 'prostitution' and sex trafficking as a way to legitimize increased police spending.

It follows from this understanding of 'prostitution' that the subordination of women in patriarchal societies is reproduced in part through sexual violence and that 'prostitution' encourages the subordination of women. Prohibitionist Catharine McKinnon echoes this argument in *Prostitution and Civil Rights* (1993), where she compares 'prostitution' to the violation of women's civil rights. A tautology is therefore effected, whereby subordination is a key characteristic of 'prostitution' and the act of 'prostitution' reaffirms subordination (McKinnon 1993). Indeed, McKinnon (1993), along with many other prohibitionist authors, go so far as to compare 'prostitution' to the slavery of African-Americans. McKinnon (1993), for example, suggests that 'prostituted' women should be allowed to civilly charge their pimps with 'sexual slavery'. By comparing 'prostitution' to the trans-Atlantic slave trade that forcibly abducted millions of individuals from West and Central Africa, and where all enslaved women were objects of sexual exploitation, McKinnon utilizes moralistic rhetoric while simultaneously conflating two distinct forms of oppression, all the while conveniently ignoring white women's complicity in the commerce and culture of chattel racial slavery (Bush 1990). This perspective reveals the racism of such a formulation in another way also: it erases indigenous and other women 'of colour'. Prohibitionism, therefore, is incapable of conceptualizing the racial and classed differences between women and has a tendency to universalize the experiences of white, middle-classed women.

This leads to the second theme characterizing prohibitionism. Because sexual violence occurs within a context where women have less social power than men, prohibitionists assume that women lack agency in all circumstances. Even in situations where the worker is able to sell her labour-power inherent in her body and on her own terms and price, prohibitionists argue that because the exploitation of women's sexuality plays a fundamental role in her subordination, the selling of sex is comparable to the selling of oneself. This attitude, however, insinuates that a women's 'self' is comprised of nothing more than her sexuality. Prohibitionists also ignore the instances where 'prostitution' can actually expand the opportunities and choices available to workers. The financial benefit that 'prostitution' provides, for example, may open up the opportunity to pursue a post-secondary education, pay off debts and so forth. The flexibility to determine one's own hours, wages and working environment may give the worker more opportunity to obtain a second job, or to spend time with children and family. This is especially true considering the formal economy is often of poorer quality and remuneration compared to 'prostitution', yet it can be just as sexually exploitative. 'Prostitution', for example, can often be less dangerous to perform compared to work in a dilapidated sweatshop or in poorly regulated chemical processing plants. Restricting 'prostitutes' from performing the labour of their choice, therefore, proves to be more restrictive of one's agency than sex work itself. Labelling all 'prostitutes' as victims (or potential victims), moreover, increases the chances that they will be targets of violence (Lowman 2000). Far from advocating for the protection of 'prostitutes' and the restoration of their agency, the prohibitionist position actually serves to put these workers in danger and restrict their options. Yet, it must be said that there are significant differences in women's ability to capitalize on their labour in themselves: approximation to normative beauty standards for women 'of

colour' who are considered 'exotic', age, class, morphology and race all shape differing degrees to which women can capitalize on their sexuality and gain access to privileged spaces for sex as work.

Thirdly, prohibitionists advocate for the criminalization of 'prostitution' and all of its affiliate industries, such as pornography, escort work, stripping and so forth. Using the repressive power of the law, their goal is to abolish 'prostitution' in all of its forms. As mentioned earlier, however, this perspective offers no mention of the patriarchal nature of the law itself. An analysis of the criminal legal system shows that it is geared toward the protection of property and the socio-economic systems that allow for the ownership of property (Hepburn 1977; Smart 1989). This property, moreover, is overwhelmingly owned by white males, hence why so few police resources are put toward crimes involving sexual assault or the general problems facing women (see Doolittle 2017). Prohibitionists, however, ignore this insight, and are silent on the fact that the criminal law does nothing for those 'prostitutes' who are robbed or sexually assaulted, often by police officers. Rather than protecting 'prostitutes', studies have shown that more 'prostitutes' are murdered when laws are in place to criminalize them (Lowman 2000; McClintock 1993). With knowledge that the victim cannot call the police for fear of being arrested themselves, violent men are able to target 'prostitutes' with impunity in contexts where it is criminalized. Prohibitionism, therefore, contributes to the normalization of hetero-patriarchy within capitalist-colonialist contexts through its moralistic framing of sex work and the infantilization of (white) women.

ii. Labour and work

Problems inherent in the prohibitionist perspective inspired the creation of the sex work-as-labour approach. The labour perspective builds upon the prohibitionist approach by expanding its analysis from an exclusively gendered lens to include how the regulation of sex work is situated within a broader capitalist and colonial context. In general terms, this perspective explores how sex work and labour are alike in the way that they both involve the selling of labour-power (van der Meulen 2013; Truong 1990; Agathangelou 2004; Brock 1998; Durisin 2010; Bernstein 2004; Agustín 2007). In the context of sex work, of course, this means the power to labour is the body itself, which is owned and controlled by the sex worker. Other workers, while having juridical ownership of their bodies, must sell their labour-power, in effect their bodies, to those who own the means of the production if they are to live. Capitalist labour processes, therefore, assure that workers are not only 'wage slaves', but also 'prostitutes' by the very definition established by prohibitionists. The labour perspective's ability to consider both gendered social relations and the capitalist contexts in which they operate allow it to identify sources of violence facing sex workers outside of patriarchy. Proponents of the approach, for example, contend that the state's criminal justice and immigration systems, now increasingly collaborative, do more harm to sex workers than their work ever could. Sex-work-as-labour research, therefore, challenges the moralistic arguments made by prohibitionists which assumes all sex workers are victims because it examines the individual experiences of sex workers and emphasizes their agency.

The labour approach can be said to be comprised of three basic tenets. First, proponents of the labour approach assert that sex work must be conceptualized as a regular form of labour so that the affinities between capitalist oppression and patriarchal oppression can be realized. Linking the struggle against capitalism with the struggle facing sex workers helps to abolish the stig-

ma surrounding sex work and de-emphasizes the moralism of prohibitionism. Linking these two struggles allows for two things: for sex work to be understood as productive labour, and, for parallels to be formed between the exploitation faced by sex workers and labourers in the formal economy. From this perspective, sex workers and women wage earners can become allies in the fight for better working conditions (Durisin 2010).

Second, the sex-work-as-labour approach contends that the violence present within the sex trade is not inherent to it. Violence in the trade is the result of structural factors such as the capitalist-colonialist system, the gendered and racialized relations that support it and the legal systems which suppress resistance to it (van der Meulen et al. 2014). This deeper understanding of sex work allows for a more detailed exploration of the social relations which sustain the subordinate status of sex workers within capitalist society. Sex work, for example, interferes with the white, male control of wealth (McClintock 1993). This is because unlike wage and expropriated domestic labour, where the majority of profits are reaped by men, sex workers are able to set their own wages and services and, most importantly, are able to keep all of their income. Sex work also blurs the distinction between the public (male) and private (female) sphere. By performing work that was previously done for free in the private sphere for a profit in the public sphere, sex work performed by women rejects the notion that male work is valuable and public, while female work is natural and private. By performing sex work for money, moreover, sex workers reject heteronormativity and male ownership of women's bodies. Proponents of the labour approach contend that the reason sex work is criminalized is so that workers can be punished for transgressing these bourgeois societal norms. They accordingly call for the decriminalization of sex work and its affiliate industries.

Lastly, the labour approach also examines how sex work is used as a tool by women to migrate to physically and economically securer countries, and, how these scenarios are often conflated with sex trafficking by various governments and moral entrepreneurs to serve an ulterior agenda. While the trafficking of women cannot be dismissed, sex-work-as-labour scholars argue that some governments intentionally conflate 'sex work' with 'human trafficking' in order to limit routes to legal migration via the criminalization of sex work (van der Meulen et al. 2014; Parent et al. 2014; Kempadoo 2011; Augustin 2007). Sex trafficking involves kidnapping, threats against one's life or the lives of their family, lies and other means of extreme and immediate coercion (Criminal Code R.S.C. 1985, c. C-46, s. 279.1 (1)). Sex work, on the other hand, is chosen freely without the presence of extreme and immediate coercion (van der Meulen et al. 2014). Sex workers may feel that they perform their labour under coercion as a result of the raced, gendered and classed social relations responsible for the formation of the capitalist system. Coercion, however, is experienced by any individual who is forced to sell their labour-power for a wage, though as I note above sex workers are distinct in that their power to labour is not commoditized. By conflating these two distinct groups, governments and moral entrepreneurs can bolster their claims for the criminalization of sex work and prevent migrant sex workers from immigrating to the receiving country on the grounds that their work is criminal, or that they are victims in need of rehabilitation. According to Colette Parent et al., this approach denies women the "ability to migrate", as well as the "right to economic and sexual self-determination" (Parent et al. 2014:115). Conflating sex work with sex trafficking, therefore, actually serves to bolster instances of sexual exploitation. By denying sex workers the ability to migrate or to be formally recognized as a resident, governments potentially leave these workers with no access to medical

care, labour law protections and other essential human rights. Failing to distinguish between the two simply criminalizes immigrant women and falsely universalizes the diverse experiences of women who are trafficked (van der Meulen et al. 2014; Parent et al. 2014; Kempadoo 2011; Augustin 2007).

iii. Indigenous Feminist Perspectives

While the sex-work-as-labour approach has been indispensable for conceptualizing sex work within a broader capitalist-colonialist context, some authors have questioned the ability of this approach when applied to the problems facing indigenous and women 'of colour' sex workers (see Stevenson et al. 1993; Razack 1998). Their uncertainty stems from their experiences with white mainstream feminism and its assertion that gendered exploitation is the most pervasive form of exploitation, while women 'of colour' understand it as only a single symptom of colonialism. For this reason, Patricia Monture-Angus states that "feminism as an ideology remains colonial" (Monture-Angus 1995:71). Both the coercion and the choice arguments within sex work research, for example, overlook the unique forms of oppression experienced by indigenous, immigrant and other women 'of colour' working in the sex trade (Razack 1998b). Both perspectives, moreover, ignore the role sex work plays in the ideological subordination of women 'of colour' and how this social construction has served to maintain the respectable/degenerate dichotomy that ideologically separates settlers from indigenous peoples and people 'of colour'.

Without an indigeneity-based analysis, both prohibitionists and sex-work-as-labour proponents overlook how the regulation of women's bodies is as central to white supremacy as it is to patriarchy and capitalism (Razack 1998b; Brand 1999; Davis 1981). When sex work is conceptualized as mainly a gender (read: women) problem with race and class as secondary compli-

cations, the hierarchical relations between women structured by race and class go ignored (Razack 1998b). Both perspectives, for example, fail to acknowledge the superior social position white women have over women 'of colour'. They overlook how the bourgeois subject is constructed through its juxtaposition to indigeneity and, in turn, how indigeneity is racialized and sexualized to justify state regulation. Both perspectives, in turn, leave intact the respectability/degeneracy binary responsible for dehumanizing indigenous and sex workers 'of colour' (Razack 1998b).

The absence of an indigeneity-based analysis causes some labour proponents to romanticize sex work and contend that all women should embrace a 'bad girl' persona, while prohibitionists moralize sex work and contend that women must pull themselves up into respectability[3] (Meil-Hobson 1990). Both perspectives are incapable of viewing sex workers as both independent beings capable of agency *and* as subjects constrained by racial, gendered and classed relations. Both arguments, moreover, overlook how sex work legislation has continued to play a vital role in the demarcation of respectable and degenerate spaces and bodies well into the twenty-first century (Razack 1998b).

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[3] This is not the first time indigenous-feminist and anti-colonial scholars have questioned the diametrically opposed conclusions offered by (White) feminist groups. Current feminist debates in sex work reflect the pro-choice and anti-choice debates concerning abortion in the 1970s and 1980s (Smith 2005). Like the prohibitionists in sex work literature, anti-choice advocates moralize abortion and call for its criminalization. Pro-choice advocates, on the other hand, rely on individualistic notions of 'free choice' that overlook the additional constraints faced by indigenous and women 'of colour'. This, in turn, falsely universalizes the experiences of white, middle-class women. The pro-choice perspective, for example, ignores how the reproductive rights of indigenous and women 'of colour' are relentlessly targeted by the state. In both Canada and the U.S., women 'of colour' and poor white women are targeted for sterilization and unsafe contraceptive treatments by the state (Smith 2005; Stote 2015). By focusing on women's individual right to control their reproductive capabilities, and by not having a decisive focus on the issues of race, pro-choice advocates overlook the systemic issues plaguing the reproductive rights of indigenous and women 'of colour' — including forced sterilization. On the other end of the spectrum, however, this epistemological weakness prevents the pro-choice campaign from addressing the classed and raced reasons why women feel they cannot afford to have as many children as they desire. The white-washing of sex work activism, therefore, is similar to what occurred with pro-choice campaigns decades earlier. White-washing continues to occur in nearly every social movement without a decisive focus on race and the unique issues facing indigenous and women 'of colour'.

To fill this lacuna, indigenous-feminist authors have sought to conceptualize the regulation of sex work as part of an ongoing process that strips indigenous peoples of their autonomy and control over their lands and resources (Barman 1997; Hunt 2013; Smith 2003; Davies 2015). The indigenous-feminist approach extends both the prohibitionist and labour approach by examining how the regulation of sex work stems from colonial interests such as the perpetuation of 'races' and the naturalized inferiority of women and non-heterosexual individuals. Indigenous-feminist scholars qualify the overdetermination of 'agency' by the labour approach. It, therefore, draws attention to the 'structural' determinants such as colonization and racism have involuntarily pushed indigenous women into the sex trade. This approach, moreover, specifies how the criminalization of sex work has disproportionately targeted indigenous women. This approach is very much consistent with a Marxian postulate of praxis (theory-action). Meaning that in 'objective' terms, social forces and material conditions exceed the possibility of any one individual to control the totality of their existence. Thus 'structural' conditions present individuals with choices from which they *decide*. To act consciously signifies resistance and an insistence on ontological sovereignty, whereas to let circumstances make the decision without awareness of this fact is to comply with relations of domination (Hoffman 1988; Gramsci 2000). Consistent with a Marxian explanatory model of human action and consciousness, the indigenous-feminist sex work approach adds nuance to the sex-as-work thesis. Rooted in a radical anti-colonial strategic essentialism and ontology, the indigenous-feminist sex work perspective is marked by three, often overlapping, characteristics. These qualifications are important as they contrast sharply with indigenous feminists and critical race feminists who are advocates for criminalization.

First, the proponents of this approach are indigenous peoples who often have sex work

experience or work closely with those who do (Hunt 2014, 2016; Sayers 2013; Native Youth Sexual Health Network; Indigenous Sex Sovereignty Collective; the chapter by JJ and Ivo in *Selling Sex)*. The principle assertions shared among this grouping are that persons who trade or sell sexual services are not hapless objects for rescue by armchair theorists and active moral entrepreneurs. They instead see indigenous sex workers and traders as autonomous beings and emphasize individual and collective autonomy.

Second, this approach highlights the connections between gendered violence and colonialist land appropriation. This view asserts that in the process of legitimizing white supremacy and land appropriation, settlers imposed patriarchal gender relations explicitly requiring the normalization of violence against indigenous women. Indigenous-feminist scholars assert, therefore, that state regulation of sex work cannot properly be understood without simultaneously acknowledging colonialism and the colonial state's interest in subordinating and regulating indigenous women. Activists and scholars working within this approach contend that sexual violence is frequently been used as a tool against indigenous women since the arrival of Canada's first settlers. Crucial to their assertions is that the subsequent establishment of the capitalist hetero-patriarchal regime explicitly required the systematic devalued and dehumanization of indigenous. This in turn normalized sexual violence towards indigenous women and made sex work more dangerous for them. The sex work performed by indigenous women cannot be properly understood if its connection to colonialism is overlooked. According to these authors, the regulation of sexuality must be understood as a form of ideological control by the capitalist-colonialist state designed to reproduce the subordinate position of all women, taking the specificity of their racial group histories into context.

Lastly, the indigenous-feminist approach emphasizes the connection between sex work and struggles for indigenous sovereignty. 'Sovereignty', in this context, refers to much more than simply having power and authority over one's own actions. According to activist-scholars such as Sarah Hunt, 'indigenous sovereignty' also includes sovereignty over the education and care of children; the autonomy to uphold and preserve the well-being, safety and sacredness of indigenous people's bodies; as well as the freedom to practice and celebrate indigenous ways of living (Hunt 2016; see Kaye 2017). Indigenous self-determination, therefore, is inclusive of both bodily autonomy and sovereignty to be on the land. This is because, according to Hunt, "it is through embodied land-based practices that [indigenous] define ourselves as peoples" (as quoted in Kaye 2017:ix). From this perspective, anti-sex work legislation constitutes a form of colonial control designed to strip indigenous women of their socio-political power and to legitimate the ongoing theft of land. This way, the state can legitimate the disproportionate police surveillance, use of force and incarceration of indigenous peoples with the goal of eliminating resistance to the abrogation of autonomy and appropriation of land. For all its claims of defending indigenous women, anti-sex work research articulates norms consistent with the myriad of ways that the colonialist legal apparatus upholds gendered violence against indigenous women.

The decriminalization propositions of indigenous-feminist sex trade and work scholars stands in stark contrast to other indigenous and anti-colonial authors who call for the criminalization and hopeful abolition of sex work (AWAN, 'About Us', n.d.; Razack 1998b). The Aboriginal Women's Action Network, for example, contends that "prostitution is inherently violent" and must be eliminated altogether (AWAN, 'About Us'; n.d.). They argue that sex work researchers commonly ignore the raced and classed factors that result in a disproportionate amount of vio-

lence against indigenous women. AWAN's statements are supported by scholars like Sherene Razack (1998b), who state that sex workers are only capable of accommodating colonialism, not combatting it. Even though the financial benefits of sex work can create better opportunities and offer financial stability, prohibitionists argue that sex workers are still contributing to the same stereotypes that facilitate their oppression. Understanding the criminalization of sex work as simply a moral standpoint (as do prohibitionists), overlooks how sex work laws emerged for the purpose of demarcating between respectable, middle-class European folk and Canada's original inhabitants. In short, these laws emerged to benefit the colonial project.

Indigenous-feminist scholars such as Sarah Hunt (Kwakwaka'wakw nation) and Naomi Sayers (Anishinabek nation), in contrast, believe that the regulation sex work of sex work is intimately related to the reproduction of heteropatriarchical social relations necessary for colonial rule. As such, sex work can constitute as form of resistance to such rule. It reaffirms the bodily autonomy of indigenous men, women, and Two-Spirited individuals whose autonomy, identity and culture have been erased by the imposition of the gendered binary arising from colonization. Unlike prohibitionists, indigenous-feminist scholars like Hunt (2014, 2016) and Sayers (2014) assert that indigenous sex workers are capable of combatting colonialism since sex work itself is a rejection of the hegemonic labour relations ideologically subordinating both indigenous women and sex workers. They advocate for the decriminalization of sex work and the recognition of the rights of sex workers. Unlike other sex-work-as-labour proponents, however, these authors recognize that sexual violence is normalized towards indigenous women, and, that this abuse represents a routine part of the colonial process. Hunt (2014) and Sayers (2014) are unique in their suggestion that because both indigenous women and sex workers have their sexuality regulated

by the state, the struggle for the recognition of both group's human rights are bound together. These scholars reveal that the ideological racialization, sexualization and therefore degradation of indigenous women would be ineffectual were it was not backed by some form of material power, such as the state's monopoly on violence. In Canada, the sexualization of indigenous women would not have occurred without colonialism and the repressive legal apparatus that sustains it. The dissemination of anti-sex work legislation, moreover, would not have occurred without the desire of elite and subordinate Anglo-French settlers to protect their disproportionate amount of wealth through the preservation of the prevailing relations of production.

iv. Situating the Current Study: Transcending the Choice vs. Coercion Debate

The current study joins a small body of work that seeks to reconcile the fact that indigenous people face an additional barrier of colonial violence while practising sex work in Canada. Or, in other words, this study acknowledges that indigenous peoples are still capable of exercising agency in ways that can combat capitalist-colonialist-racist and hetero-patriarchal relations (Hunt 2013; Sayers 2016). By making this distinction, generalizations about the agency exercised by any particular sex worker can be avoided. The connections between legislation that criminalizes sex work and the perpetuation of colonial rule through the management of both colonized and settler labour can then be adequately theorized. This study critically relies on the insights of indigenous-feminist scholars who regard the selling of sexual services as a form of labour, in spite of the structural coerciveness of racism and patriarchy. The work of these activists and scholars acknowledges that sex workers are capable of combatting colonialism since their work can command a shift in the prevailing relations of production. Sex work can also be understood as having the capacity disrupt the social relations upon which colonialism depends.

Thus, for example, sex work interferes with the white, male control of wealth and ownership of women's bodies; it can thus blur the distinction between the public (male) sphere and the private (female) sphere. Since sex workers represent the most pristine case of persons owning their bodies as both property and as the means of production, their existence undermines the capitalistic logic which legitimizes the appropriation of citizen's bodies as well as the privatization of the means of production. In short, indigenous-feminist activist/scholars who regard sex as work imagine it as a site for the possibility of resistance that is, in part, consistent with the sovereignty of land and lives of indigenous peoples.

By acknowledging that sex work occurs in a variety of highly racialized, gendered and classed contexts, this study seeks to transcend the 'choice' versus 'coercion' debate set out by sex-work-as-labour and prohibitionist researchers. For indigenous women in Canada, for example, sex work can be both a choice and the result of coercion. Agency, therefore, must be understood as a complex interplay between one's position within a set of particular socio-economic relations, particular geographical and historical location, as well as the particular capitalist-colonialist, racial and hetero-patriarchal political project that one is subjected to. Debates which understand sex work to be either 'coerced' or 'chosen' consider gendered and classed factors at most, and completely overlooks how sex work can be both a site of struggle and emancipation and, therefore, overlooks the experiences of indigenous and women 'of colour' entirely. These debates, moreover, do nothing to disrupt the socially constructed binaries that label indigenous women and sex workers as degenerate and other women as respectable.

Lastly, this study also acknowledges that unlike settlers, indigenous women have historically had their sexuality regulated through a variety of legal and legislative instruments specific

to them *because* they are indigenous. This means that sex work scholarship must interrogate the suite of laws that target indigenous women, such as laws associated with the 'War on Drugs' and child welfare (Sayers 2014). Sex work activism must look for solutions beyond decriminalization, since decriminalization alone will do nothing to address the systematic 'Othering' of indigenous people, and especially indigenous women (Bruckert and Hannem 2013; Hunt 2013; Sayers 2016). Decriminalization, moreover, does not protect indigenous sex workers from violent, racist attacks in which it seems, for reasons yet to be fully elaborated, white men are uniquely preponderant if not having a sole monopoly.

Chapter Three: Theoretical Foundations

This study draws upon the insights of a variety of perspectives in the tradition of conflict social theory: Marxist feminism, critical race theory and critical race feminism, indigenous-feminism and Gramsci's theory of hegemony. Conflict social theory represents a group of theories that grew out of opposition to functionalist and positivist theory; and can be specified as any theory that examines unequal or dominative social relationships which express themselves in regimes of authority and obedience such as 'systems' and 'structures' (see Sears and Cairns 2010). This includes feminist theories, post-modern theories, post-colonial theories, queer theories, and so forth. While this study draws on a diverse range of theories, which in some instances are incommensurate, all are united by their connection to conflict social theory.

This section provides an overview of each theory and specifies how each is used to examine how anti-sex work legislation upholds the capitalist-colonialist, racist and hetero-patriarchal project. Marxist-feminism, for example, will be used to highlight how the oppression of indigenous women has a material basis linked to prevailing socio-economic conditions. Critical race feminism builds upon this idea by acknowledging the colonialist nature of this socio-economic system and its ongoing consequences for indigenous people's control over their land and bodies. Critical race feminism, moreover, illustrates the interconnected yet autonomous nature of racial oppression of people 'of colour' under colonialism. Indigenous-feminist scholars, for example, connect the systematic abuse suffered by indigenous women to the colonization of land. Lastly, Gramsci's theory of hegemony is used to propose a conceptual lens that ties the theoretical foundations of this study together. The theory is used to explain how capitalist-colonialist relations of production are legitimated through criminal laws such as anti-sex work legislation. Hegemony

demonstrates how the criminal law is used to protect the interests of white elites while claiming to protect the rights and interests of all people equally. The theory is used to explain how ideologies such as 'liberalism' and 'possessive individualism' have created a distribution of property and wealth based on race, which in turn denies sex workers autonomy under the current capitalist-colonialist system.

i. Marxist-Feminism

Marxist-feminism can be defined, in short, as a branch of thought focused on how capitalism oppresses women. Marxist-feminism emphasizes how women's subordinate position results from patriarchal social relations inherent to the capitalist system. These social relations cause women to be restricted to the private sphere, where their labour is systematically appropriated and devalued in order to increase profits for (white, male) capitalists.

The Marxist approach is rejected by radical feminists who assert that Marxism narrowly conceptualizes women's oppression through an economic lens and contributes no theoretical insight into the origins of women's oppression. While it may be true that some forms of Marxism focus on the structural causes of women's oppression, it is analytically incorrect to state that Marxism is incapable of addressing women's oppression as a totality. In fact, Marxist-feminists have discovered that the totality of women's oppression cannot be adequately conceptualized without first considering the multiplicity of ways patriarchal relations are articulated and amplified through the capitalist system. Feminists working within the political economy tradition, for example, have advanced our understanding of women's oppression through an examination of domestic labour. By demonstrating how the gendered division of labour is required for the reproduction of the capitalist system, these authors have shown how women's oppression is rooted in

material conditions (see Seccombe 1980; Brown 1992; Bezanson and Luxton 2006; Bezanson 2006; Bakker 2007; Shirin et al. 2014). These authors also demonstrate that it is possible to theorize a coherent and integrated Marxist-feminist perspective that analyzes the oppression women face in capitalist society. Theorists such as Pat Armstrong and Hugh Armstrong (1983), Michele Barrett (1985) and Patricia Connelly (1983) have consequently argued that women's oppression must be analyzed from two different levels — the abstract level and the historically-specific level — both of which are grounded in the base/superstructure analysis: a fact recognizing ideological and material forces.

These Marxist-feminist authors, therefore, move beyond instrumental Marxism by acknowledging that women's oppression cannot be reduced to the workings of economic systems alone. In this, they are more Marxist than either their critics or instrumental Marxists, since Marx and Engels never isolated economics from metaphysics (Cutler et al. 1977). Indeed, unlike instrumental Marxists, academics using a Marxist-feminist approach understand that sexist ideology occurred, in the first instance, along with the elaboration of privatized productive relations. Marx clearly specified that social relations of production will always be consistent with a given mode of production, be it 'primitive' or 'advanced' capitalism. The point is to emphasize that theory and practice, which constitute 'praxis' as Antonio Gramsci called it, rejects the false dichotomy between ideas and the material world (Mepham 1979; Smith 2009). To this end, this study borrows from the ideas of Marxist-feminists to argue that women's oppression has a material basis linked to ideology that coheres in the prevailing socio-economic relations of production.

Critical race feminism

Early scholars working in the mainstream Marxist-feminist tradition, however, have been

rightfully critiqued for depicting the struggle of middle-class white women as universal. Critics such as Angela Davis (1981), Kimberle Crenshaw (1989) and Jean Belkhir (1994) argue that mainstream Marxist-feminists fail to consider how the experiences of women 'of colour' and poor white women vary greatly from those of middle-class white women. Marxist-feminists also overlook other groups who experience heightened forms of oppression, such as that of LQBTQ2S+, immigrants and refugees, the targets of islamophobia and so forth. Mainstream Marxist-feminists, for example, have traditionally argued that the primary source of women's oppression is the nuclear family. Critical race feminists such as bell hooks (1982), however, point out that the nuclear family is a bourgeois construct far removed from the experiences and historical realities of indigenous and women 'of colour' (also see Davis 1981; Collins 1991; Das Gupta 1995). Black women, for example, from slavery to the present, have always been participants in the labour market and are not generally afforded the privilege of staying home to perform domestic work, in part due to exclusions and subordinate economic position of Black men. By ignoring the vast differences between women based on race, the mainstream Marxist-feminist approach has inadvertently universalized the experiences of privileged middle-class white women. This study, therefore, resists this false universalism by using insights from critical race feminism to highlight how the classed nature of gender relates to race.

Critical race feminism (hereafter CRF) is defined as a "body of writing that attempts to integrate the way race and gender function together in structuring inequality" (Dua 1999:9). According to Anh Hua (2003), CRF emerged as a result of the historical exclusion of Black theorists from the (white) feminist movement. 'Intersectionality' as elaborated by Kimberle Crenshaw (1989) and other Black feminist scholars, is a specific instance of efforts to place Black and

other women of colour at the centre of feminist theory. CRF, therefore, has since provided the basis for an integrative analysis of race, class, gender and sexuality because it understands the oppression specific to these social categories/identities as both autonomous and interrelated (see Mirza 2015; Collins 2000; Verjee 2012). CRF has since been extended to include an elaboration of colonialism and indigeneity. Colonization is understood as a continuing project sustained by 'interlocking' systems of oppression (Razack, Smith & Thobani 2010). This allows CRF to forward a distinctive epistemology capable of acknowledging the heterogeneity within oppressed groups. CRF, moreover, acknowledges that in order for the negatively racialized to be subordinated, they must be juxtaposed to so-called white civility. Whiteness is consequently revealed as a discourse, practice, site of privilege and way of being designed to perpetuate colonial and white supremacist rule: Joe Feagin has called this constellation a 'white frame' (Feagin 2009; Deliovsky 2010).

This study, however, follows the work of a particular group of critical race feminists who argue that race, gender and class do not always equally articulate themselves in women's oppression of women (Bannerji 1995; Coulthard 2014; Dua 1999; Hall 1980; McClintock 1995; Razack 1998a, Razack 1998b;): race, can at times be the salient mode by which women's oppression is articulated. This is because according to these authors, race can be the primary locus through which patriarchal, racist and classist relations are articulated (Coulthard 2014). By this mode of analysis, these scholars do not mean that race, colonialism or imperialism should be understood as the 'base' or 'root' from which other forms of oppression originate. To use such language would naturalize racism by insinuating that it is an essential aspect of the human condition. As this thesis demonstrates, negatively raced and gendered categories emerged as a result of racism

and continue to be used to justify the plundering of lands and the mistreatment of people. Thus, racism must be understood not as an epiphenomenon but as one of the foundational factors upon which colonialism, sexism and classism rest. Conceptualizing race as the primary locus of other forms of oppression prevents issues concerning white settlers from being falsely universalized and issues facing people 'of colour' from being ignored (Ware 2015).

It must be noted, however, that by conceptualizing race and colonialism as the primary contradiction by which other oppressions converge, this study is *not* stating that race should be conceptualized as the most important, the most exploitative, or the oldest[4] type of oppression (Mills 1997). As Charles Mills (1997) eloquently explains, all oppressions are both important and exploitative. Race is understood as the primary contradiction because it is the primary reference point from which to infer the material resources an individual has access to. In the words of Mills, race provides the most "stable reference point for identifying the 'them' and 'us' which override all other 'thems' and 'us's' " (Mills 1997:157). Race is considered the most central part of one's identity. Gender, on the other hand, is not considered the most central part of a person's identity, nor is it a stable predictor of oppression. White women, for example, gain power by virtue of their whiteness and through their relationships with white men (e.g. father, partner) (Curry, 2017). This is why white women often decide that defending their privileges as a white person is more worth defending than their rights as a woman, as what was demonstrated in the 2016 election of Donald Trump (Kitossa, 2016a; see Kitossa, 2002)[5].

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[4] The oldest form of oppression is gendered oppression (Mills 1997) and ageism. These oppressions emerged under the privatization of property and with the emergence of patriarchy.

[5] Exit polls show that 53 percent of white women voted for Donald Trump, in contrast to a mere 4 percent of Black women (Tyson and Maniam 2016)

In the case of sex work, insights from both Marxist-feminism and CRF are used to highlight how the legislation criminalizing this act is linked to the prevailing capitalist-colonialist system. When combined, these perspectives are useful for a number of reasons. First, this linked approach is capable of conceptualizing the affinities (and gendered and racial differences) between sex work and other forms of labour. Sex workers, like all wage earners, are exploited by the capitalist system, despite owning the means of production – their bodies. This is why Karl Marx himself contends that "prostitution is only a specific expression of the general prostitution of the labourer" (as quoted in Pateman 2014:201). Second, this combination of perspectives provides a critical analysis of unpaid domestic labour that is useful for understanding why sex work is so devalued in society: it highlights how sex work, like other forms of labour that have been racialized and feminized, are systematically devalued by the capitalist-colonialist system. For example, it was not until 1985 that Canada's criminal law recognized spousal rape as a possibility (Comack 1999): until then, women's marital 'duties' included performing sex with their spouses upon demand, suggesting the not too far-fetched proposition that marriage was legalized prostitution. Lastly, and more generally, this perspective's critique of women's unpaid labour provides a useful lens from which to conceptualize sex work as work.

From this perspective, sex work is stigmatized and its renumeration is devalued because it puts a price on something that is traditionally seen as a property belonging to men — a woman's sexuality, if not body. This is especially true for indigenous women, whose bodies are equated with land and are thought to be endlessly exploitable (Anderson 2000; McClintock 1995). Together, therefore, the principles of Marxist feminism and CRF are used to highlight the ongoing nature of colonialism and its consequences for a) indigenous people's control over their

land and bodies; and b) to illustrate the interconnected nature of racial oppression of people 'of colour' under the capitalist-colonialist system, particularly in the case of indigenous women.

Indigenous-feminist concepts

In order to shed light on the particular forms of oppression experienced by indigenous women in Canada, this study relies on the insights of indigenous-feminist scholars. Scholars such as Andrea Smith (2003; 2005; 2014), Kim Anderson (2000), Alex Wilson and Lee Maracle connect the systematic abuse suffered by indigenous women to the colonial project that continues to unfold in Canada. By theorizing the correspondence between gendered violence and colonization, these authors emphasize the subordination of indigenous women as a necessary condition in the colonizing process. This section first provides an overview of the main arguments undergirding the work of Andrea Smith (2005), Kim Anderson (2000), Alex Wilson (2015) and Sarah Hunt (2016). The section then moves to a brief explanation of how their insights connect the harms posed by Canadian anti-sex work legislation to the unfolding colonialist project.

Indigenous-feminist scholars have long theorized the connection between the colonial drive to appropriate and control land and the gendered violence disproportionately affecting indigenous women (Smith 2005; Anderson 2000). Or, in other words, these scholars contend that the capitalist-colonialist system's disregard for the environment, women and indigenous people are all rooted within the same materialist and ideological imperatives of capitalism, hegemonic masculinity and patriarchy. These imperatives antedated colonialism, indeed reaching as far back in history as the emergence of what Lewis Mumford calls the 'megamachine' technification of society 5,000 years ago in Egypt and Mesopotamia (1967), to Aristotle, to the more recent European Enlightenment and its predecessors. Carolyn Merchant, in her classic text *The Death of*

Nature (1990), cites Sir Francis Bacon's infamous dictum that 'nature is a woman whose secrets must be pried from her' as evidence for a moral geography articulated by an acquisitive, technocratic and patriarchal philosophy:

> [nature] is either free...or driven out of her ordinary course by the perverseness, insolence and forwardness of matter and violence of impediments...or she is put in constraint, moulded and made as it were new by art and the hand of man; as in things artificial...nature takes orders from man and works under his authority (Bacon, as cited in Merchant 1990:282).

This logic manifested in an equation linking the bodies of indigenous women to the land (Anderson 2000; McClintock 1995). Since the onset of colonization in Canada, settlers have ideologically feminized the land as a way of reinscribing the pillaging of its resources as natural. According to this narrative, 'virgin land' is an empty space awaiting the agency of a man (McClintock 1995). Similar to how land is conceived by settlers, the bodies of indigenous women are also understood as *terra nullius,* or free for the taking: assuming the principle of white competitive masculinity that indigenous men are not man enough (see Fanon 1982; Hoch 1979). Because indigenous people and societies are believed to be inferior, settler control over their bodies and lands is justified.

The connections between the exploitation of indigenous women and the exploitation of land becomes clear when environmental abuses are examined in detail. Andrea Smith (2003), for example, points out that it is no coincidence that the majority of toxic waste dumps are located on or next to reserve lands. While statistics do not currently exist for Canada, it is estimated that all uranium production occurs either on or near indigenous reserves in the United States (La Duke 1993, as cited in Smith 2003). In the U.S., moreover, nuclear testing for military purposes

occurs almost exclusively on reserves (Smith 2003). The results have been a significantly heightened risk of lung and cervical cancers amongst indigenous people (Elias et al. 2011). This is true even in Canada, where indigenous communities initially had lower rates of cancer than their settler counterparts (Moore at el. 2015). The environmental racism experienced by indigenous communities in Canada also extends to the contamination of clean drinking water. Although clean water is taken for granted by the settler population in Canada, the majority of indigenous communities in Canada consider it a luxury. According to a CBC investigative report made in 2015, two thirds of indigenous communities have been affected by a boil water advisory at least once in the last decade (Levasseur and Marcoux 2015).

Another potent example of the connection between the abuse of indigenous women's bodies and the abuse of the environment is the mass sterilization of indigenous women in Canada[6] beginning in the 1970s (Stote 2015). From the years 1971 to 1974, for example, 580 sterilization procedures had been forced onto indigenous women across Canada (Stote 2015). This statistic does not take into account unreported sterilizations, the sterilizations that occurred within Residential Schools, mental hospitals or the criminal legal system (Stote 2015). Previous to this,

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[6] A similar process has occurred elsewhere in North America. In the United States, the sterilization of indigenous women became federally funded in 1970 (Smith 2005). This eugenics program was designed to purify — or in other words, make white — the imaginary racial gene pool. Indigenous women were denied the option to refuse sterilization and were often threatened with the termination of social assistance benefits if they did not comply (Smith 2005). The program successfully lowered the average birth rate of indigenous women from 3.8 in 1970 to 1.8 in 1980 (Lawrence 2000). The program's success, however, is partly attributed to the passing of the Hyde Amendment in 1976 (Smith 2005). This legislation eliminated funding for abortion services for indigenous women except in a few extreme circumstances. Restricting indigenous women's access to abortion consequently removed any remaining control these women may have had over their reproductive capabilities. The resulting lack of reproductive control forced more indigenous women to pursue sterilization. From these examples, therefore, it is clear that in settler colonial contexts such as Canada, indigenous peoples' bodies are seen as obstacles rather than as part of the pool of surplus labour necessary for the reproduction of capitalism. The sterilization of indigenous women demonstrates that settler colonial governments are primarily concerned with the segregation and eventual elimination of indigenous peoples.

thousands of individuals had already been forcibly sterilized in Alberta and British Colombia under the S*exual Sterilization Act* (Boyer 2006; Campbell 1995). The purpose of this legislation was to 'improve the race' by limiting reproduction to those who were deemed fit, and sterilizing those who were deemed 'feeble-minded' (McLaren 1990). Because rationality is a characteristic of whiteness, it meant that this legislation targeted indigenous peoples and people 'of colour' who are perceived to not measure up to white standards. The sterilization of indigenous women has been reported to continue to this day in Canada (Quesnel 2016).

More recent indigenous-feminist scholarship has extended the theorization of colonialism and violence against indigenous women to include an emphasis of indigenous sovereignty and its connection to the violence of the colonial law (Hunt, personal communication, 2017). This area of work examines how colonialism has systematically denied indigenous people the right to self-determination, including but not limited to the right to body sovereignty; sovereignty over cultural practices; the sovereignty over the care and education of children; and the freedom to regenerate relationships with the land, animals and other indigenous peoples without repression (Wilson 2015; Hunt 2016). These authors interrogate heteropatriarchal colonial social relations and their use as tools to govern indigenous peoples at both collective and individual sites of ontology.

Alex Wilson of the Opaskwayak Cree Nation, for example, has written extensively on the connection between the colonial law and the autonomy of Two-Spirited peoples (Wilson 2015, 2009, 2000). According to Wilson, Cree practices and teachings celebrates variances in sexuality and gender. It is noted that the Cree dialect does not include gender-specific pronouns (Wilson 2015). The celebration of diversity in gender and sexuality, however, was (and continues to be)

seen as threatening by European colonists. Two-Spirit identity, defined as the capacity "to possess some balance of masculinity and femininity or male and female energy", has especially been targeted and penalized. In colonial culture, two-Spirit individuals are subjected to transphobia, homophobia and misogyny and are victims of both individual-level and structural racism and classism. As a result, though the numbers are probably higher, it is estimated that "39% of Two-Spirit women and 21% of Two-Spirit men have attempted suicide" (Fieland, Walters & Simoni 2007). Although Two-Spirit individuals are subjected to increased levels of misogyny, homophobia, racism and classism, Wilson points out that Two-Spirit identity is nonetheless an act of resistance against colonial rule. Two-Spirit identity is a direct rejection of the heteropatriarchical relations introduced by colonizers: it rejects gendered binaries, hierarchies based on gender and sexuality, amongst other misogynist social relations introduced in an attempt to strip indigenous peoples of their right to self-determination (Wilson 2015; Simpson, Nanibush & Williams 2012). Wilson's work thus highlights that colonialism does not just facilitate the theft of land and gendered violence, it also facilitates the systematic oppression of indigenous "culture, spirituality and ways of being" that are in direct contrast to heteropatriarchical rule.

As noted above, indigenous-feminist authors demonstrate that colonization is intimately linked with the exploitation of land and resources, gendered violence against indigenous women and the repression of indigenous autonomy and sovereignty. This process of environmental and racial degradation, however, cannot be adequately understood without an examination of the ideological process by which colonial States such as Canada become dominant. The next section explores Gramsci's theory of hegemony in pursuit of an explanation.

ii. Gramsci's Theory of Hegemony

The theory of hegemony is a refinement of the base/superstructure model brought about by Karl Marx (Jabubowski 1990). According to this model, the 'base' represents both the means of production (e.g. factories, tools, raw materials) and the relations of production (e.g. dominative social structures that influence relationships between humans); the 'superstructure', on the other hand, represents ideology and culture (Jabubowski 1990). Marx believed that social development would bring about changes in the base that eventually would lead to changes in the superstructure (Raymond 1973). This theory, however, fails to explain why centuries later, the Western working class has still failed to overthrow capitalism in spite of all the presumably necessary conditions for revolution being present (Karabel 1976). Because Marx's analyses focused on the base, in part because the rudimentary development in energy, mass communications and transportation, and because bureaucracy, both within capitalist enterprise and the state were not as fully developed during Marx's writings, a refined observation on the superstructure is limited (Raymond 1973). In order to provide a more complete picture of the relationship between ideology and materiality, Antonio Gramsci began to espouse the theory of hegemony in a series of notebooks he had written during his imprisonment from 1929 to 1935 (Gramsci 2000).

Whereas Marx's base/superstructure model predicts that change in the base would translate into a specified change in superstructure toward socialism, the theory of hegemony states that material events can only shape the possibility of certain ideologies developing. The conditions for revolution under capitalism, for example, might produce fascism rather than socialism; whereas, due to an 'underdeveloped' economy and hence, a rudimentary state structure, ideological domination by colonizers in the Third World gave way to revolutions, precisely where they were not to occur (Gouldner 1974). Gramsci hypothesizes that material domination, such as that

in Western Europe, could not occur without the presence of a fully developed ideology/'super-structure'. Domination can only be made possible through the manipulation of its culture, beliefs and values so that oppressed classes become persuaded that the logic of the capitalist system is indeed legitimate. The monopoly on physical force by the state is not enough to ensure control over its subjects. By imposing a universally dominant worldview that is accepted as the norm, and through the use of a highly developed bourgeois media and state ideological apparatus (e.g., schools), the subordinate class was conditioned into accepting inequalities as natural and/or inevitable, instead of as social conditions designed to reaffirm their subordination. For those who remain to oppose – 'social dynamite' as opposed to the 'social junk' as Steven Spitzer (1975) labeled these groups – slander, slurs, counter-intelligence programs, detention and assassination are used to undercut advocates of alternative possibilities (Churchill and Vander Wall 2002).

Hegemonic dominance, therefore, is the end result of a process whereby 'rational laws' are made equivalent to 'natural laws' (Gramsci 2000:206). By naturalizing social inequalities, the ruling class is able to persuade subordinate classes that it is acting within their interests and that their rule should be consented to. Consent must continuously be balanced with physical force, with the latter never exceeding the former. The reason being that in instances where the state relies primarily on physical force to rule, as in direct colonialism such as throughout the 20th century in the Third World, its actions no longer appear as if they are done in the interests of all (Karabel 1976). Instead of being understood as something secondary to the base, therefore, Gramsci extends Marx's theory by adding that the superstructure must be understood as a tool of domination in its own right: ideas, in short, are constituted as a material force.

Various hegemonic ideologies often come together to form a particular (and often contradictory) worldview that is uncritically accepted, and made to appear natural and unsurmountable. This is what Gramsci referred to as 'common sense'. An example of a contemporary hegemonic ideology is the notion that hard work brings reward and, therefore, all wealthy individuals are hard workers. When combined with other similar hegemonic ideologies, such as liberalism and possessive individualism, a 'common sense' worldview is formed whereby inequalities are obscured. In reality, however, the prevailing division of labour means that hard work does not necessarily translate into higher rewards as demonstrated by various authors and government reports detailing the decline in wages coupled with longer work days since the 1970s (Smith and Taylor 1996). This worldview is perpetuated by the logic of the capitalist system in order to accomplish two things. First, it provides an incentive to work so that elites can harness and exploit the productive power of the working classes. By having workers consent to their rule under the false premise of a reward commensurate with their efforts, elites reduce the costs and risks associated with managing populations with physical violence – not least because citizens can be extorted through the taxes-as-tribute to subsidize the repressive and military apparatus on grounds it protects them from internal (e.g., crime, illegal immigrants and 'terrorists') and external enemies (e.g., 'Axis of Evil') (Tilly 1985). Second, this ideology asserts that the oppressed only have themselves to blame for their inferior social positioning: it individualizes relational inequalities and deflects attention away from the dysfunctional nature of the capitalist-colonialist pattern of social relations.

Both Gramsci's theory of hegemony and the Marxist-feminist approach, therefore, move beyond the instrumental Marxist perspective by acknowledging the important role ideology plays

in the capitalist-colonialist system. The approach used in this study accordingly seeks to bridge the division that is purported to exist between Marxism and feminism, and Marxism and critical race studies. This divide is said to have occurred with the emergence of Foucault and the resulting shift towards a focus on discourse (Barrett 1980; Kreps 2015). Growing discontent with Marxism's focus on 'structural' power and its subsequent inability to explain the complexities of sexism and racism led scholars to apply Foucault's concepts of discourse and power to map their expression in what Foucault termed a 'genealogy of the present'. This shift suggests that material relations are no longer relevant and that, subsequently, Gramsci's theory of hegemony is no longer useful.

I reject this notion and suggest instead that Foucault's work may be seen to complement rather than contradict Gramsci. The shift to Foucault can be seen to contribute a more nuanced epistemological approach (rather than in political practice) to analyze culture and social relations of production. Foucault's concepts 'micro-politics' and 'bio-power', for example, focus on how power is deployed onto the individual body of the citizen-as-subject. Curiously, Foucault contradicted himself by assuming that (legitimated) power is the same everywhere and available to all, even if the scale of its articulation is distilled to that of personal social interaction. Foucault's concepts demonstrate that power is not uni-directional and that, at a specified level of analysis, it is capable of influencing individual perceptions and practices through surveillance and intensive disciplining. Taken into the domain of political practices that would resist corporate and state power, Foucault's perspective is not an especially useful strategy for resisting oppressive sys-

tems: it, for one, is incapable of conceptualizing the nuances of gendered and raced oppression[7]. Indeed, to the extent that Foucault assumes the state no longer takes life in rituals of degradation, torture and outright murder, he obviates both the possibility of the racial state and the ways that racial capitalism thrives on the distribution of authority to kill as a property right and wage of whiteness (see Mbembe 2003). Gramsci, on the other hand, uses a wider framework to examine how the manipulation of beliefs, habits and culture can have a hegemonic influence on everyday social interactions (Hall 1986). Taking these theoretical approaches in mind, this study provides a historical analysis of sex work laws rooted in a convergence of Foucauldian concepts such as micro-politics and Gramsci's concrete, materialist political theory of hegemony, both of which are extended by conceptions in critical race theory (broadly conceived).

Because hegemony is rooted in materialism in the sense that ideas are recognized as material forces, special attention must be paid to the context of this constantly developing ideological battle as it expresses itself in colonialism and racism. To this end, a distinction must be made between direct colonialism and settler colonialism if Gramsci's concept of hegemony and Foucault's concepts of micro-politics and bio-power are to be applied to the minutiae of social control in the capitalist-colonialist-racial settler state. With direct colonialism, activities such as administrative oversight, satraps and compradors along with military occupation are directed at controlling indigenous populations so that colonized space can be transformed into capitalist-colonialist space (Crosby and Monaghan 2012). This form of colonialism operates by transforming indigenous populations into governable subjects and, by extension, into a source of ex-

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[7] Foucault's inability to consider the dialecticalism of gendered and sexual racism, can, in part, be traced to his refusal to credit the Black Panthers for providing the theoretical groundwork for his notion of bio-power, his arguments on the prison system, as well as his overall conception of power (Heiner 2007; Austin 2012).

ploitable labour to work expropriated lands and for extracting staples (e.g., minerals) and luxury commodities (e.g., cocoa).

In settler colonial contexts like Canada, however, colonizers were more interested in the value of staples/resources (and later on, land) than they were interested in controlling and harnessing indigenous labour (Stannard 1992; Wolfe 1999). Such a political economy results on a different colonial configuration. Settler colonial states primarily deploy tactics of population management relevant to dispossessing indigenous peoples of their land or to erase them through cultural genocide and outright murder (Stannard 1992). Settler governmentality in Canada, for example, aims to dispossess indigenous peoples of their lands by containing them in reserves and subjecting them to genocidal regimes of 'assimilation' or annihilation by benign neglect. At the micro-political level, police and prisons serve as a means to control emergent resistance. This explains the extraordinary rates of incarceration for indigenous people in the prairies (Gordon 2006) and the high police-to-civilian ratio in the prairie provinces and Northern Territories (Caputo et al. 1989).

Thus while hegemony impacts all negatively racialized groups, this study highlights how indigenous communities experience hegemony differently in the context of settler colonialism as they would in the context of direct colonialism. Indigenous communities, moreover, experience hegemony differently compared to white communities and communities 'of colour'. This is because indigenous people are not essential to settler colonial labour exploitation in the same way as settlers and immigrants; they are viewed, rather, as an obstacle to capitalist-colonial control over land and expropriation of resources. Idle No More and the Standing Rock Water Protectors are but two examples. Hegemonic dominance and racial micro-politics, therefore, invites the use

of physical force and repression against the indigenous peoples in ways that would invalidate capitalist hetero-patriarchy if it were used against white and labourers 'of colour',[8] save for strike control. This force is legitimated by legal doctrines that emerge during times of instability within capitalist, colonialist and imperialist regimes (see Anghie 2005), including anti-sex work legislation. This study accordingly uses the theory of hegemony to illuminate how and why the Canadian settler state governs sex work the way it does. In doing so, it demonstrates that the law is a tool used to reinforce the hegemonic nature of 'race' and the gendered binary, which in turn preserves the hegemonically dominant position of the state (Strange and Loo 1997; Barman 1997; Carter 1997). Anti-sex work legislation is a potent example of such a tool.

ii. Liberalism, possessive individualism and white middle-class personhood

To this point, I have sought to sketch a theoretical framework appropriate to my contention that moral regulation, as specified by anti-sex work legislation and their enforcement, has deeper meaning and relevance for both indigenous peoples and labour in Canada. What I propose to do now is to bring the foregoing theoretical perspectives into a conversation that continues the task of theoretical elaboration, but by specifying the lived articulation of a normative fiction that justifies and sustains capitalism, colonialism, heteropatriarchy and racism: the theory of possessive individualism.

Over time, ideologies dialectical to gender and race emerged to legitimate and preserve the hegemonic status of capitalist and colonial rule. Liberalism and possessive individualism, for example, emerged as a way to mediate the systematic contradictions inherent to the raced and gendered hierarchy of post-feudal stratified societies. These ideologies accomplish this by trans-

[8] The prevalence of extra-judicial killings of African descended peoples in Canada and the U.S. qualifies this statement.

ferring responsibility for social inequalities from the logic of capitalism to the individual, deflecting attention away from the material benefits the elites and the state gain from maintaining inequitable social relations. This section provides an overview of these concepts and demonstrates their relationship to the construction of white middle-class personhood: a fact central to the myths of juridical equality, naturalized private ownership of the productive means, individuality and masculinity. Drawing on Charles Mills (2003), I argue that white middle-class personhood (WMCP) is necessary for the reproduction of the Canadian capitalist and colonialist project. WMCP ideologically justifies the superiority of the white settler colonialist over indigenous people, people 'of colour' and immigrants, no matter how contentious and problematically these latter groups are incorporated into the white supremacist-colonialist state (see Amadahy and Lawrence 2010; Madden 2010). I, therefore, draw out the white racialized characteristics of individualism to theorize how the state regulation of sex work serves to reaffirm white middle-class personhood, and, capitalist and state hegemony more generally.

Liberalism is an ideology dating back to the political conceptual developments of the fourteenth century (Williams 1985). The term was later given full development by John Locke, one of the most influential political philosophers of the seventeenth century, in part to justify the dominance of the new bourgeoisie and the colonialist adventurism of the Virginia Company (see Simon-Aaron 2008; Williams 1985). His ideas entered the world as a result of the European Enlightenment movement and has since continued to develop to serve the needs of white settlers. In short, liberalism can be defined as a social formation that centres around the exchange of goods and services under the guise of individual equality and personal freedom. Central to liberalism is the idea of 'natural law', or that particular truths are universal regardless of a place, time or cir-

cumstance. Natural law, furthermore, can only be revealed through the application of logic and reason.

According to William Leiss (2009), Locke identified several different natural laws that can be specified into three main tenets. First, each person has a property interest in themselves, establishing that any interference without consent constitutes a breach against the state and is, by that nature, a criminal offence. Persons, therefore, have property in themselves, to the extent that property, a relation of exclusion specified by fungible goods and services, reduces a person's status to that of a thing which they possess but which they cannot sell except the labour-power contained therein. Second, each person is 'free', within the limits of the social contract determined by the state, to pursue their own satisfactions — which generally means the pursuit of possessions. Each person freely enters a social contract with Hobbes' Leviathan State, wherein the citizen promises their loyalty in exchange for the state's protection from those who violate this second legal condition of natural law: the sanctification of private property as it manifests in a right to exclude others from possessing a 'thing' (Patterson 1985). Ultimately in the view of a later Virginian, Thomas Jefferson, in the event that the citizenry perceive the state to no longer be acting in their best interests, the state is overthrown, and is then returned to acting in the best interests of the commonwealth. Third, liberalism contends that the exchange of material goods and services forms the basis of social relations. Since liberalism understands each individual to be equal in their ability to participate in the labour market, it understands all social relations in liberal society to be based on formal equality. Lastly, liberalism conceptualizes all human rights as manifest in property rights. Criminal justice systems in liberal societies, therefore, focus on the protection of fungible property under the guise of protecting working-class people (Leiss 2009).

All these premises are vacated by the facts of colonialism, slavery and their after-life: Residential Schools, for instance, were made possible by state laws that justified the kidnapping of indigenous children. As noted by Biko Agozino (2003), the state creates a legalized zone of lawless that only it can inhabit.

In order to support the ostensible individual freedoms expressed by the philosophy of liberalism, the fiction of 'possessive individualism' became a central part of Locke's political theory (Macpherson 1962). The term, 'possessive individualism', was first coined by C.B. Macpherson in 1962 to critically elaborate the counter-intuitive social and political implications of Locke's theory which has firmly established the doctrine that each person is the proprietor of their own personhood and capacities which are, in theory, not indebted to any one for them (Utku 2012). According to Macpherson (1962), possessive individualism is comprised of four related assumptions. First, the market determines each person's allocation of labour. There is no authoritative allocation of rewards for such labour, nor is there an authoritative enforcement of labor contracts, save for the 'equality' between buyers and sellers of labour-power. Secondly, all individuals act rationally to maximize their interests. Third, all individuals own their capacity to labour and to sell their labour-power and fungible goods on the market. Lastly, some individuals have more possessions and power than others, which are coveted as a result. All four assumptions imply the necessity of the state as an arbiter between persons, a guarantor of 'free' exchange. In short, MacPherson was keen to make strange the naturalizing effects of Locke's theory for its contradictory result: the state, in defending the interests of the propertied against the propertyless, metastasizes into a cancer-like apparatus that pursues war at home and abroad —

especially with nuclear weapons — the state becomes the greatest threat to the existence of its citizens.

Possessive individualism is, therefore, an inherently contradictory political theory. Contrary to its first tenet, for example, there are no 'natural laws' dictating a universal truth for all people, at all times and at all places. Indeed, people do not have identical access to resources and opportunities and, therefore, are not equally capable of selling their labour-power on the market. The 'modern' capitalist-colonialist system, however, portrays itself as being incapable of discrimination since all labour-power is a source of profit, though the miraculous emergence of private property and the role and use of the state's monopoly on force weighing on the side of capital is never considered. The idea of individual equality underlying both liberalism and possessive individualism is therefore a falsehood. Falsely perpetuating individual equality, however, proves to be a useful political tool for amplifying race and gender inequalities: it allows the consequences of 'systematic' racism and sexism to be attributed to personal shortcomings instead of an inherently contradictory pattern of ruling relations. The notion of individual equality also portrays colonialism — and by extension, racism — as something that occurred in the past. In a society where everyone is supposedly treated equally and given the same access to resources, people 'of colour' and women are understood to have 'no excuses' and are urged to 'get over' ongoing exclusion, exploitation and social traumas. Liberalism and possessive individualism, therefore, reinforce negative effects of raced and gendered social relations. This theory makes it possible to speak of equality in an inherently unequal colonial society.

A close reading of Locke's theory reveals other contradictions. Instead of allowing individuals to maximize their own interests, for example, the coercive logic of capitalism forces in-

dividuals to sell their labour-power. From this perspective, ‘acting rationally’ can be translated into ‘playing by the rules of the capitalist system’, ‘to maximize self-interests’ and to ‘maximize profits for the ruling class’. Third, while Locke states that all individuals own their capacity to sell their labour-power because they are owners of their persons, Locke also understands slavery to be a ‘natural’ condition (Simon-Aaron 2008). Both in terms of chattel slavery and wage labour, therefore, liberalism violates the principles of freedom and possessive individualism since a) there is a need to sell one’s labour-power or, in the case of slavery, have it expropriated and b) as in the case of sex work, one is not free to control the means of production inherent in their personhood. It is clear from these contradictions, Locke’s conception of liberalism was formulated to benefit a particular social group: colonizers, the middle class and elite white men.

Cumulatively, the dichotomies embedded within liberalism, and therefore possessive individualism, means that race and gender are central to the construction of a white, middle-class personhood. WMCP, much like the ideologies undergirding it, is made to appear eternal and natural: an unchangeable fact of life. In actuality, however, WMCP and its supporting ideologies were only consolidated in Canada two centuries ago (Carter 1997). WMCP refers to a combination of multiple colonial constructions (race, class, gender and heteronormativity) that work to simultaneously establish and reproduce white, male, middle-class privilege in colonial contexts. WMCP is employed in this study to reveal the way distinct social relations work in unison to preserve the capitalist-colonialist project.

According to Cheryl Harris (1993), the most important component of whiteness, or to what this study refers to as WMCP, is its evolution into a form of property (i.e., the right to exclude others from access to employment, enjoyment, goods and services inclusive of the right to

life, liberty and security of the person). Or, in other words, whiteness is unique in its privilege of owning property and excluding others from said property, as well as from the other material benefits of whiteness (Harris 1993). Whiteness is both 'thing' and a condition for full juridical equality where 'possessive individualism' is a group right for white people (Kitossa 2016b). Whiteness has 'evolved' into an inherent right to and of property, through the systematic exclusion and negative racialization of blackness, indigeneity and other people 'of colour'.

According to Locke, it was a natural occurrence for slaves to have their capacity to sell labour-power taken (read: legally stolen) from them because it is a victor's right to take slaves in war (Simon-Aaron 2008). In a similar manner, because indigenous land was not considered to be 'developed enough' in use by European standards, indigenous people were denied rights to property altogether, including the right to personhood (Simon-Aaron 2008; Harris 1993). In each case, being denied the right to own property — whether it be land, or the ability to own one's person — is intimately tied with racial subjugation and the denial of personhood more generally. These events have naturalized the superior position of whiteness even as laws once legitimating the physical segregation of Black and indigenous peoples have ceased to be public policy (Harris 1993).

In summary, then, whiteness determines the ability to own land, and only those who can own land are awarded the basis of personhood. Conversely, only those with personhood possessed the human capabilities and competencies to use their labour to transform nature. Because in Locke's dialectic possessive individualism and ownership of land is the basis of personhood, personhood systematically excludes indigenous and people 'of colour'. This explains why poor white people have been racialized throughout history (though they shared the same organizing

cultural logic of elites): because they could not own property, they could not technically be considered 'white' and therefore human. This contradiction – difference within unity – is more easily comprehended if we recognize that ethnic groups such as Irish and Ashkenazi Jews as well as the Anglo-Saxon working class were at various times considered racial species apart from their 'betters' (see Robinson 2000). White (middle-class) women, moreover, have only recently won recognition for their personhood in the early 20th century.

This study uses the term 'white middle-class personhood' in place of simply 'whiteness' to highlight these insights: first, 'personhood' denotes the ability to own property and its exclusivity to whites; second, 'middle-class' reminds the reader that only those of financial means are fully capable of being considered 'white'; and finally, hegemony specifies that the 'wage of whiteness' invites poor and working class white people into a cultural hegemonic bloc that emphasizes racial competitiveness over the contradiction of class conflict. Of course, this historical specificity does not obviate the proposition that Europe is a civilizational complex created out of the necessity of internal pacification and homogenization in the formation of capitalism from feudalism as a reaction to geopolitical dynamics (ie., Muslim control of overland routes to Asia) (Robinson 2000).

WMCP is supported by moralistic rhetoric that connects it with virtuousness, godliness and superiority. For women settlers upholding the principles of WMCP, this means practicing sexual purity (Deliovsky 2010). Until the early 20th century, and as evinced by the abrogation of rape protection for spouses in 1985 (2005 in the U.S.), women's sexuality was explicitly under male control (Comack 1999). Up until the Victorian era, when the woman is a child, her sexuality belongs to her father, who later receives a reward for it in the form of a dowry when she is

‘sold’ into marriage. The imposition of WMCP — and more specifically, sexual purity — onto women is essential to the capitalist-colonialist system for three reasons. First, it establishes paternity, and therefore the patriarchal basis of property ownership. Second, it helps to prevent miscegenation, ensuring that the ownership of wealth is exclusive to white, middle-class persons. Lastly, it encourages domesticity and unpaid labour amongst white women and the exploitation of women 'of colour' (Lugones 2007: Hunt 2002: Carty 1999; Davis 1981). It is for these reasons that Vron Ware argues that white women are constructed as “moral guardians of the race” (Ware 2015:37). Not only do these women guard whiteness with their reproductive capacities, they guard it ideologically (Deliovsky 2010). They inculcate settler morals and values into coming generations so that hegemonic domination — and by extension, inequalities in the prevailing social relations of production — can continue uninterrupted. There is thus a contingency to white femininity, but this does not obviate that by virtue of whiteness White women in vertically accessible, but differential ways, can exercise tremendous power over indigenous and people ‘of colour’.

WMCP, through gendered, heterosexist and racist discourse and practices, serves to materially support the Canadian capitalist-colonialist project both directly and indirectly. WMCP directly supports the capitalist-colonialist project by legitimating the forced segregation and removal of indigenous people from the land via criminal law, police and prisons. Indirectly, WMCP supports this project through its ideological subordination of indigenous women through dual processes of racialization and sexualization. WMCP thus legitimates the exclusion of indigenous women from politics and public life, thereby destroying previously gynocratic, matri-

focal and matriarchal societies[9]. Indeed, according to Anderson (2000), many pre-colonial indigenous communities provided women with a source of political power unknown to gender relations in Western culture. In some communities, for example, women were solely responsible for the production and distribution of food (Anderson 2000). Their status as primary producers gave women the power to make group decisions and hold significant political power.

WMCP also supports colonial rule simply by requiring an opposite category: racialized, poor, female, non-heterosexual 'Others'. Individuals who are excluded from WMCP become viewed in juxtaposition to the 'civilized', sovereign settler. The indigenous woman, therefore, is central to the identity formation of the Canadian settler state (Francis 2011; Erickson 2011). Without the hegemonic ideologies actively racializing and sexualizing indigenous women, settler women would have no basis to juxtapose themselves to, and therefore would not be forced to practice sexual purity and domesticity in order to retain their privilege as whites.

iii. Theorizing the Regulation of Sex Work as a Proxy for the Regulation of Settler Labour

As discussed in the introduction, research has yet to examine how anti-sex work laws specifically further the goals of settler capitalist-colonialism in Canada. These goals fall into two main categories: the appropriation of land through the containment and/or removal of indigenous peoples and capital's hegemonic control over settler labour. Existing research, moreover, has yet to apply this theoretical perspective to Canada's history of anti-sex work legislation. The present study, consequently, seeks to develop a theory that can examine the extent to which the regulation of sex work in Canada shapes colonial rule through a) the control of indigenous peoples to

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[9] Not all indigenous societies that existed previous to colonization were matriarchal. This would be a generalization. Particularly with east and central indigenous peoples on Turtle Island, the near or total absence of the gendered binary brought later by Europeans allowed indigenous women in some communities to command more personal and political freedom compared than women in colonial societies.

legitimate and perpetuate land appropriation and b) though its use as a proxy for the management of settler labour. This theory, moreover, has yet to be developed within a framework that transcends the 'choice' versus ‘coercion’ debate occurring in sex work research.

When examined from the combined perspectives of Marxist-feminism, critical race feminism, indigenous concepts of land and Gramsci’s theory of hegemony, it becomes clear that while anti-sex work legislation is tremendously beneficial for the Canadian capitalist-colonialist state, it has both positive and negative effects for settlers. On the positive side of the spectrum, anti-sex work legislation assists in the demarcation of race and gender that is essential for hegemonic dominance and therefore colonial stability.[10] As explained in the beginning of this chapter, race and gender are ruling relations whose effect is to stabilize colonial-capitalist rule. Without clear lines of demarcation separating whites from indigenous peoples and people ‘of colour’, the settler colonial state could not justify the exploitation of indigenous people and the theft of land. The state could not, moreover, use the subordinate position of undesirable populations to juxtapose itself to and subsequently legitimate its own superiority. Anti-sex work legislation assists in the reproduction of these colonial imperatives by giving the state a seemingly legitimate way to remove the (negatively racialized and/or gendered) bodies that stand in the way of land appropriation. While some immigrants ‘of colour’ do manage to enter Canada wealthy or amass wealth and middle-class status while here, this level of dominance has predominantly favourable outcomes for white, male settlers. Racial dominance enables white settlers to have access to a wide

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[10] Animus toward immigrants from the Global South appears to rise, especially from white labour and the political elite during times of economic instability. The most classic case is that of effort to expel Chinese labourers at the completion of the Canadian Pacific Railway on the grounds that they were undercutting the labour value of working class white males. An assortment of moral entrepreneurs, politicians and rich industrialists supported expedient initiatives, such as the 1908 anti-opium laws and white slavery panic, that in fact targeted the Chinese and other people ‘of colour’. As will be discussed later, White women’s bodies were central props in passing laws that affirmed the exclusion of Chinese labour.

range of resources and opportunities which are barred from indigenous and other negatively racialized groups.

The adverse effects of anti-sex work legislation are directed at, and felt most acutely by, those who are poor, negatively raced and/or gendered. The most severe consequence of anti-sex work legislation and its role in the reproduction of raced and gendered relations has been the systematic devaluation of indigenous womanhood. By such legal means settlers to distorted social relations and disparaged cosmologies that were more egalitarian and which empowered women in indigenous communities. The result has been an environment where indigenous women are dehumanized and where violent attacks against them are as routine as they are ignored. The goal of anti-sex work legislation, therefore, is to reproduce the raced and gendered social relations that justify the containment and/or removal of indigenous peoples from their lands and resources. For this reason, anti-sex work legislation disproportionately targets indigenous sex workers for arrest more than it does their white counterparts (Backhouse 1985; Meil-Hobson 1990).

The racial inequality perpetuated by anti-sex work research is just one example of a larger system designed to reproduce racialized privilege, the other is the criminal legal system. As discussed earlier in this chapter, the most central component of whiteness is its evolution into an inherent right to property through the systematic racialization of indigenous peoples and people 'of colour' (see Harris 1993). This perspective reveals that the criminal legal system, through its balance of coercion and persuasion, exists to facilitate the reproduction of hegemonic ideologies required by the capitalist-colonialist system and to protect the property and interests of white people.

There are, however, negative effects of hegemonic dominance. The preoccupation with the body of the indigenous woman as an obstacle to capitalist imperatives obscures settler's awareness of their own subordination: Mensah and Williams (2017) call this the 'boomerang effect'. Anti-sex work legislation assists in the dehumanization and subordination of those who are negatively raced and/or gendered and, consequently, makes white, male settlers ideologically superior. Through the 'wage of whiteness', settlers are consequently blinded from ever realizing how anti-sex work legislation — and the capitalist-colonialist stability it helps to promote — exploits the prosaic 99%, albeit at different levels. The ideological subordination of indigenous women makes it possible to obscure the settlers' own subordinate positioning beneath the ruling class who control the state and the means of production. This process can be used, for example, to provide settlers with an incentive for their loyalty to the state, despite the poor working conditions prevalent during the beginning of Canada's colonization. Regardless of their ideological superiority over indigenous women, settlers still have their labour exploited and made into profit by the overarching capitalist-colonialist system. Anti-sex work legislation and enforcement, therefore, while beneficial to settlers and the capitalist-colonialist system more generally, actually assists to mystify settler's own subordinate position under colonial-capitalism. Anti-sex work legislation represents one of many tools used to simultaneously subordinate indigenous women and pacify settlers.

In addition to ideological superiority, the raced and gendered relations that anti-sex work legislation promotes also pacifies settlers by giving them a perceived unfettered right to the bodies of negatively gendered and/or raced men and women (see McKittrick 2006). Or, in other words, by legitimating the sexual abuse of indigenous women and other negatively gendered

and/or raced groups, the state is able to incentivize settlers in exchange for their loyalty. This allows the colonial state to justify the devaluation of women's labour and to placate male workers who are fearful of the devaluation of their own labour.[11] Legitimating the sexual abuse of indigenous women, moreover, incentivized White male settlers in the past to abandon their indigenous partners in favour of white ones when they eventually arrived *en masse* to Canada in the mid-nineteenth century (Smith 2005; Carter 1997).

iv. *Conclusion*

To capture these ideas, this study proposes a theory of appropriation and regulation centred around the body of the indigenous woman. To this end, the ideas of indigenous-feminist authors who assert that gendered violence against indigenous women, the systematic repression of indigenous self-determination and the destruction of the environment is rooted within the same dynamic. These connections are applied to anti-sex work legislation and the role it plays in the reproduction of colonialism (Smith 2005; Anderson 2000). According to this feminist-indigenous theory, the bodies of indigenous women are a topography upon which raced and gendered oppressions are both constructed and mobilized for war and conquest by colonizers (Smith 2005; Anderson 2000). This theoretical perspective is useful for a number of reasons. First, by acknowledging the effects anti-sex work legislation has on both indigenous women and settlers, the extent of its role in the ideological preservation of the capitalist-colonial project can be revealed. Second, this perspective enables the issues facing people 'of colour' to be kept at the forefront, and to be conceptualized as part of the wider colonial system. Third, this lens is useful for clarifying the connection between the subordination of sex workers and indigenous women, since

[11] A similar process occurred in fourteenth century Venice, where the sexual assault of proletarian women was decriminalized in order to maintain political stability after the Bubonic Plague (Federici 2004).

both groups are subordinated through dual processes of racialization and sexualization. Just as negatively raced and/or gendered persons are the primary target of colonial oppressions, they are also the primary sites of resistance to colonialism. As such, the liberation of indigenous peoples, people ‘of colour’ and of white labourers are tightly bound with one another. Examining anti-sex work legislation from this perspective enables the present study to reveal the extent to which such legislation and its enforcement reproduces colonial rule through the appropriation of indigenous lands and control of settler labour.

Chapter Three: Methodological Approach

i. Critical Discourse Analysis

This study uses critical discourse analysis (CDA) to explore the extent to which the regulation of sex work serves to perpetuate relations of capitalist-colonial rule. According to van Dijk, CDA operates by "focusing on the role of discourse in the (re)production and challenge of dominance [by elites]" (1993:249). By focusing on the "structures, strategies, or other properties" of text and talk, CDA can be used to tease out how these communicative events reproduce existing dominative social relations (Van Dijk 1993:250). CDA, therefore, is unlike other methodologies in the way that it refuses to take a neutral starting point to research. Instead, CDA's focus on inequality and dominance means that it incorporates a multitude of theories from across disciplines to support its critical stance. This thesis, accordingly, uses CDA to analyze various pieces of anti-sex work legislation for discursive strategies that support capitalist-colonial and heteropatriarchal rule over land and labour through the maintenance of socially constructed racial divisions. This examination is inclusive of Canadian legislation such as the 1867 *Indian Act*, the 1869 *Vagrancy Act*, the white women's labour laws of the early 20th century, the 1972 reform of Vagrancy laws, Bill C-49 and Bill C-36.

In this study, the use of the term 'discourse' and 'discursive strategies' refers not simply to text and talk[12], but also to the social relations responsible for shaping it. Discourse is shaped by the raced, gendered and classed social relations that inform it. The proliferation of literature and groups involved in rescuing 'fallen women' around the turn of the twentieth century, for ex-

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[12]While this particular study focuses on how dominance is reproduced through text in Canada's anti-sex work legislation, in other studies, 'discourse' has been extended beyond text and talk to include any organized body of signifying practices or strategies. This can include architectural designs, educational curriculums, codes of dress, etc.

ample, could not have existed without raced and gendered relations that determined what behaviours were considered 'virtuous' (Valverde 2008). These raced and gendered relations, in turn, could not have existed were it not for colonialism and the need for settlers to legitimate the slaughtering of First Nations people, the plundering of resources (refer to Chapter 3 for a more in-depth discussion on this topic), slavery and the exploitation of negatively racialized labour. The use of 'discourse' and 'discursive strategies' in this study, therefore, refers to imperialist and colonial social relations and the language that reproduces them. Not only will this study identify and investigate linguistic forms of racism, sexism and classism found in Canada's history of anti-sex work legislation, it will also critically examine the social relations responsible for it. This includes discourses of dominance related to racism and imperialism, as well as the gendered, individualist and liberal discourses that support capitalism, colonialism and heteropatriarchy.

ii. Applying Critical Discourse Analysis to Sex Work Research

A variety of sex work scholars have also successfully used CDA or a similar approach as their methodological framework. Shawna Ferris (2015), for example, uses CDA to analyze the media's portrayal of street-level sex workers. She concludes that the highly racialized and sexualized portrayal of sex workers in the media — even during reports of their disappearance — contributes to a colonial mindset whereby entire populations can be deemed disposable. Mariana Valverde (2008), moreover, uses CDA to critically assess the social purity movement's impact relative to how its discourses both influenced and reproduced the settler colonial state from 1870 to 1920. She finds that discourses of social purity were, and continue to be, important tools for reaffirming the line between the respectable and degenerate classes. Lastly, Anne McClintock (1995) uses CDA to illustrate how the contradictions inherent to the colonial system are mediated

through discourse. She finds the gendered and raced inequalities produced by these ruling relations are explained through two prevalent discourses: "the Family of Man" and the "trope of degeneration" (McClintock 1995:43). CDA is a useful tool for identifying and analyzing the raced, gendered and classed strategies of dominance that are perpetuated through anti-sex work legislation.

For a number of reasons, CDA is particularly useful for the study at hand. First, CDA allows this study to clarify the connection between colonialist social relations and its *textual* articulation within Canada's history of anti-sex work legislation. The critical factor here is to avoid the trap of idealism. CDA's materialist roots allow proponents of this theory to acknowledge that text and talk shape and are shaped by social relations rooted within the material world (i.e., praxis).

Secondly, in many instances, as with Foucault's 'genealogy of the present', the study of texts that inform practice can expose social dynamics and processes in contemporary or historical periods that are otherwise concealed by hegemony. Studying sex work in Canada's formative years, for example, is limited almost exclusively to the legislature that criminalized sex workers as well as accompanying criminal records. The recording of visual and oral materials was rare, and, many sex workers in the 19th century did not leave written accounts as most were unable to read or write (Backhouse 1985). Diaries and journaling, a common cultural practice among bourgeois men and women alike especially in the Victorian era, assumes life was worthy of recording for either posterity or self-reflection. The 'invention' of history as is well-noted, leaves the voices of ordinary people out of the formal register, this especially so for women, and especially for marginalized women. The absence of autobiographical expressions is problematic since archives and historical accounts of early sex work in colonial and post-confederate Canada re-

flect media, legislation and enforcement practices consistent with a hetero-patriarchal worldview. The speculative nature of this work, therefore, is as much art as it is an endeavour of political theory. To this end, CDA's focus on identifying strategies of dominance and exposing the relationality and continuity of relations of ruling is vital for the legibility of the argument I seek to mobilize. CDA allows this study to negotiate the objective limitation imposed on archives and the subject of resources needed to undertake such a remote task. Through CDA it is possible to mount plausible propositions toward sketching a fuller picture of the social relations responsible for shaping legal discourse and social practices so vital to shaping the contemporary social landscape.

Lastly, CDA's refusal to adopt a 'value-neutral' standpoint complements this study's desire to prioritize capitalist, colonialist, heteropatriarchal and racial oppressions. By understanding these ruling relations as constitutive of social reality, CDA is capable of examining related forms of dominance and connecting them to Canada's ongoing hetero-patriarchal capitalist-colonial-racial formation.

Chapter Four: Analysis of Canadian Legislation Criminalizing Sex Work

This chapter examines Canada's history of anti-sex work legislation to explore underlying strategies of dominance that support the appropriation of indigenous lands and control over settler labour. The examination begins prior to the arrival of European settlers and extends into the present period. This gloss does not cover every piece of anti-sex work legislation introduced throughout Canadian history or even modifications to those legislations. The study does, instead, carefully examines how these legislation have had an enduring impact on the lives of indigenous women and settler labour. These include the *Contagious Diseases Act* (1865), the *Vagrancy Act* (1867), the *Indian Act* (1876), white women's labour laws of the early 20th century, the 1972 reform of the *Vagrancy Act*, Bill C-49: *An Act to Amend the Criminal Code* (1985) and Bill C-36: *The Protection of Communities and Exploited Persons Act* (2014).

As this chapter demonstrates, anti-sex work laws are created and enforced in Canada during periods of colonial-capitalist instability with the aim of sustaining hegemonic dominance. As such, this chapter is divided into three sections according to three major periods of colonialism and responses to instability: the consummation of the Canadian settler colonial system (1850 - 1900), the industrialization of Canada (1900 - 1920) and the neoliberal period (1970s - current).[13] It is hoped that by analyzing these pieces of legislation this study will reveal the role that the regulation of sex work plays in maintaining the hegemonic dominance of the capitalist-colonial system.

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[13] Refer to figure 1.

i. Introduction: The Arrival of Settlers and the Naturalization of 'Race' (1534)

The colonization of Turtle Island began with the arrival of its first European settlers in 1534. This marked the arrival of Jacques Cartier, a French explorer sent on behalf of Francis I, to what is now known as Newfoundland (Reindeau 2007). Cartier, however, failed to establish a permanent settlement. The French did not form a permanent settlement until 1603, when an expedition headed by explorer Samuel Champlain, whose interpreter was a Portuguese African named Mathieu D'Costa, managed to create settlements and name its colonial capital New France (Reindeau 2007). Settlers from Britain arrived in Turtle Island around the same time and established their first settlement in St. John's (Hermann 2010; Gonthier 2012). The French and British settlers established separate colonial economies centred around the fur trade: this led to a century-long conflict over rights to land that, in actuality, never belonged to either party (Fowler 2006). The conflict culminated in 1756 with the Seven Years War and ended in 1763 with the Treaty of Paris (Fowler 2006). This treaty merged all French settlements into a new colony named Quebec, which was later split into half in 1791 to accommodate both English and French speaking settlers (Fowler 2006). This arrangement continues today in Canada.

These conflicts were accompanied by an intellectual movement known as the Age of the Enlightenment. This bourgeois movement developed during the eighteenth and early nineteenth centuries out of opposition to the absolute monarchy in England and France, and, refers to a multiplicity of ideas that centre around individual liberty and reason (Chakrabarty 2000). At first glance, these ideas appear to conflict with colonialism. The Enlightenment's focus on individuality and reason, however, allows for the ideological separation of indigenous and people 'of colour' versus white, middle-class personhood, based on assumed cultural, intellectual and phys-

ical characteristics. Under the assumption that indigenous peoples were childlike, irrational and uncivilized, these ideas justified the plundering of resources and the slaughter millions of indigenous peoples – some 95-97% of the total population across the Americas (Stannard 1992). The logic of the Enlightenment, therefore, was used to ideologically separate settlers from indigenous people[14] and to justify the multiple imperialist and colonialist projects occurring at this time.

'Race' refers to superficial, biological, but substantive cultural and religious differences that are imagined to constitute essential characteristics of various groups and imagined communities. As a social construction, race is a way to naturalize dominant and subordinated status among groups. Race's main effect in a capitalist-colonial state is that it is part of a cultural logic that facilitates the construction of an imagined identity of the settler which transcends class antagonism: its manifestation is white, middle-class personhood (see Chapter 3). By co-constructing WMCP, the colonial state positions itself as the vanguard of racial protectionism. This way, the state can justify its own superiority both on behalf of capital and whiteness as property. As noted and quite possibly coined by Frantz Fanon ([1952]1967), 'racialization' represents an essential step in the process of colonization: its purpose is to dehumanize indigenous populations in order to make way for land appropriation and for the arrival of more settlers.

Racializing, in the construction of both dominant and subordinate groups, implies 'positive and negative racialization' (Kitossa 2016b) and imposes hierarchical relations onto formerly egalitarian indigenous communities. This was not an easy task. In order to colonize a non-hierar-

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[14] It is important to note that the process by which indigenous people were racialized and sexualized began long before the colonization of Canada, and even before colonization itself more generally (McClintock 1995; Levine 2003). According to McClintock (1995), for example, the sexualization of African people began long before Africa too was colonized. This is because the racialization and sexualization of other groups serves as a helpful tool for the justification of the colonialist project. Racialization and sexualization does not, however, guarantee that white supremacy and racial hierarchies will be successfully established.

chical society, colonizers had to first make hierarchy natural by institutionalizing patriarchy (Smith 2005). A gendered binary was created whereby indigenous women were made subordinate to men. Women came to be understood as closest to nature, with delicate sensibilities best suited to the private realm. Men, on the other hand, came to be associated with rationality and the public sphere (Lugones 2007; McClintock 1995). The binary was especially devastating for matriarchal indigenous communities where women held powerful roles (Smith 2005; Anderson 2000). While it would be a generalization to state that all pre-colonial indigenous women were free from subordination and that all indigenous societies were egalitarian[15], especially given class and state-based formation in societies of the Aztec, Inca, Olmec, Toltec, Nazca and others, it is generally true that indigenous women exercised a level of power unimaginable to Western women (Anderson 2000; Smith 2005). Gender roles did exist, however, 'gender' was not understood to exist as a binary (Anderson 2000). This meant that men's and women's labour were weighted equally. No person, furthermore, was restricted to a single job (Anderson 2000). This allowed each member of the community to cultivate respect for those with different roles (Anderson 2000).

In many pre-colonial societies across North America, indigenous women held the special role of being responsible for the production and distribution of food (Anderson 2000; Deer 2015; Allen 1998; Smith 2003; Wilson 2015). Authors from the Opaskwayak Cree Nation (Wilson 2015), Metis (Anderson 2000), Muscogee (Creek) Nation (Deer 2015), Cherokee (Smith 2003), and Laguna-Sioux (Allen 1998) all write about matriarchal nature of their communities. According to Kim Anderson, Metis culture believes that a women's ability to bear children gives them

[15] Indeed, it is important to note that some pre-colonial indigenous Nations practiced slavery, including the Tsimshian Nation, Nisga'a Nation and Haida Nation of British Colombia (Ames 2001).

the spiritual and physical strength suitable for raising healthy crops (Anderson 2000). Their role as primary producers meant that indigenous women held a significant amount of social and political power. In hunter-gatherer and barter economies, when men returned from hunts or from trades with other communities, for example, the goods they brought back automatically belonged to the women (Anderson 2000). Goods were then distributed throughout the community on the basis of need, with special consideration for Elders and the very young (Anderson 2000). In addition to having a right to all goods coming into the community, indigenous women also had property rights, including rights to their tools and lodging.[16] They held prominent roles in all areas of their communities, including within the family, spiritual ceremonies and self-government (Aboriginal Justice Implementation Commission 1999).

These matriarchal social relations, however, needed to be dismantled before colonization could be successfully implemented (Smith 2005; Smith 2003; Anderson 2000; Deer 2015; Allen 1998; Wilson 2015). As a patriarchal system of power, colonization requires social relations that ensure power and property remain almost entirely in the hands of men in general, but white men in particular. The establishment of patriarchy required, for example, the establishment of a patrilineal system that prevented women from owning property and wealth. It required the normalization of a blatantly misogynistic political environment that prevented women from voicing themselves in the public arena. The introduction of the gendered binary into indigenous societies, therefore, served as a tool for naturalizing hierarchy by reinforcing previously existing notions of race and for attacking the powerful position of women in indigenous societies.

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[16] According to Anderson (2000), this does not include land, since land is understood as something that cannot be owned in most indigenous communities.

The new distinction between the public and private sphere prevented indigenous women from continuing their role as critical producers within their respective economies (Anderson 2000; Devens 1992; Van Kirk 1996). They could not, for example, continue to work in groups processing hides or preparing food while each person took turns watching the group's children (Anderson 2000). With the imposition of the nuclear family, childcare became confined to the private realm and all productive work was made masculine. The establishment of a patrilineal system, moreover, allowed settlers to control and take away property from indigenous women and restrict political power to men (Carter 1997; Stevenson 1999). Indigenous women, for example, were excluded from Canadian politics and barred from voting in federal elections until 1960 (Anderson 2000). Though resisted by indigenous women, for example in Idle No More and by water protectors across Canada, the U.S. and in South America, colonization has sought to rob indigenous women of their sacred relationship to the land and their political and spiritual power within indigenous communities.

The ideological and practical subordination of indigenous women stands in contrast to white male settlers establishing relationships and families with indigenous women throughout all phases of colonization. In these contexts, streams of single, working-class white men flooded to the colony to perform hard labour. Because the cost of establishing the infrastructure necessary to support the European standard of life was too high in Canada's early years, the state adopted a cost-saving measure by preventing women from immigrating to Canada (Stoler 2002; Levine 2003; Erickson 2011). Outside its newly founded and slaveholding towns along the eastern seaboard and the great lakes, allowing settler women to join their counterparts in the colony would make clear the absence of the infrastructure and amenities that European settlers were ac-

customed to (Stoler 2002). The newly established Canadian colony could not risk a decline in the standard of living in a context where their success depended on persuading the masses of the superiority of the colonial-capitalist state, as is the case with hegemony (Stoler 2002). To obscure these intentions, the state explained its exclusion of white women by pointing to the subordinate status of women (Erickson 2011; Stoler 2002). State authorities maintained that the colonies were too dangerous for white women and that their delicate sensibilities would be disturbed if exposed to the colony's lack of infrastructure and amenities (Erickson 2011; Stoler 2002).

In response to the needs of a staples economy, the state encouraged white males to form relationships with indigenous women in the form of concubinage[17] (Stoler 2002). This ensured that settlers would have their domestic, physical and emotional needs met for free (Stoler 2002). Concubinage was so common that even North West Mounted Police officers were known to have relationships with indigenous women (Carter 1997). Settler relationships with indigenous women were important for gaining access to the knowledge settlers needed to survive the varied climate of Turtle Island (Stoler 2002; Levine 2003). Settlers, for example, would not know what berries are edible and poisonous or the best way to go about trapping animals native to North America (Stoler 2002; Levine 2003). Without the domestic labour performed by indigenous women, moreover, settlers would not be able to experience the same standard of living that they had come to expect back in Europe (Erickson 2011; Stoler 2002). The state feared that without concubinage, settlers would turn to homosexuality to fill their emotional, physical and domestic needs (Stoler 2002; Levine 2003). These unions, therefore, were considered a necessary evil in

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[17] Concubinage was also used in Java and Sumatra, Indochina and throughout the French empire as a way to 'stabilize political order' and 'colonial health' (Stoler 2002). A similar pattern also occurred in India during the Victorian century (Ballhatchet 1980).

combatting the homosexuality that was thought to arise as a result of the unbalanced male-to-female ratio.

ii. Crisis #1: Concubinage and the Establishment of the Canadian Colonial System (1850-1900)

With the arrival of larger numbers of European women beginning in 1830 and subsequently full-scale settler colonialism, the state began to worry about the sizeable number of white settler males that refused to abandon their relationships with indigenous women in favour of a white partner[18] (Smith 2005; Carter 1997). These settlers had instead continued their relationships by abandoning their settlements and living within indigenous communities (Carter 1997). State authorities feared that more settlers would follow suit and that the colony might be faced with a civil war (Carter 1997). The mixed children resulting from indigenous-settler relationships were also a threat to white property and rule (Carter 1997), as was confirmed to colonizers in the Louis Riel-led rebellion of the Metis. These children could potentially lay claim to the inheritance left by their white male settler fathers and pursue legal avenues for the ownership of property that was designed to be exclusive to white settlers. Most importantly, however, the state feared that these previously sanctioned relationships had gained too much legitimacy amongst the masses, and that this had subsequently delegitimized the supposed superiority of white, middle-class personhood (Woollacott 2006).

The state solved this problem by intensifying the sexualization of the already negatively raced and gendered bodies of indigenous women. By emphasizing an additional reason to dehumanize indigenous women, the state was able to reaffirm the racial divides that had been weak-

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[18] State fears surrounding miscegenation remained visible within Canadian politics up until 1921, when the House of Commons debated whether or not to outlaw relationships between white men and indigenous women (Backhouse 1985). This provision, however, was never passed due to fears that it would give indigenous women the opportunity to potentially extort white men (Carter 1997).

ened as a result of concubinage. The sexualization of indigenous women also provided the state a way to deny the children of indigenous women any sort of legitimacy and, therefore, deny them rights to the ownership of property (Carter 1997). According to some anti-colonial scholars, it was at this historical moment that indigenous women, and negatively racialized people more generally, had become completely sexualized in Canada (Barman 1997; Carter 1997). The notion that all indigenous women and women 'of colour' are sex workers became so deeply ingrained that after the nineteenth century, all sex workers were depicted as racialized regardless of the race they identified with (Maynard, 2017; Razack 1998b; Gilman 1985). This included white sex workers, who were negatively racialized in the interest of protecting the principles undergirding WMCP (Razack 1998b). The sexualization of indigenous women, in short, served to reinforce the previously existing ideological binaries subordinating this group.

Much like racialization, the sexualization of a particular group requires that it be juxtaposed to an "Other": in this particular case, European women. In contrast to indigenous women, European women are expected to practice the principles of white femininity: virtuousness, godliness, domesticity and chastity (Carter 1997; Deliovsky 2010). Their ideological and practical roles in the colonial project were to prevent the mixing of races through miscegenation (Ware 2015; Deliovsky 2010). The sexualization of indigenous women, therefore, resulted in society that demands chastity from white women while simultaneously hyper-sexualizing indigenous women (Smith 2014).

In addition to reaffirming racial divides, the sexualization of indigenous women has assisted the capitalist-colonialist project in three critical ways. First, the criminalization of indigenous women through anti-sex work legislation is related to the state's interest in devaluing

women's domestic labour (Frederici 2004). The devaluation of women's labour is essential to the capitalist-colonial system, as it relies on expropriating labour for the reproduction of the working class (Bezanson and Luxton 2006). Indeed, maintaining a surplus pool of domestic labour is especially important in places like the Canadian prairies where crop failure is high (Carter 1997). Without women's labour to diversify the economic base of the farm, crop failure could spell certain doom for many settlers. The criminalization of sex work assists in creating a pool of domestic labourers in two ways: first, it makes it clear that in capitalist-colonialist societies, a woman's sexuality does not belong to her and is therefore not something she has a right to sell; and, second, that a woman's labour has no place in a public setting.

Second, the sexualization of indigenous women serves to pacify male, working-class settlers and make them loyal to the state. The devaluation of women's labour, and especially racialized women's labour, is essential for placating male workers who fear for the eventual devaluation of their own labour (Federici 2004). By tolerating the sexual abuse against indigenous women, any animosity (white) working-class settlers may have toward capital and the state is redirected and actually made beneficial to both capital and the state. As discussed earlier in this chapter, though many resisted, the normalization of the sexual abuse of indigenous women also incentivized white male settlers to be loyal to the state and to whiteness by abandoning any relationships with indigenous partners in favour of white ones (Smith 2005; Carter 1997).

Lastly, and most important to the colonial process, the sexualization of indigenous women serves to legitimize a disproportionate amount of violence against them. Ideological sexualization assists in the demarcation of bodies that pose a threat to the capitalist-colonialist-patriarchal-racist system and must be removed if the appropriation of land is to continue uninterrupt-

ed. The sexualization of indigenous women inspires a variety of seemingly race-neutral and gender-neutral laws that actually serve to justify the disproportionate amount of police surveillance experienced by indigenous women, of which anti-sex work legislation is just one facet.

The sexualization of indigenous women in Canada mirrors what occurred in fourteenth century Venice during the aftermath of the Bubonic Plague (Federici 2004). At this time, depending on the area, Europe lost 30 to 60 percent of its population (Federici 2004). This dramatic reduction of the working population made labour incredibly scarce, causing the cost of labour to rise dramatically. This intensified already existing conflicts between the classes, and, according to Silvia Federici, "stiffened people's determination to break the shackles of feudal rule" (2004:44). Because increasing the population was of vital importance, women's control over their reproductive capabilities became viewed as an obstacle to the preservation of social and economic stability. The solution was to transform this class conflict into a conflict against proletarian women (Federici 2004). The rape of proletarian women became decriminalized, and women were forced out of public spaces for fear of being assaulted (Federici 2004). The value of women's labour plummeted, and the free labour they now provided helped stabilize the feudal regime. The sexualization and degradation of proletarian women in fourteenth century Venice thus allowed the state to divide the working class, pacify male workers and create a free source of labour during a time of political and economic instability.

The effects of the Bubonic Plague on labour value and masculinity were felt elsewhere in Europe, as well. To keep the peace with a rising labour aristocracy into the 15th century, even feudal lords in England, Ireland, Scotland and Wales had to cede their ancient customary prerogative of taking the virginity of a peasant man's wife on their first nuptial night if he so desired. In

his reaction to rebellions across his kingdom, Theodore Allen cites authoritative accounts of even an absolute monarch such as Henry VIII who dared not punish with the wives of rebels "for there still remained a good deal of the old tribal feeling about women, that they were the most valuable possessions of the clan, and that if any stranger, even the King, touch them all men were disgraced" (cited in Allen 1997: 28). Allen lays out the case clearly:

> The poor and labouring people of England might not prevail over their kings, or their queens, or their lords and masters, but the men of these classes could be king and lord and master of his wife. Male domination in this way served as a link between the beaten-down peasants and the proletarians and the very authority that was beating them down. As such it operated as another instrument of ruling-class social control, disguised as the natural outcome of the sexual differentiation occurring in the population (Allen 1997: 29).

Even the Catholic Church, 200 years following the plague and having been basically expelled from the Middle East save small Christian communities by Muslims, extended its war on egalitarian Christian ''infidels and 'heretics' to include a generalized war on women. The objective was bolster the claims of the male-dominated clergy to specialized apothecary and medical knowledge, undermine the value of women, concentrate the inherited wealth of monks into Church coffers and to promote the ideology of male supremacy (see Szasz 1970).

Evidence of this historically specific articulation of masculinity, patriarchy and the domination of women is not unlike what occurred in Canada with the introduction (and later, the revival of) anti-sex work legislation. In both instances, the most socially undesirable women were sexualized so that profitability could be restored and political stability maintained. Instead of sexualizing white proletarian women, though they were imagined as unfortunate and 'fallen' and in some cases not quite White, the Canadian state sexualized indigenous women and women 'of colour'. And instead of responding to a health epidemic such as the Bubonic Plague, the Canadi-

an state used the sexualization of indigenous women and moral panics about sexually transmitted infections as a way to maintain hegemonic dominance during politically turbulent periods.

a) The Contagious Diseases Act (1865)

As discussed earlier, by the mid-nineteenth century concubinage began to be viewed as a threat to the hegemonic dominance of the settler colonial state. Settlers were subsequently encouraged to hire the services of sex workers in place of concubinage. At the same time, skyrocketing rates of venereal diseases amongst soldiers had forced the state to implement hygiene regulations to protect settlers from infection. Under these circumstances, Canadian authorities adopted a legal approach that would continue to allow settlers access to women's bodies, while at the same time protect settlers from the contraction of venereal diseases. This led to the passing of the *Contagious Diseases Act* in 1865. This marked the start of a new regulatory regime that understood sex work as something that was inevitable and which required management (Backhouse 1985). This shift, moreover, allowed the state to institutionalize racist policies under the guise of medicine and science. The *Contagious Diseases Act*, for example, allowed authorities to detain women who were simply suspected of being infected with a venereal disease:

> Where an Information…is laid before a Justice of the Peace, by any Chief of Police, High Constable, Chief Constable, High Baliff, or any other chief office of Head of the Police or Constabulary, authorized to act in any place to which this Act applies, or by any Medical Practitioner duly licensed to practice Physic of Surgery, the Justice may, if he thinks fit, issue to the Woman named in the information…[and she will be] taken to a Certified Hospital for medical examination (*Contagious Diseases Act*, R.S.C. 1865, c. 8, s. 1).

The vague wording of the Act gave authorities the discretion to arrest virtually whomever they wanted, provided that they were a woman. The Act, however, was primarily used to harass indigenous women and women 'of colour' whom were deemed socially undesirable by the state

(Bright 2003). Once accused, women were forced to undergo medical examinations to prove their innocence within a period of twenty-four hours (Valverde 2008). If a woman was found to be infected with a venereal disease, they would be detained in a 'lock hospital' for a period lasting up to three months (Valverde 2008). If the woman refused medical examination, they would also be detained:

> Within a said period of twenty-four hours the authorities of such hospital shall cause a certificate, signed by the medical officer who has made such examination, stating (if the fact be so) that on such examination is had been ascertained that such woman has a contagious disease… [the] justice may, if he thinks fit, order the authorities of such hospital to detain such woman in the hospital for medical treatment until discharged by such authorities, and such Order shall be a sufficient warrant to such authorities to detain such woman, and such authorities shall detain her accordingly; — Provided that no woman shall be detained under any such Order for a longer period than Three Months (*Contagious Diseases Act*, R.S.C. 1865, c. 8, s. 16).

The discourse used within the *Act* is telling of the social relations that shaped it. The use of English professional titles (e.g. High Constable, Medical Practitioner, etc.), and, lack of indigenous terms for the same positions (e.g. 'mashkikiiwinini', which could have been used to include medical practitioners in the Ojibwe community), demonstrate that only white people were afforded the power to identify and arrest sex workers. In addition to excluding indigenous people from positions of power, the use of the phrase 'if he thinks fit' indicates that women are also barred from these positions. Indeed, the language used in the *Act* indicates that women are the sole target of this legislation, even though both sexes can carry venereal disease. This reflects the subordinate position of indigenous people and women in colonial societies. Thus while the *Act's* use of these professional titles is seemingly neutral, and its use of pronouns seemingly harmless, both are class, race and gender-specific strategies that served to legitimize the superiority of hegemonically dominant groups (white, heterosexual males) at the expense of all 'Others'.

The use of medical and hygienic discourses within the *Contagious Diseases Act* is another example of seemingly neutral language that serves to thinly veil racism. These discourses are able to recast sex work as an issue of hygiene that can be controlled through medicine and surveillance, instead of as something that needs to be prohibited (Levine 2003). These discourses assist in reaffirming socially constructed labour divides that attribute the subordinate position of indigenous and people 'of colour' to their biology instead of attributing it to colonialist social relations of domination/subordination (Levine 2003). They lend legitimacy to biological determinism as well as to the eugenics movement (Stoler 2002). By medicalizing sex work, colonial authorities could neutralize the threat sex workers[19] posed to WMCP by claiming that they suffered from supposed biological deficiencies. Medical professionals, for example, claimed that venereal disease was a form of "racial poison" that created a "distinctly un-British moral laxness" (Levine 2003:4). They claimed, moreover, that venereal disease caused promiscuity by making women's 'natural' instincts uncontrollable (Levine 2003), presuming sexual incontinence was the norm for indigenous, African descended and other women 'of colour'. This discourse allowed authorities to explain the behaviour of white women arrested under the *Act* without compromising the superiority of whiteness, since such women were treated paternalistically or imagined as negatively racialized. When indigenous and people 'of colour' were arrested under the *Contagious Diseases Act*, in contrast, their criminality would be linked to their supposed race-based inferiority. The medicalization of sex work and venereal disease that occurred under the *Contagious Diseases Act* thus serves to protect the hegemonically dominant position of the capitalist-colonial-heteropatriarchal state.

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[19] White sex workers are especially threatening to WMCP, as whiteness is considered to be the pinnacle of rationality and virtuousness — things sex work are juxtaposed against.

Records are unclear, however, if this legislation was ever enforced in Canada. There is evidence to suggest that the *Act* was never enforced since there was no hospital in Canada certified to detain 'diseased' women (Valverde 2008; $WE@&R!, n.d.; van Der Meulen et al. 2013). Within the context of early Canada, it makes sense that settlers would be opposed to the *Contagious Diseases Act* because it limited their own access to sex workers. Sex workers could not be hired by settlers if they were detained in lock hospitals. The state could not outright abrogate the *Act*, however, since doing so would be akin to rejecting the very principles that make the hetero-patriarchal state hegemonically dominant. As for example is currently the case with abortion laws, the state consequently chose to keep the legislation but not enforce it. By refusing to enforce the *Act*, the colonial state could continue to use it to ideologically to subordinate indigenous women while simultaneously enabling settler's access to their bodies, as well as the bodies of other negatively racialized and sexualized individuals. The *Act* expired five years later and was never reinstituted (Backhouse 1984).

The ease at which Canadian authorities ignored the *Contagious Diseases Act* came as a shock to 'respectable' citizens. Indeed, the police's refusal to prosecute sex workers became a flash-point of contention between the state and the Catholic Church during the nineteenth century (Gray 1971). While the Church believed that sex work should be eliminated, police would only arrest a sex worker if they were breaking additional laws (Backhouse 1985). To avoid conflict with the Church that could potentially be devastating to the state's hegemonically dominant position — and most importantly, to keep the sharp line dividing 'respectability/whiteness' and 'degeneracy/indigeneity' from blurring — the state implemented a system of segregation whereby sex workers could only walk the streets at night and could only perform their work in private

dwellings or carriages (Erickson 2011). This dual system of toleration and segregation was favoured so much by police that it was not uncommon for police officers to frequent brothels (Strange and Loo 1997) — or even to own them[20] (Gray 1971).

It is important to note, however, that even though the police refused to enforce the *Contagious Diseases Act*, they still used the *Act t*o justify the harassment and abuse of indigenous women. As mentioned previously, the *Act* ignited claims by medical practitioners that white women infected with a venereal disease 'degenerated' into 'non-whiteness' (Levine 2003). Indigenous sex workers were consequently considered to be twice as poisonous: not only did their sexuality pose a threat to the colonial system, but so did their indigeneity. The police, unsurprisingly, used anti-sex work legislation to justify the abuse of indigenous women. There is evidence, for example, that the police used anti-sex work legislation to justify the harassment of the owners and patrons of brothels frequented by indigenous and men 'of colour' (Gray 1971). Indeed, law men such as Regina's chief of police Walter Johnson, who famously made the first Canadian arrest under the White Women's labour law, was rumoured to charge brothels a protection fee (Backhouse 1996). Brothels owned by white women, in contrast, were popular destinations for many officers and consequently received police protection and support (Gray 1971).

b) The Vagrancy Act (1869)

The expiration of the *Contagious Diseases Act* in 1870 meant that state authorities had to invent new legislation to regulate sex work. The state also had to respond to the growing complaints of Church officials and affiliated social purity campaigns (Backhouse 1984). The Church was pleased to see the *Act* eliminated, but would not stop its moral campaigns until it saw sex

[20] The most notable example is Police Chief Markwick, who owned a brothel in Medicine Hat, Alberta. Chief Markwick's brothel was reportedly the largest and most frequented in town (Grey 1971).

work was prohibited altogether (Backhouse 1984). The colonial state needed to make a concession in response to these criticisms. The confederation of the Canadian state in 1867, moreover, required officials to ensure its hegemonically dominant position by forging a national identity that distinguished settlers from Turtle Island's original inhabitants (Hunt 2013). Part of this process included introducing new legislation to govern morality and social respectability, but also to discipline labour.

The state set out to accomplish this task by implementing *An Act Respecting Vagrants* (hereafter referred to as the *Vagrancy Act*) in 1869. The *Vagrancy Act* is designed to criminalize those who either refused or were unable to work[21], as well as those who worked in illegitimate markets that were considered immoral. According to David Bright, the *Vagrancy Act* was an "invaluable tool" for the regulation of morality and reinforcement of social respectability (2003:162). Or in other words, it was an essential tool for reinforcing the racial boundaries that notions of respectability and morality depended on. The *Vagrancy Act* defined a vagrant as any "loose, idle or disorderly" person who "does not have any visible means of maintaining himself" (Criminal Code, R.S.C. 1892, c. 157, s. 8). The *Vagrancy Act* contains a list of provisions that included everything from blocking roadways, loitering, causing a disturbance by "swearing, singing, or by being drunk", discharging firearms, defacing property, and so forth (Criminal Code, R.S.C. 1892, c. 157, s. 8). Those found guilty under the *Vagrancy Act* could be sentenced to a maximum of six months hard labour (Criminal Code, R.S.C. 1892, c. 157, s. 8).

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[21] According to William Chambliss, vagrancy laws first emerged in England in 1349 following the Bubonic Plague (1964). The death of a large portion of the working population caused wages to skyrocket, and this threatened both the socio-economic and political stability of England (Chambliss 1964). Vagrancy laws were therefore introduced as a way to stabilize England's economy by a) increasing the pool of surplus labour and b) forcing workers to accept low wages.

The *Vagrancy Act*, however, was so broad that it could potentially be used to charge anyone: it represented a new tool with which colonial authorities could legitimate the harassment and abuse of those determined to be socially undesirable (Levine 2003). As Philippa Levine points out, linking vagrancy with criminality is an effective way to strip vagrants "of any rights or moral authority" (2003:187). The criminalization of vagrancy, moreover, places the onus on the individual to prove their innocence (Bright 2003). This is unlike most other criminal legislation where individuals are considered innocent until proven guilty by a court of law and where evidence of wrongdoing is required before the accused can be brought to court. With the *Vagrancy Act*, in contrast, criminality is defined as an *absence* of action (e.g. joblessness).

Vagrancy provisions related to sex work

In addition to criminalizing idleness and drunkenness, the *Vagrancy Act* also included provisions specific to sex work. Because sex work is understood to be a dishonest and a lazy alternative to 'respectable' work, sex workers are also considered vagrants in the eyes of colonial authorities (Bright 2003). According to the *Vagrancy Act*, therefore, a vagrant could refer to someone who:

> i) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering or people, and does not give a satisfactory account of herself;
>
> j) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;
>
> k) is in the habit of frequenting such houses and does not give a satisfactory account or himself or herself" (Criminal Code, R.S.C. 1892, c. 157, s. 8).

The definition of a vagrant as anyone who "wanders the streets" and who "does not give a satisfactory account of herself" was intentionally vague so that authorities could use legislation to police women considered to be socially undesirable. Indeed, the *Vagrancy Act* was so ambiguous

that police could justify the arrest of virtually any woman found in public. Whether or not the woman is actually engaged in sex work was irrelevant to the goals of the *Vagrancy Act* since being a woman in public still counts as a strike against WMCP. According to the rhetoric comprising WMCP, the delicate sensibilities of a 'respectable' white women are best suited for the confines of the home. This is why any woman who appeared to be engaged in manual labour outside the home was automatically at suspicion of being both sexualized and racialized (Levine 2003). The purpose of the *Vagrancy Act*, therefore, was to reinforce the gendered binaries that were introduced by settlers as a way to naturalize class, gender and racial hierarchies.

Sex workers represent a particularly potent threat to the reproduction of WMCP. Not only does their very existence challenge the socially constructed divisions between public/private and male/female, they also reject the ideologies responsible for devaluing women's labour. They do this by selling something previously thought to be freely obtainable: women's sexuality as part of their domestic labour. By practicing heterosexuality for money, sex workers also rejected heteronormativity and the nuclear family model. If the sex worker were white, moreover, their labour challenged the racial binaries undergirding the capitalist-colonialist system. In these instances, every effort was made to recast white sex workers into racialized sex workers so that the so-called respectability of WMCP can be protected (Razack 1998b; Gilman 1985). In order to eliminate the threat sex workers and other working women pose to colonial rule, the *Vagrancy Act*

was implemented. The *Vagrancy Act* served to limit women's access to wealth and political power through the restriction of mobility[22].

Issues with enforcement

Much like the *Contagious Diseases Act* (1867), however, the anti-sex work provisions within the *Vagrancy Act* were rarely enforced (Edmonds 2010; Erickson 2011). Limiting settler's access to sex workers would conflict with the state's desire to denounce concubinage. The state could not reject the *Vagrancy Act* outright, however, since doing so would undermine some of the hetero-patriarchal principles underlying WMCP, including sexual purity. Even the main target of the *Vagrancy Act* — indigenous women — seem to have been unaffected by it (Edmonds 2010). In Penelope Edmonds' study, which examines vagrancy in Victoria from the years 1867-1868, there is not one clear instance where a First Nations woman was charged (2010). Lesley Erickson (2011) explains this paradox by pointing to the narrowness with which the vagrancy laws were applied. Indigenous women who performed sex work on reserves, for example, could not be arrested under existing vagrancy laws (Erickson 2011). Colonial authorities decided that the *Vagrancy Act* did not apply "because the woman did not keep, frequent or reside in a disorderly house, nor did she wander the fields, public streets or highways" (Erickson 2011:63). Lesley Erickson (2011) does not explain, however, why colonial authorities would wish to be so narrow in their interpretation of the *Vagrancy Act*.

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[22] It is important to note, however, that the state's concern with the restriction of women's mobility in public spaces did not occur in a vacuum. This is part of a larger process of industrialization, whereby spatial lines are redrawn to make way for a massive movement of wealth into the hands of white, male elites. This not only includes the restriction of women's participation in public and in the formal labour market, but also the segregation of indigenous people onto reserves and people 'of colour' into ghettos. The connection between industrialization and the restriction of mobility will be elaborated in part 3 of this chapter: *Crisis #2: Industrialization (1900-1920).*

Penelope Edmonds explains this reluctance by pointing to a 1837 report released by the Parliamentary Select Committee on the Aboriginal Tribes (Edmonds 2010). Within this report, authorities advise that "no vagrancy laws or other regulations should be allowed, the effect of which might be to cripple the natives by preventing them selling their labour at the best price, and at the market most convenient for themselves" (Edmonds 2010:13). Or in other words, it was feared that vagrancy laws might inadvertently increase the cost of indigenous labour. An increase in the cost of indigenous labour would have devastating effects for Canada's fur trade and would drive up the cost of the native-made goods that settlers relied on (Edmonds 2010). In addition to driving up the cost of indigenous labour in legitimate markets, authorities were also concerned that the *Vagrancy Act* would drive up the cost of sexual services of indigenous women. As with the *Contagious Diseases Act* (1867), authorities feared that the *Vagrancy Act* would restrict settler's access to the bodies of indigenous women and consequently jeopardize colonial stability.

The state solved this problem by using less serious provisions within the *Vagrancy Act* to criminalize sex workers (Erickson 2011). This way, the state could regulate sex workers without restricting settler's access to them. The state could also use this method to manage the new system of toleration and segregation that had been implemented in regards to sex work with the introduction of the *Contagious Diseases Act* (1867). The trespassing and drunkenness provisions of the *Vagrancy Act*, for example, were often used in place of the 'common prostitute' provision as a way to regulate when and where sex workers could ply their trade (Erickson 2011). Because the state's toleration of sex work could not be publicly known, this work had to be performed privately and was restricted to working-class, racialized neighborhoods (Erickson 2011). The *Vagrancy Act* not only contributed to this accommodation, but also assisted in the preservation of

the ideological divide between whiteness/indigeneity and respectability/degeneracy that made segregation possible.

c*) The Indian Act (1876)*

The last quarter of the nineteenth century saw an uptick in the numbers of white women immigrating to the colony (Carter 1997; Stoler 2002). While small numbers of white women began to migrate to Canada as early as the 1820-1830s, immigration increased significantly after the establishment of basic infrastructure and amenities (Erickson 2011). This included developments like the completion of the Canadian Pacific Railway through Alberta in 1883, growth in agriculture and farming and the consolidation of numerous treaties (Le Jeune 2006; Carter 1997).

According to Ann Stoler, the immigration of white women to the colonies was restricted up until 1850 due to fears that hegemonic notions of "middle-class morality, manliness and motherhood" were threatened by concubinage and miscegenation (2002:63). Sarah Carter echoes this point by stating that "in times of a real or imagined threat to the stability of colonial rule, the arrival and protection of white women was part of a broader response to the problems of colonial control" (1997:14). By bringing large numbers of white women to the colony, the state intended to 'civilize' the settler population by preventing miscegenation and racial degeneration (Stoler 2002; Carter 1997; Campbell 1995).

The influx of white women to the colony, however, had the potential to threaten the stability of colonial rule if not managed properly. With both white and indigenous women now present in large numbers in the colony, the state had to sharpen the ideological boundary between WMCP and indigeneity, or risk losing its hegemonically dominant position (Carter 1997; Van Kirk 1996). If white settler males chose to continue their relationships with indigenous women

over white women, the state could no longer claim the level of racial superiority needed for the reproduction of its colonial project. The *Indian Act* proved to be an invaluable tool for addressing this issue. In addition to extending previous policies that dictated the creation and management of reserves, the *Indian Act* introduced a number of provisions that sought to reinstate complex hierarchies of race and gender (Thompson 2009). Like the *Vagrancy Act* and the *Contagious Diseases Act*, the *Indian Act* was developed to assist in the sharpening of racial lines that had been blurred by decades of concubinage.

A number of similar policies were introduced before the *Indian Act* was officially implemented. In 1850, for example, the legislatures of both Upper and Lower Canada passed policies that gave the state power to define who was 'Indian' and to restrict all ‘Indians’ to reserves (Thompson 2009; Lawrence 2003). These powers were extended in 1857 with the passing of the *Gradual Civilization Act* (Lawrence 2003). This *Act* gave indigenous men the option to gain Canadian citizenship and to convert reserve land into legal plots (Lawrence 2003). Only through enfranchisement could indigenous men make claim to the property rights that are restricted to whites (Stevenson 1999). Indigenous women were excluded from this opportunity altogether (Lawrence 2003). In exchange for Canadian citizenship, however, indigenous men had to give up their 'Indian' status and its associated benefits, as well as the status of their wives and children (Lawrence 2003). Enfranchisement benefits the state in two main ways: it voids any collective rights ‘Indians’ have to the land and reduces the costs associated with managing reserves (Thompson 2009).

Shortly after the formation of the federal government in 1867 came the *Gradual Enfranchisement Act* in 1869 (Stevenson 1999; Lawrence 2003). This legislation severely restricted the

amount of ‘Indians’ eligible to register for 'Indian' status through the implementation of a blood quantum (Stevenson 1999; Lawrence 2003). Initially, only those who were considered at least ‘one-quarter Indian’ could be enfranchised, but this provision was extended over time to include ‘half-breed’ men (Lawrence 2003). ‘Half-breeds’ became enfranchised through a process that required the applicant to appear in front of a judge and be deemed ‘civilized’ enough to become a Canadian citizen (Stevenson 1999). Applicants were judged based on their ability to speak English, whether or not they attended school, and if they have ‘respectable’ employment (Stevenson 1999; Lawrence 2003). After this, the applicant needed to pass a three-year probation period before being officially granted citizenship (Lawrence 2003).

The colonial state’s desire to define, categorize and quantify indigenous peoples did not stop here. These policies were extended through the introduction of the *Indian Act* in 1876, which introduced separate criminal legislation for ‘Indians’ (Hunt 2013). Canada’s long history of separating the legislation that governs indigenous peoples and settlers reveals the differential treatment of indigenous people and exposes the law as a tool of social control (Backhouse 1985; Carter 1997).

One of the first provisions within the *Indian Act*, for example, assists in reproducing racial hierarchy by extending previous policies that determine who is considered 'Indian' (*Indian Act*, R.S.C. 1876, c. 18, s. 3). The *Indian Act* defines an 'Indian' as “any male person of Indian blood reputed to belong to a particular band”, “any child of such person” and “any woman who is or was lawfully married to such person” (Indian Act, R.S.C. 1876, c. 18, s. 3). This definition, however, has numerous implications for indigenous people. First, the word 'Indian' was completely meaningless to indigenous people prior to colonization (Lawrence 2003). This label dis-

solves the distinct differences between indigenous communities and reduces indigeneity to a common stereotype (Lawrence 2003). By stripping indigenous peoples of their ability to define themselves and explore the culture and customs of their own distinct nation, the *Indian Act* assisted in placing indigenous peoples at the bottom of a newly established racial hierarchy.

By legitimating the colonizer's ability to define who is or is not colonized, this provision of the *Indian Act* promoted a form of 'statistical genocide' that is designed to abolish 'Indians' from the colony altogether (Churchill 1995, as quoted in Lawrence 2003:5; Dean and Therrien, 2003). The implementation of strict blood quantum requirements to obtain 'Indian' status combined with the state's refusal to grant status to indigenous women individually reduced the number of 'Indians' living in Canada to 350,000 as of 1985 (Holmes 1987:8, as quoted in Lawrence 2003:9). This provision, moreover, assists in excluding indigenous peoples from WMCP and its associated benefits — namely, property ownership. By making property ownership exclusive to white, middle-class men with Canadian citizenship, the *Indian Act* denies indigenous people personhood within liberal Canadian society (Harris 1993). The enfranchisement process guarantees that WMCP remains distinct from indigeneity by granting property rights only to indigenous men who 'pass' as white.

Another important component of the *Indian Act* is the pass system. This system was originally put in place in order to control indigenous people during the North-West Rebellion in 1885 (Erickson 2011). Mirror a practice of the Code Noir and the British slave codes, the Act required all 'Indians' to have a letter by either an employer or 'Indian' Agent verifying that the person was travelling for legitimate purposes (Carter 1997). This prevented indigenous people from visiting family and friends who lived off-reserve, from trading, as well as from attending religious cere-

monies that were banned by the *Indian Act* (Erickson 2011). Most importantly, however, the pass system authorized the removal of indigenous people from white spaces, thus employing a spatial strategy to reproduce the ideological binary between WMCP and indigeneity. North West Mounted Police officials justified the pass system by claiming that indigenous sex workers were trespassing onto white property (Hunt 2013; Erickson 2011; Backhouse 1985). They also touted the pass system for its ability to 'protect' indigenous women from sex work, limit indigenous alcohol consumption and generally "enhance the enjoyment of life in rural, agricultural communities" (Erickson 2011:47)

Gendered provisions of the Indian Act

In its attempt to ideologically subordinate indigenous peoples, the *Indian Act* also contains a number of provisions that are specific to indigenous women (Lawrence 2003; Erickson 2011; Carter 1997). As discussed earlier in this chapter, the high status of indigenous women in pre-colonial societies represented an obstacle to the establishment of colonial rule (Smith 2003; Anderson 2000). Traditional arrangements respecting polygamy, divorce, communal property and matriarchy had to be abolished if a liberal and possessive individualist society were to be successfully established and reproduced (Erickson 2011). As a result, the *Indian Act* contained numerous provisions designed to assist in the implementation of a patrilineal and patriarchal system. The *Act* did so in three main ways.

First, the *Indian Act* supports the establishment of a patrilineal system through its gendered definition of 'Indian'. According to the *Act*, only a "male person of Indian blood" is considered 'Indian', effectively rendering indigenous women as non-persons (Indian Act, R.S.C. 1876, c. 18, s. 3). An indigenous woman, therefore, is considered to be an extension of her husband or

father under European law. This explains the logic behind section 12(1)(b) of the *Indian Act*, which until 1985, voided the status of any indigenous woman who married a non-indigenous man and banished these women from their communities (Lawrence 2003):

> (c) Provided that any Indian woman marrying any other than an other than an Indian. Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time at ten years' purchase with the consent of the band (Indian Act, R.S.C. 1876, c. 18, s. 12(b)).

If an indigenous woman were to marry a man from a different indigenous community, moreover, she and her children would be transferred to the husband's band (Stevenson 1999). If an indigenous woman did not have status before marriage, furthermore, subparagraph 12(1)(a)(iv) removed the status of her children upon turning 21 years of age (Lawrence 2003). Both amendments, however, were struck down in 1985 after Sandra Lovelace (Tobique First Nation) presented her case against the provisions to the United Nations Human Rights Committee (Lawrence 2003).

Second, the *Indian Act* supports the establishment of a patrilineal system by forcing indigenous women into poverty and making them dependent on men. In addition to reaffirming the state's denial of the ability of indigenous women to own property and exercise additional power, the *Indian Act* also institutionalized rules of inheritance that governed the morality of widows. According to section 9 of the Act:

> Upon the death of any Indian holding under location or other duly recognized title any lot or parcel of land, the right and interest therein of such deceased Indian shall…devolve one-third upon his widow, and the remainder upon his children equally (Indian Act, R.S.C. 1876, c. 18, s. 9).

Instead of having property pass through the generations via the mother, now only a small fraction of property and wealth belonging to a married indigenous couple will be transferred to the wife upon being widowed.[23] If a judge found that the widow was "not of a good moral character", moreover, another one-third of her share would be taken by the state (Carter 1997:194).

The *Indian Act* also undermined the matrilineal and/or matrifocal character of many indigenous communities by limiting their participation in politics and community decision-making. In stark contrast to many pre-colonial indigenous communities, which based clan membership and political leadership through matrilineal descent, the *Indian Act* now banned indigenous women from taking leadership roles (Anderson 2000). The election of a chief and council would now be restricted to "male members of the band of the full age of twenty-one years" (Indian Act, R.S.C. 1876, c. 18, s. 61).

Fourth, the *Indian Act* assisted in the dismantling and criminalization of family patterns such as polygamy and stigmatizes the use of the extended family to raise children (Sangster 1999).[24] Many pre-colonial indigenous communities preferred polygamy because it ensured every woman who wanted to marry could do so (Leacock 1980; Devens 1992). The pool of available men could be limited in some indigenous communities, as men were often involved in potentially dangerous occupations like hunting and trading (Leacock 1980; Devens 1992). Polygamous living, moreover, reduced the workload of pre-colonial indigenous women signifi-

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[23] It is important to note that while the *Indian Act* outlined inheritance rules in case of widowhood, it contains no provisions dealing with the division of property once a marriage or relationship ends. This leaves indigenous women living on reserves with less legal protections than those living off-reserve. Indigenous women living on-reserve, for example, are unable to take permanent or temporary possession of a family home, and therefore cannot prevent their spouse from selling their shared property and belongings (Ontario Women's Native Association, n.d.)

[24] It is also important to note that the forced implementation of heterosexual monogamy erased the existence of twin-spirited and otherwise non-binary indigenous people (Thompson 1999).

cantly (Stevenson 1999). Working communally allowed women to watch the group's children while simultaneously producing goods and raising crops (Stevenson 1999; Anderson 2000). The criminalization and stigmatization of these relationships in combination with the separation of the public and private spheres resulted in more work for indigenous women. Over time, they, along with other women, were expected to engage in a 'second shift' by working for pay while simultaneously caring for and raising children (Hochschild 1989).

Additionally, varied living arrangements protected indigenous women against domestic violence (Stevenson 1999). Indigenous women in pre-colonial communities were more protected against abuse as they lived with their extended family and did so communally. The imposition of the nuclear family model, however, forced women to remain within the private confines of the home. This model also prevented indigenous women from pooling and sharing goods to ensure that everyone in the community was secure. The new policy of enforced isolation removed any remaining power indigenous women may have had and placed them into a situation where they were more likely to be victimized.

The *Indian Act* also prevented indigenous women from escaping domestic violence by replacing culturally accepted modes of reconciliation and divorce (Erickson 2011; Stevenson 1999; Carter 1997). These latter systems have been replaced with a reliance on the European legal system and police (Erickson 2011; Stevenson 1999; Carter 1997; Sangster 1999). If an indigenous woman were found to be living with a partner who was not her husband, she would be charged with bigamy and sent to a reformatory (Sangster 1999). With legal restrictions on traditional indigenous ways to settle disputes, indigenous men increasingly turned to the NWMP to resolve disputes (Erickson 2011). This was problematic, however, since the European legal sys-

tem rarely punished indigenous men for crimes of violence or sexual assault, and, instead preferred to operate under the falsely constructed notion that sexual violence is a fundamental part of indigenous culture (Erickson 2011). By operating under such an assumption, colonial authorities could justify noninterference while at the same time portray indigeneity as barbaric.

Provisions of the Indian Act specific to sex work

In addition to removing the status of indigenous women who married non-indigenous men and abolishing matrilineal systems of living and dismantling traditional family patterns, the *Indian Act* also served to ideologically subordinate indigenous women through its provisions on sex work. In 1879, an amendment was made to the *Indian Act* to criminalize additional aspects of sex work that were specific to indigenous women.[25] Now, virtually all aspects of indigenous sex work were criminalized. According to this provision:

> If any person, being the keeper of any house, allows or suffers any Indian woman to be or remain in such house, knowing, or having probable cause for believing, that such Indian woman is in or remains in such house with the intention of prostituting herself therein, such person shall be deemed guilty of an offence against this Act, and shall, on conviction thereof, in a summary way, before any Stipendiary Magistrate, Police Magistrate or Justice of the Peace, be liable to a fine of not less than ten dollars, or more than one hundred dollars, or to imprisonment in any gaol or place of confinement other than a penitentiary, for a term not exceeding six months (Indian Act, R.S.C. 1879, c. 34, s. 7).

This provision consequently stigmatized indigenous women and incentivized landlords not to rent to them or, if they did, they could extort them without fear of criminal sanction. As a result, indigenous sex workers were often forced into homelessness and exposed to the dangers of assault, exploitation and murder.

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[25] These provisions remained until 1892, when they were removed from the *Indian Act* and inserted into the Criminal Code (Backhouse 1985; Erickson 2011). At this time, these provisions were slightly altered so that they would only apply to status 'Indians'.

These provisions were in addition to pre-existing laws against sex work contained within the *Vagrancy Act*, which were used to prosecute white sex workers (Erickson 2011). According to Constance Backhouse (1985), the provisions pertaining to sex work within the *Indian Act* varied from the bawdy house provisions in the *Vagrancy Act* in two ways. First, the *Indian Act* contained vague language that widened its definition of criminality. The term 'common bawdy house', for example, had been removed and replaced with simply 'house' (Backhouse 1985). This made it so that it was no longer necessary to prove that the establishment was a bawdy house in order to make an arrest (Backhouse 1985). Any 'house' could be interpreted as a bawdy house, given that an indigenous woman suspected of sex work was present. Living with and renting to an indigenous sex worker was now criminalized. This drove indigenous sex workers into exploitative relationships with landlords and pimps (McLaren 1986). This provision was amended in 1884 to include 'tents' and 'wigwams' as potential bawdy houses in an effort to secure more indigenous prosecutions (Backhouse 1985). Second, the penalty for sex work under the *Indian Act* was much higher than the penalty for sex work under the *Vagrancy Act*. While white sex workers charged under the vagrancy provision were only charged with a summary offense, indigenous sex workers charged under these provisions were charged with an indictable offense (Erickson 2011). Those who were convicted under the *Vagrancy Act* would receive a maximum penalty of $50.00 or six months in prison, while those who were convicted under the *Indian Act* could be fined up to $100.00 and six months of imprisonment (Backhouse 1985).

In 1886, another amendment was made to the law that enabled police officers to target indigenous populations with more precision (Backhouse 1985). The provision which states that "every person who keeps, frequents or is found in a disorderly house, tent or wigwam used for

such a purpose" was changed to include "every *Indian* who keeps, frequents or is found in a disorderly house…" (Backhouse 1985). According to this provision, 'Indian' men only needed to be found on the premises of a suspected bawdy house to be arrested, while white men needed to be proved to be a 'habitual frequenter' (Backhouse 1985). This allowed the state to criminalize indigenous men under the guise of the 'protection' of women, even though the customers of indigenous sex workers are overwhelmingly white (Backhouse 1985). In 1887, however, this provision was repealed so that the state could retain its focus on the regulation of indigenous women (Backhouse 1985).

Issues with enforcement

Much like the *Contagious Diseases Act* (1865) and the *Vagrancy Act* (1869), however, there was no evidence to suggest the anti-sex work provisions within the *Indian Act* were ever enforced (Levine-Rasky 2012; Backhouse 1985; Erickson 2011). White women, however, were frequently convicted under the *Vagrancy Act* (Levine-Rasky 2012). Cynthia Levine-Rasky (2012) and Constance Backhouse (1985) offer different explanations for this discrepancy. Levine-Rasky suggests that indigenous women were dealt with informally for crimes of sex work. Because of the extreme power imbalances between indigenous sex workers and police, police were free to abuse this group with impunity as a form of 'punishment' as well as to engage in sexual exploitation in place of arrest (Levine-Rasky 2012).[26] Constance Backhouse, on the other hand, suggests the practice of polygamy and bigamy in some indigenous communities may

[26] The abuse of indigenous women by colonial authorities is well-documented by Canadian historians. James Gray (1971) notes that in 1886, the Department of Indian Affairs was revealed to be trafficking indigenous women. Lesley Erickson (2011) demonstrates that in the same year, government officials in the Prairies were accused of withholding rations and forcing indigenous communities to sell their female children. In the late 1990s and into the 2000s, numerous reports of complaints regarding the RCMP's and municipal police's sexual exploitation of indigenous women have come to public attention (CBC News 2013; Curtis 2016; Human Rights Watch 2013)

have made it “difficult for courts to determine which women were ‘common prostitutes’” (1985:422). Both of these explanations, however, overlook the state's reliance on alternative provisions within the *Indian Act* to prosecute suspected indigenous sex workers.

According to Lesley Erickson (2011), police and government officials relied on provisions of the *Indian Act* that criminalized alcohol consumption and trespassing in order to regulate indigenous sex work. In 1880, upon realizing the unrealistic scope of the pass system, the *Indian Act* was amended to include provisions against public intoxication (Erickson 2011). Like the anti-sex work laws contained within the same *Act*, this provision applied to indigenous people only and was used as a tool of social control to keep indigenous peoples away from white spaces. Like what occurred with the *Contagious Diseases Act* (1865) and the *Vagrancy Act* (1869), it made little sense from the perspective of the colonial authorities to limit their own access to sex workers via the *Indian Act*. The authorities, however, still had to regulate sex work so that it did not seep into ‘respectable’ white areas (Razack 1998). Trespassing and alcohol consumption laws allowed authorities to control where sex work was taking place without restricting settler’s access to bawdy houses or criminalizing the overwhelmingly white clients of indigenous sex workers. This model of police toleration and segregation, however, would need to be modified in order to prepare the state for the ‘risks’ of moral and racial degeneration that increased immigration would later pose to white superiority.

ii. Crisis #2: Industrialization (1900-1920)

In addition to sexualizing indigenous peoples, the state sexualized the bodies of immigrants and people 'of colour' assuming they posed a threat to colonial stability. This began when many large Canadian cities experienced a population boom throughout the period of 1900-1920

(Gray 1971; Bright 1995; Valverde 2008; Meil-Hobson 1990). Calgary's population, for example, had increased 13 per cent from 1900 to 1914 (Bright 1995). While some immigrants were single white males from Britain, most were 'non-white' (eg., Irish, Italians, Greeks, Russians, Poles, Ukranians, etc.) and emigrated from non-Protestant and/or non-British countries (Gray 1971; Valverde 2008). Building permits, moreover, had increased by 2,000 per cent, and the average profit of manufacturing firms increased from $600,000 to $7,750,000 (Bright 1995:44). An increase in profits for large businesses, however, did not translate into prosperity for the working class. On the contrary, the economic boom was linked to a housing crisis as well as a decline in the wages of male workers (Valverde 2008). This intensified the animosities expressed by white male settlers toward competing immigrants 'of colour' and women, since both represented a threat to white working class men's prioritized access to the labour market. Chinese immigrants, for example, were paid 50 percent to 75 per cent of what white settlers were paid for the same job (Backhouse 1996). White women were paid even less (Backhouse 1996).

Between the years of 1881 to 1885, approximately 15,000 Chinese immigrants were recruited to build the Trans Pacific Railway (Wohl et al. 2013). After the railway was completed in 1885, however, Chinese immigrants were perceived to be in direct competition with white male settlers for work (Edwards & Calhoun 2011). This was irrespective of the fact that the racially stratified nature of the Canadian labour market prevented Chinese immigrants from accessing the types of jobs white settlers performed (Backhouse 1996). Chinese immigrants often worked in industries typically stereotyped as 'female': laundry, restaurants and other forms of domestic service (Backhouse 1996). Due to the lack of women available for domestic labour in the colony,

these jobs had little white competition (Backhouse 1996).[27] Concerned for the implications to Anglo-white superiority, trade unionists, businessmen and moral reformers reacted by lobbying against Chinese immigration (Backhouse 1996). Lobbyists obscured the financial benefit they had in banning Chinese immigration by pointing to the supposed threat Chinese immigration posed to white women (Backhouse 1996). These groups denounced interracial marriage and expressed concern that Chinese employers would sexually coerce the white women who worked for them (Backhouse 1996). In their competition with Chinese labourers, white male settlers consequently constructed a violent, predatory image of Chinese immigrants and cast white women as valuable property in need of protection from other races.[28] Simultaneously, as Constance Backhouse shows, Chinese and all other Asian males were imagined as sexually neutered and effeminate (1996).

As a result, Chinese immigrants were suddenly faced with a variety of restrictions in order to discourage Chinese immigration after the Canadian Pacific Railway had been completed. First, section 38 of the *Immigration Act* (1910) permitted authorities to deny Chinese immigrants entry to Canada on the basis that they were "unsuitable for the climate of Canada" (as quoted in Strange and Loo 1997:120). Second, immigrants faced deportation for a variety of 'offenses'. Men, for example, were often deported for having an alliance with left-wing politics, while women were deported for committing 'morality' offenses (Strange and Loo 1997). All immi-

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[27] It is important to note, however, that Chinese immigrants had been used to break strikes and ultimately null the efforts of white trade unions (Backhouse 1996). This also contributed to the animosities felt by settlers toward Chinese immigrants.

[28] This is not unlike what has occurred in other countries during times of perceived colonial instability. Black men in both Canada and the U.S., for example, are constructed as sexually insatiable deviants from which white women require protection from (Ware 2015).

grants risked deportation if they found themselves unemployed and/or on public assistance (Strange and Loo 1997). Third, in 1923, the Canadian government enacted the *Chinese Exclusion Act* (Dyzenhaus & Moran 2005). This banned Chinese immigration altogether and even forced some Chinese immigrants already living in Canada to return to their country of origin (Edwards & Calhoun 2011). The *Chinese Exclusion Act* was not repealed until 1947 (Edwards & Calhoun 2011).[29]

These efforts at exclusion were in addition to previously instated pieces of discriminatory legislation, including those that prevented Chinese persons from voting in provincial elections (Qualification and Registration of Voters Act S.B.C. 1872, c.39), from being employed on or from owning Crown land (Crown Land Act, S.B.C. 1884, c.2), from being included as 'persons' (The Electoral Franchise Act, S.C. 1885, c. 40), from voting in federal elections (The Electoral Franchise Act, S.C. 1885, c. 40) and from working in coal mines (The Coal Mines Regulation Amendment Act 1890). Additionally, the *Chinese Immigration Act* passed in 1885 imposed a tax on each Chinese immigrant entering Canada (Kung 2016). The tax began at $50 per person in 1885 and rose to $500 in 1903 (Edwards & Calhoun 2011). The provincial legislature of British Columbia even went as far as to attempt to ban Chinese immigration altogether (Alpheus 1894). The legislature, however, was immediately struck down by the Supreme Court as it infringed upon federal responsibility for issues of immigration (Alpheus 1894).

These discriminatory policies had many negative effects on the Chinese community in Canada. The high cost of immigration as a result of the *Chinese Immigration Act* (1885), for example, severed many Chinese families (Novogrodsky 2003). While Chinese men went abroad to

[29] There is evidence, however, that the Canadian government resumed its restriction of Chinese immigration long past the repeal of the *Chinese Exclusion Act* (see Edwards & Calhoun 2011).

work, their wives were expected to stay at home to care for children, parents and the community (Novogrodsky 2003). Chinese men were forced to navigate their introduction to Canadian life alone and were denied the emotional and domestic labour provided to white settlers by women. Mariana Valverde points out that the *Chinese Immigration Act* played an important role in the creation of organized systems of human trafficking within the Chinese immigrant community (Valverde 2008). Because many could not afford the price of bringing their wives to Canada with them and single Chinese women were unable to emigrate, and because of the resulting demand within Chinese communities for emotional, sexual and domestic labour, trafficked Chinese women were considered a valuable commodity (Valverde 2008). It is also interesting, though poorly popularized, that it was not uncommon for Chinese railroad workers to partner with indigenous women (Chung 2010). Sadly, like their white male counterparts, many such unions were dissolved by Chinese men when they either returned to China or when their advocacy for open immigration allowed them to sponsor Chinese women for entry to Canada.

The role of male Chinese immigrants in organized human trafficking rings soon became a heightened point of discussion amongst lawmakers and moral reformers (Valverde 2008). This rhetoric provided support for colonialist ideologies, especially those that sought to align Chinese people with primitivism and portray settlers as civilizing agents (Backhouse 1996). According to Sarah Carter, newspapers featured reports that depicted "sordid and revolting stories about young white women who were introduced to Chinese men in Sunday school classes, only to come under the influence of the stronger personalities of the would-be converts and find themselves tragically transformed into drug fiends" (Carter 1997:198). This led organizations like the YWCA, the

Local Council of Women and the National Council of Women to support restrictions on Chinese immigration (Carter 1997).

Fears that Chinese immigrants were procuring white women were contrary to reality, however, since arrest statistics reveal that two-thirds of those who were arrested for operating a bawdy house were actually white women (McLaren 1986; Valverde 2008; Strange and Loo 1997). During the period between 1912 and 1917 in Vancouver, for example, 332 women were charged with keeping a bawdy house compared to only seven men (Strange and Loo 1997). Only two of these seven men were actually convicted (Strange and Loo 1997).

There is no surprise, therefore, that the economic and spatial changes brought on by industrialization and urbanization were accompanied by concerns about what these changes might mean for existing gender and race relations. Any major changes made to these relations had the potential to threaten the newly gained material and ideological hegemony of settlers (Valverde 2008). The state feared, for example, that the opportunity brought on by the pressures of urbanization would encourage white women to move to the city and work outside of the home; that the recent influx of immigrants would threaten the superiority of whites; and that the anonymity offered by big city life would enable white women to engage in miscegenation — all of which was imagined to signal a decline in the morality and a dissolution of WMCP (Valverde 2008). Urged on by the likes of the Women's Christian Temperance Union, the clergy and first wave nativist feminists such as Agnes McPhail, Nellie McClung, Emily Murphy and others (Kitossa 2002), colonial authorities sought to protect the value of WMCP by abandoning their leniency toward sex work (McLaren 1986). Sex workers began to be arrested at a rate higher than they ever had been (McLaren 1986). This marked what John McLaren calls the "greatest period of moral and

social unease about prostitution and its exploitative aspects — colourfully described as 'white slavery'" (McLaren 1986:54). 'White slavery', therefore, emerged as a result of interaction between the emergence of urbanization, white supremacism, the effort of capitalists to discipline labour and general anxieties surrounding the shifting race and gender relations at this time.

a) The White Slavery Panic (1909-1914)

'White slavery' refers to a common narrative centred on the imagined sexual exploitation of middle-class white women by male immigrants (Valverde 2008). The narrative was designed to portray the city as a dangerous place where innocent women can be unwittingly swayed into the sex trade by an assortment of diabolical, predatory, dark hued, smooth-talking lotharios (Valverde 2008). So paranoid was this discourse that even divorced, elderly and widowed women were suspected madams. One narrative, for example, warns that "a widow may turn out to be a procuress; the blandest of entertainments in a respectable hall may be but the stepping stone to prostitution; the girlish pleasure of eating chocolates may result in being drugged…" (Valverde 2008:97). These narratives demonize public space (especially spaces that are perceived to be racialized spaces, such as immigrant-owned diners and dance halls) in an attempt to reaffirm the public/private binary so essential to colonialist hegemony (Valverde 2008). Quite aside from infantilizing white women who exercised their autonomy, this discourse blamed white women victims for their supposed foolishness and vanity (Valverde 2008).

The 'white slavery' panic played an important role in legitimizing the tightening of previously existing vagrancy laws and bawdy house provisions. 1900-1920 marked a period of considerable labour unrest that culminated with the Winnipeg General Strike, and which was accompanied by a burst of law enforcement efforts against vagrancy and sex work (Bright 1995;

Strange and Loo 1997; McLaren 1997; Erickson 2011). In 1904, for example, Winnipeg police were given orders to raid downtown brothels and drive them out of business, effectively making them the first police force to attempt to suppress sex work in the Prairies (Gray 1971). Without the proper resources to transport all of the arrested sex workers, however, the police resigned to fining each brothel owner $40 and each sex worker $20 (Gray 1971). According to historian James Gray, “All were warned by the magistrate that the era of segregated prostitution was over for Winnipeg and that they must either reform, leave town, or face much stiffer penalties if they ever again appeared in court” (Gray 1971:46). This officially ended the previously co-operative relationship between police and (white) brothel owners that ensured sex workers would keep public exposure to a minimum (Gray 1971). Previously, the police would stage occasional raids, collect fines and leave bawdy house operators to resume their businesses (Gray 1971). With police co-operation now off the table, sex workers had little incentive to appease police by working discreetly and by restricting their labour to racialized and working-class neighborhoods (Gray 1971).

In 1907, vagrancy laws had been revised to include “any individual walking in or out of a bawdy house” (Erickson 2011:95). This gave police authority to arrest virtually anyone found near or inside of a suspected bawdy house and allowed the rate of vagrancy convictions to flourish. In a five-year span from 1910 to 1915 across Canada, vagrancy convictions increased from 2,800 to 5,500 (Strange and Loo 1997). The conviction rate for vagrancy, moreover, was almost 90 per cent (Strange and Loo 1997). It is important to note, however, that police were not random in their enforcement of these laws and often focused their efforts on brothels operated and frequented by indigenous peoples and people 'of colour' (Gray 1971). The selective enforcement

of bawdy house laws suggest that police were more concerned with the regulation of indigenous peoples and people 'of colour' than they were with the elimination of sex work. This explains why, regardless of changes to the law that allowed police to charge men with walking in and out of a bawdy house, it was rare for police to actually arrest male perpetrators (Strange and Loo 1997). Enforcing these laws would have meant arresting vast numbers of settlers, so police focused on arresting sex workers instead (Strange and Loo 1997). This was in stark contrast to the alleged purpose of the laws introduced during the 'white slavery' panic, which purported to protect white women from non-white immigrant men.

As David Bright (1995) points out, capitalism was not yet hegemonically dominant in Canada during the period of 1900-1920. By arresting more vagrants under the guise of the 'white slavery' panic, the state could reinforce a capitalist work ethic (Bright 1995). This was especially important in the case of sex work, as this form of work challenges many of the social relations underpinning capitalism (Valverde 2008). The white slavery panic subsequently played an important role in reaffirming capitalist and colonialist ideologies during a period of economical unrest amongst the working class (Valverde 2008). Or in other words, it allowed colonial authorities to draw attention away from the systemic causes of violence against women that were rooted in the capitalist-colonial system. The panic also draws attention away from the role of industrialization in the growing division between the rich and the poor, as well as the expanding spatial divisions between racialized, working-class neighborhoods and white suburbs.

The 'white slavery' panic created a fictionalized character to blame for the negative consequences of capitalism: a racialized 'Other', a scapegoat, who ostensibly preys upon white women (Erickson 2011). The protection of white women against 'sexual slavery' can therefore

be seen as a proxy for the suppression of indigenous peoples and communities 'of colour', irrespective of the existence of any actual threat (Carter 1997). In other words, the panic is a tool for securing white supremacy and for refining racial boundaries. In addition to legitimizing the tightening of both immigration and vagrancy legislation, it also legitimized the introduction of *An Act to Prevent the Employment of Female Labour in Certain Capacities* (1912), or what will be referred to in this study as 'White Women's Labour Laws'. As this study demonstrates next, this provincial legislation largely found in Ontario, the Prairie and Western provinces had serious consequences for Chinese immigrants who had already been disadvantaged by discriminatory immigration legislation and the white women who were barred from working for them.

White Women's Labour Laws (1912)

In 1912, the provincial government of Saskatchewan assented *An Act to Prevent the Employment of Female Labour in Certain Capacities* into law (Carter 1997). Similar provisions were enacted over the next several years in other provinces, including Ontario, Manitoba and British Columbia (Backhouse 1996; Carter 1997). According to this legislation, Chinese, Japanese or otherwise 'Oriental' persons[30] could no longer employ white women:

> No person shall employ, in any capacity, any white woman or girl or permit any white woman or girl to reside or lodge in or to work in or, save as a bona fide customer in a public apartment thereof only, to frequent any restaurant, laundry or other place of business or amusement owed, kept or managed by any Japanese, Chinese or other Oriental person (An Act to Prevent the Employment of Female Labour in Certain Capacities, R.S.S. 1912, c. 17, s. 1).

Those who were prosecuted under the *Act* were fined a penalty of up to $100 or were imprisoned for a maximum of 2 months (Backhouse 1996). The Supreme Court defended the *Act* by stating

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[30] Due to protest from the Japanese government, however, references to 'Japanese' persons and 'Oriental' persons were deleted soon after the implementation of the Act (Backhouse 1996).

that it was for "the protection of white women and girls" (Backhouse 1996:366). Those who lobbied for the implementation of these laws also argued that Chinese employers could not physically protect their female employees from violent patrons (Backhouse 1996). They argued that Chinese men were more 'feminine' compared to white men, and that they had a 'timid' and 'unmuscular' nature (Backhouse 1996).

An Act to Prevent the Employment of Female Labour in Certain Capacities was the result of the lobbying efforts of trade unionists, which were white males only, who were concerned about the effects of cheap Chinese labour on their own access and earning power (Carter 1997). Unions first became involved during the 1911 convention of the Trades and Labour Congress of Canada, where union representatives suggested that Chinese employers should be prohibited from hiring white women (Backhouse 1996). Social reformers joined the efforts of trade unionists by claiming that the Act was critical to 'moral' interests (Backhouse 1996). Reformers claimed that "each day's delay means scores of [white] Canadian women lost to decency, and shames our country in the eyes of all moral nations" (Backhouse 1996:332). Eventually, *An Act to Prevent the Employment of Female Labour in Certain Capacities* (1912) was passed by the Saskatchewan provincial government in response to a petition that had been circulated by members of the Saskatchewan Trades and Labour Council (Backhouse 1996).

The *Act* was successful from the perspective of the small businessmen and trade unionists who supported drastically reducing the number of Chinese entrepreneurs (Backhouse 1996). In Moose Jaw, for example, 10 Chinese-owned restaurants had been reduced to six by 1916 (Backhouse 1996:336). Since white women were the only group to earn a lower wage than Chinese immigrants, it became impossible for Chinese employers to be able to afford employees (Back-

house 1996). Thus, even though the law claimed to be for the benefit of white women, it had the effect of exacerbating the gendered wage gap and heightening class and racial disparities (Backhouse 1996). The abundance of discriminatory legislation preventing Chinese women from immigrating to Canada, moreover, made finding the labour of Chinese women next to impossible (Backhouse 1996).

Like other discriminatory legislation before it, the 'White Women's Labour Law' was intended to prevent Chinese immigrants from accessing the same resources and opportunities as white male settlers, especially the cheapened value of women's labour. In doing so, settlers invoked racial divisions that juxtaposed the symbolic purity of white femininity to the supposed dangerousness and degeneracy of immigrants from non-European countries. Sexual racism needed to take precedence over class solidarity so white male settlers could protect the wages of whiteness that guaranteed their preferential access to the labour market, segregated entertainment, residences, places of worship and other privileges (Backhouse 1996). These intentions are revealed by moral reformer Emily Murphy, who claimed that "white girls lose caste when they are employed by Chinese" (Carter 1997:198). Were they to allow middle and upper-class Chinese immigrants to employ lower-class white women, settlers risked their ideological superiority over indigenous peoples and people 'of colour'. Holding up white women as symbols of racial purity, moreover, justifies any brutal attempts to defend white racial superiority — including the implementation of racist laws that target Chinese immigrants and depicted them as hyper-sexualized predators (Backhouse 1996).

After the panic

Regardless of the implementation of these laws, however, sex work remained. Just four years after the Winnipeg police raided downtown brothels to warn that the "era of segregated prostitution was over", Police Chief McRae connected sex workers with a real estate agent willing to sell property to women keepers at inflated prices (Gray 1971:46). Quickly thereafter, a new unofficial red light district had been established on McFarlane and Rachel Street through the direct assistance of the police force (Valverde 2008).

By 1918, arrest rates for sex work in the West had declined dramatically from its all-time high in 1886 (Erickson 2011). Sex work was now considered a social problem to be dealt with by moral reformers and social purity groups as opposed to suppression by police (Bright 1995). Sex work was now dealt with through the use of 'women's homes' that sought to 'rehabilitate' working-class women and sex workers (Erickson 2011). Lesley Erickson (2011) forwards a number of possibilities for the drop in arrest rates. First, the introduction of the telephone and the automobile meant that sex work could now be more effectively hidden from public view. Police consequently have less opportunity to arrest sex workers for vagrancy and bawdy house offenses. Second, Erickson (2011) posits that sex work became less important to the success of white supremacy as more white women immigrated to Canada over time. As the pool of women available for state-sanctioned relationships grew, white male settlers began to rely less on sex workers to fulfill their emotional and physical needs. Lastly, resistance on the part of both sex workers and their clients contributed to the Winnipeg police force's decision to embrace the segregation model.

An Act to Prevent the Employment of Female Labour in Certain Capacities was again revised in 1919 to remove any references to 'Chinese' persons (Backhouse 1996). There were,

however, no changes in the way the policy was being executed (Backhouse 1996). Municipalities were left to decide whether or not they would license Chinese-owned establishments that employed white women (Backhouse 1996). With the intensification of anti-Chinese sentiment, the original Saskatchewan *Act* was not repealed until 1969 (Backhouse 1996). From 1923 to 1947, virtually no Chinese immigration was permitted (Dyzenhaus & Moran 2005). These racist policies and sentiments would only worsen later with the introduction of neoliberal policies in the mid-1970s.

iii. Crisis #3: Neoliberalism and Sex Work

No changes were made to Canada's anti-sex work legislation from 1915 to 1970. After the end of World War II, however, the profitability of the capitalist-colonial system began to decline (Porter 2012; Smith and Taylor 1996). By the late 1970s, this loss in profit began to pose a real threat to the hegemonic stability of the Canadian state. The state attempted to restore profitability by propagating neoliberal practices such as 'economic liberalization', 'individualization of responsibility' and 'risk' while simultaneously reinforcing already established ideologies concerning the superiority of the white, male middle-class (Porter 2012).

In its simplest form, neoliberalism can be defined as a resurgence of classic liberal philosophy that seeks to dismantle the Keynesian 'welfare state' of the 1960s and early 1970s (Baker 1997; Abramovitz 2010; Harvey 2005; Klein 2007). This period emphasized state intervention and expanded social programming throughout Canada (Baker 1997). Neoliberalism, on the other hand, highlights individual responsibility and praises the free market as the most efficient way to bring about equality (Porter 2012; Harvey 2005; Klein 2007). Neoliberalism pushes for the privatization of previously public services, the deregulation of environmental and labour standards,

and the ‘flexibilization’ of labour practices (Cheng and Kim 2014; Leech 2012). Neoliberalism, moreover, fosters the internationalization of capitalist relations (Mueller 2011; Leech 2012). This has led to the introduction of economic restructuring policies that forces indebted countries to compete on the international market and cause manufacturing jobs to migrate to countries with a cheaper labour supply (Mueller 2011; Perkins 2016). Neoliberalism thus seeks to restore profitability by legitimating the downgrading of responsibilities previously held by the state onto the individual citizen, by transferring wealth upward through regressive taxation, by exploiting the public treasury and by treating every facet of life as a commodity (Hoppania and Vaittinen 2015). This development in capitalism has resulted in a proliferation of precarious work and has made social services increasingly difficult to access, thereby exacerbating previously existing social inequalities (Abramovitz 2010).

As a practice, neoliberalism is usually accompanied by the ideology of neo-conservatism. The latter stresses the importance of a punitive criminal legal system, the nuclear family and social order (Porter 2012). Neo-conservatism legitimates the punitive treatment of non-violent criminalized behaviour and offences against private, fungible property. Akin to vagrancy laws, the result has been the criminalization of panhandling, food sharing, non-prescription narcotics, squeegeeing and the intensification of anti-sex work law enforcement (Gordon 2006). The effect of neoliberalism and neo-conservatism has resulted in a 700% increase in the number of incarcerated women from 1980 to 2014 in the United States alone (The Sentencing Project 2016). In Canada during the same period, there has been a 40 percent increase in the number of women being imprisoned (Osazuwa 2015). The Commission on Systemic Racism in the Ontario Criminal Justice System (1995) documented that the massive uptick in the imprisonment of African

descended women was directly connected to the so-called ‘war on drugs’ profiling of them as ‘drug mules’. Neo-conservatism, therefore, allows the state to legitimize the criminalization of people that are unable to generate profits in legitimate labour markets. It also enables capitalist and state profiteering and the stabilization of rural economic decline through a process of commodifying poor and marginalized persons and groups for the prison industrial complex system (Davis 2003; Gordon 2006; Nunn 2002).

In addition to restoring profitability, various scholars note that neoliberal ideology is useful for obscuring the role the state plays in the reproduction of inequality (Brents and Sanders 2010; Cheng 2012; Porter 2012). Neoliberalism, for example, propagates liberal notions of equality that serve to conceal the connections between pervasive social inequalities and the capitalist-colonialist system. By propagating the assumption that everyone is able to participate freely and without exploitation or discrimination in the labour market, neoliberal ideology supports the notion that individual advancement is available for all. Inequitable outcomes are therefore said to be produced as a result of laziness or inadequacy and not as a direct consequence of capitalist-colonial rule in Turtle Island (Porter 2012).

Under these conditions, citizenship is determined by the individual’s ability to be compliant with coercive powers (e.g., schools, police etc), be self-sufficient within the diktats of the ‘free’ market in labour and to be a self-regulating consumer (Porter 2012). Citizenship is not determined by an individual’s personal connection or investment within their community (Porter 2012). As a result, individuals are no longer entitled to social assistance and are expected to become independent of the state by relying on marketized services (Abramovitz 2010). As Sealing Cheng and Eunjung Kim point out, neoliberalism transforms ‘citizen-subjects' into ‘entrepre-

neurs and consumers' without any substantive purchase on the state (2014:374).

The weakening of the state in the social sphere does not, however, translate into a weakening of the state in the areas of policing and border control (Cheng 2012; Crichlow 2014; Wacquant 2010). These efforts, instead, have expanded continuously since the onset of neoliberalism and are justified by purported threats to neoliberal constructions of personal choice (Brents 2016). As Megan Rivers-Moore explains, "neoliberal governance is defined by differential and selective use of repressive power, with gestures towards freedom and choice operating alongside the repression of specific populations marked out as 'exceptions'" (2014:407). Thus while increases in policing are justified under the guise of personal freedom, their use is to limit the personal freedoms of indigenous peoples, people 'of colour', women, and working-class individuals who pose a threat to the colonial-capitalist system. Neoliberalism's focus on the protection of property as a means to restore capitalist profitability, moreover, means that the social landscape will continue to be segregated by class, gender and race. Policing efforts will continue to increase to ensure that these gendered, raced and classed divisions remain intact (Gordon 2009).

With this in mind, it comes as no surprise that neoliberalism restores capitalist profitability at the expense of negatively raced and/or gendered peoples. William Julius Wilson, for example, demonstrates that the conditions present under neoliberalism have translated into persistently high rates of poverty for inner-city African-Americans (Wilson 2012). He argues that the recent shift from a production-based economy towards a service-based economy has left many inner-city areas, referred to by scholars as 'liminal' or 'intermediate' spaces, with little means of employment (Zukin 1991; Groth and Corijn 2005). This shift has forced many African-Americans into precarious, low-wage service jobs (Wilson 2012). For women and caregivers, the state's re-

trenchment from social services in combination with an ideological push towards self-responsibilization has forced them to become both the financial providers and caregivers for their families (Porter 2012; Federici 2012; Mitchell et al. 2003; Hardy 2016; Bezanson 2006; Bezanson and Luxton 2006). Neoconservative ideology reinforces this logic by emphasizing the family as the rightful site of social reproduction (Porter 2012; Cossman 2002). As elucidated by Robyn Maynard, a parallel dynamic is taking place in Canada's African-Canadian, indigenous, immigrant and communities 'of colour' (Maynard 2017). Not only are these communities especially impacted by neoliberal cutbacks, they are targeted by draconian criminal policies that criminalize various forms of economic survival, including sex work, the sale of narcotics and welfare fraud. This allows the Canadian state to link the ghetto to the prison as seamless continuities, and worse yet, with ghettos being open air prisons (Crichlow 2014; Kitossa 2012; Wacquant 2010).

In the neoliberal era, people and communities that cannot be exploited in the labour market because they are 'redundant' and 'surplus' (Bauman 2011; Davis 2007) are made into profitable commodities through the criminal justice and social assistance systems (Gordon 2006). Others have referred to this 'machinery' for recycling the poor as the either the criminal or prison industrial complex (Bauman 2011; Davis 2003). The mass incarceration of Black and indigenous peoples in Canada, for example, has skyrocketed since the introduction of neoliberal policies (Melin 2015; Maynard 2017). As of 2015, African-Canadians make up only three percent of the general Canadian population but account for 10 per cent of federal prisoners (Sapers 2015). Indigenous peoples, moreover, account for 4.3 percent of the general population but account for an extraordinary 24.4 percent of federal prisoners (Sapers 2015). Negatively racialized women who are forced to accept social assistance, moreover, find that their activities and very being are crim-

inalized and therefore subject to heavy regulation and surveillance (Maynard, 2017). This is because the rollback of the welfare state has also been accompanied by an intensification in the government surveillance of welfare recipients, especially those who are perceived to be negatively racialized, gendered and/or classed[31] (Fox-Piven 1998; Chan and Mirchandani 2007; Gordon 2006; Maynard 2017; Chunn and Menzies 2004).

Neoliberalism and the Policing of Sex Work

Because women have higher poverty rates than men and are more likely to be sole support parents and caregivers, one consequence of neoliberalism is a marked increase in sex work (Rivers-Moore 2014; Wahab and Abel 2016; Munro and Scoular 2012; Hofmann 2013). In a neoliberal economy, sex work provides the flexibility to earn an income *and* perform the social reproductive work the state has either rolled back or privatized (Hofmann 2012). It is important to note, however, that sex work does more than provide flexibility to workers. Sex work also subsidizes the neoliberal, capitalist-colonialist system (Hardy 2016). The flexibility exercised by sex workers, for example, allows the state to profit from workers without guaranteeing a living wage or even a means of employment (Hardy 2016). Sex workers, moreover, have benefited the state by providing free labour in areas like healthcare provision and sex education (Hardy 2016). Irre-

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[31] It is important to note, however, that social assistance has been used long before neoliberalism as a tool to regulate undesirable populations and behaviour in capitalist-colonial states (Federici 2004; Meil-Hobson 1990). In the 19th century, unmarried mothers in the United States and England who applied for social assistance were confined in workhouses as punishment (Meil-Hobson 1990). As with the work-fare regime inaugurated by Mike Harris in Ontario and by the political elite across the U.S., present-day social assistance recipients, on the other hand, social assistance recipients are forced to take training programs after a specified period in order to keep their financial benefits (Fox-Piven 1998). Benefits are revoked if recipients and are found to not be actively looking for employment (Fox-Piven 1998). The fields available for training are often underpaid and oversaturated, or in unpaid domestic labour and charitable work (Fox-Piven 1998).

spective of these subsidies, neoliberalism has made life undeniably harder for sex workers and other criminalized groups (Gordon 2006).

Neoliberalism has changed the way Canadian[32] police interact with sex workers (Gordon 2006; Ferris 2015). The protection of market interests is increasingly being prioritized over the protection of people (Ferris 2015). Police are dedicating more resources to the protection of property, reducing public 'disorder', improving the flow of traffic and prosecuting those involved in the so-called 'War on Drugs' (Ferris 2015; Kitossa 2016a). As a result, police are increasingly empowered to intensify the regulation of sex work and other forms of illegitimate labour (Mitchel and Heynen 2009; Campbell 2015; Maynard 2017). A large part of these efforts include regulating the spaces sex workers can and cannot occupy (Bernstein 2004; Hubbard 1998). The *Safe Streets Act* (2000), for example, criminalizes those who solicit in public areas (Gordon 2006). This includes sex workers, panhandlers and squeegee kids and any kind of solicitation that is deemed to be done in a 'aggressive manner' (Gordon 2006). In the United Kingdom, police have invoked 'Risk of Sexual Harm Orders' and 'Anti-Social Behaviour Orders' to push sex workers out of public view (Munro and Scoular 2012; Campbell 2015). These examples illustrate

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[32] Unfortunately, the intensification in the policing of sex work is not unique to Canada. Various scholars have explored how the policing of sex work has changed internationally since the implementation of neoliberal policies (Rivers-Moore 2014; Wahab & Abel 2016). In Vietnam and South Korea, for example, sex workers are now forced to be tested for STIs (Nguyen-vo 2008; Cheng 2010). The United Kingdom and United States, moreover, have recently adopted the 'Nordic Model' by criminalizing the customers of sex workers (Sanders 2009; Bernstein 2004). A small Italian city has even gone as far as to ban women from wearing revealing clothing in popular areas after 10 p.m. (Di Feliciantonio 2015). Researchers have also explored how new developments in anti-sex work law in the Dominican Republic and Cuba have resulted in an increase in sex worker harassment (Brennan 2005; Cabezas 2009). Notably, all these regulatory initiatives occur precisely at a time of instability and crisis in the labour market. Related to the spectre of moral panic that surrounds sex work, the effect also is to drive women into the wage market and to mobilize a weapon to control working-class men.

why Sherene Razack states that anti-sex work legislation represents a tool to "prevent seepage from the space of prostitution into the space of respectability" (Razack 1998:373).

Police have an interest in regulating space for two main reasons, the most obvious being the protection of profits. Since the mid-1990s, neoliberal policies have legitimized the gentrification of inner-city areas that had been hardest hit by the shift away from a manufacturing-based economy (Lees 2008; Rose et al. 2013). This has paved the way for the construction of expensive condominiums over affordable housing units, large-scale private entertainment venues over public community centres and franchises over small businesses (Lehrer and Winkler 2006). Individuals who are displaced by gentrification are quickly labelled a nuisance and are accordingly dealt with by police, who ensure that these undesirable populations remain outside of the 'revitalized' city core (Gordon 2006). This often prevents individuals from accessing essential services such as employment counselling, free health clinics and emergency housing supports. This is especially worrisome for sex workers who rely on free health services provided by clinics in order to work safely and on the shelter provided by emergency housing services to escape unsafe living situations.

Second, and most importantly, the police's reinvigorated interest in the regulation of space stems from the nineteenth-century nation building project that required Canada to secure spatial and ideological boundaries between the European middle-class and the indigenous population. If the boundaries between these zones were to blur, the ideological distinction separating whiteness and indigeneity, men and women, and licit and illicit sexuality could be dismantled — all of which are essential to the hegemonic positioning of the Canadian capitalist-colonial state.

In addition to intensifying the regulation of space, neoliberalism has also legitimized in-

dividualist policing practices that deeply impact sex workers. Sex work, for example, is increasingly presented by police as an individual issue that stems from traumatic personal encounters (Dewey and Germain 2017). Sex workers are purported to 'choose' the risks associated with their work and violent attacks against them are portrayed as inevitable (Ferris 2015). By portraying sex work in such a manner, the police can obscure the systemic, socioeconomic issues that coerce some individuals into the sex trade (Dewey and Germain 2017), while at the same time negating the role of choice. Police can then justify the use of the criminal law as a tool to harass sex workers and others who are considered a threat to the maintenance of respectable spaces. As such, those who are arrested for sex work are mandated to undergo training in order to become responsible citizens (Dewey and Germain 2017). These programs are referred to as 'therapeutic treatment programs' and are closely surveilled by probation officers (Dewey and Germain 2017). In addition to learning to become 'responsible' citizens, sex workers in the neoliberal era are also expected to become responsible for their own health by accessing private healthcare options independent of the state, as per neoliberal privatization schemes.

A telling example of individualistic policing is 'Project KARE' (RCMP 2015), a strategy implemented by Edmonton police in response to criticisms levied against the Vancouver police department's handling of missing and murdered indigenous women[33] (Ferris 2015). Here it was revealed that police departments did not have a proactive approach toward investigating the cas-

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[33] As discussed previously, indigenous women are disproportionately victimized in sex worker assaults and murders compared to non-indigenous sex workers (Ferris 2015). The RMCP estimated in 2016 that approximately 1,200 indigenous women were either missing or murdered (CBC News 2016). The Native Women's Association of Canada, however, has estimated the number of missing and murdered indigenous women in Canada to be upwards of 4,000 (CBC News 2016). Shawna Ferris points out that that these statistics "poignantly suggest that when centuries-old racism combines with patriarchy, whore stigma, and global capitalism, Aboriginal women, particularly those who live in cities across the country, are among the first to suffer and die" (2015:135).

es of missing and murdered indigenous women, and, were instead only attempting to locate and identify their bodies (Ferris 2015). Investigators involved in Project KARE, however, work to "immerse themselves into the world of sex trade workers" and go as far as to collect physical descriptions and DNA samples from sex workers working in downtown Edmonton (Project KARE, "Information: Proactive Initiative," 2012, as quoted in Ferris 2015:75). Project KARE also has a list of safety tips designed for those who are considered 'high-risk missing persons' like sex workers. Because the Edmonton police force cannot officially recommend behaviours conducive to safer sex work, such as working in groups and screening clients in public, they simply recommend "staying out of high-risk professions" and "not placing yourself in vulnerable situations" (Project KARE, "Information: Safety Tips, 2012; as quoted in Ferris 2015:76). These 'tips' clearly downgrade the responsibility for safety from police onto the individual and frame missing persons as victims of their own choices. Like the Edmonton and Vancouver police force's previous approach, Project KARE does little to *prevent* abduction and murder. The project instead forces sex workers to assume responsibility for the disproportionate risk of violence they face. Project KARE can also be used to further criminalize sex work if the DNA samples collected by Project KARE were to be used against sex workers in court (Lowman, as quoted in Smith 2005).

This shift towards individual responsibility has also had an impact on the way missing and murdered indigenous women are depicted in the media. Missing and murdered indigenous women are represented in a manner that denies them the femininity associated with white middle-class womanhood. Reliant on racist tropes of the 'savage squaw', they are both negatively raced and portrayed as being responsible for their own victimization through their naturalized

deviancy and predisposition toward 'prostitution' (Ferris 2015). The character assassination and subhuman treatment of missing and murdered indigenous women becomes most apparent when compared to the media's contrasting treatment of missing sex workers who are white. These individuals are regularly portrayed as cases of white purity and morality gone awry, all without any real sense of empathy toward murdered white sex workers (Ferris 2015). Compared to their white counterparts, moreover, the photos of missing and murdered indigenous women that appear in the media are often individualized and removed from their friends, families and communities (Ferris 2015). Shawna Ferris notes, for example, as with the dehumanizing 'rogues' gallery of the 19th century, the photographs shown of missing and murdered indigenous women in the media were often mugshots or mugshot-like (Ferris 2015). The media reports covering white victims, on the other hand, often featured graduation photos and photos with the victim and their family in happier times (Ferris 2015). These contrasting representations, negative racialization for indigenous women and positive racialization for white women, impairs the public's capacity to cultivate the same compassion for indigenous women as that they typically reserve for white victims (Ferris 2015).

The Development of Anti-Sex Work Legislation Under Neoliberalism

The discourse of individual responsibility (hereafter, 'responsibilization') inherent to the policing of sex work under neoliberalism is given context and contour by legislation. In 1970, a report forwarded by the Royal Commission on the Status of Women recommended that "vagrancy should not be considered a crime", and stated that "action on this recommendation would greatly reduce the jail population in prisons for women" (Report of the Standing Committee on Justice and Human Rights 2006:397). In 1972, the commercial 'revitalization' of the downtown

areas of major Canadian cities like Toronto[34] and Vancouver (Brock 1998; Fynes 2013) paved the way for revising Canada's vagrancy laws.

Charter of Rights and Freedoms Challenge (1972)

In 1972 Canada's vagrancy laws were updated, purportedly to remove misogynistic language while at the same time strengthening the criminal law in an effort to address concerns regarding street 'prostitution' (Ferris 2015). The Criminal Code previously defined a vagrant as "everyone…who…being a common prostitute or nightwalker is found in a public place and does not, when required, give a good account of herself" (Criminal Code, R.S.C. 1892, c. 157, s. 8). The Code now defined a vagrant as any person who "solicits any person in a public place for the purpose of prostitution", otherwise known as the 'solicitation law' (Criminal Code R.S.C. 1985, s.195.1; Gordon 2006). Two other components of the vagrancy law were also decriminalized: being found wandering without any means of financial support and begging (Ranasinhe 2010). These changes were said to be positive as they made the law gender-neutral and modified the law from a status offense to an offense against a specific action. Indeed, a quote from MP John Gilbert illustrates that sex work is increasingly being recast from a criminal act to a social nuisance: "[M]any of the offences mentioned in the code are not criminal in the real sense of that word. I have in mind offences such as vagrancy…[and] prostitution…Surely they do not belong in the Criminal Code" (quoted in Ranasinhe 2010:87).

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[34] In Toronto, body rub parlours, strip clubs, adult movie theatres and book stores, and massage parlours were common along a section of Yonge Street that ran from Wellesley Street to Queen Street (Brock 1998). During the mid-1970s, local politicians were anxious to entice middle-class shoppers into the area for the opening of the Eaton Centre. The brutal sexual assault and murder of shoe shine boy Emanuel Jaques in 1977 provided the political elite of Toronto with the catalyst to mobilize public sentiment against parlours and body shops along Yonge Street.

The state, however, did not ease the provisions dictating the criminality of bawdy houses. To do so would risk a loss in profit for the state and the blurring of the ideological boundaries separating the European-Canadian middle-class from the indigenous population, especially those ideological boundaries which restricted the ownership of property to respectable, 'white' men. To prevent this occurrence, the state updated its anti-bawdy house laws in 1977 (Ferris 2015). Section s. 210(2) of the Criminal Code defined a bawdy house as any place that is "kept or occupied, or resorted to by one or more persons, for the purpose of prostitution or the practice of acts of indecency" (Criminal Code, R.S.C. 1985, s. 210(2)). The Code also criminalized everyone who:

> (a) is an inmate of a common bawdy-house,
> (b) is found, without lawful excuse, in a common bawdy-house, or
> (c) as owner, landlord, lessor, tenant, occupier, agent or otherwise having charge or control of any place, knowingly permits the place or any part thereof to be let or used for the purposes of a common bawdy-house (Criminal Code, R.S.C. 1985, s. 210(2))

Municipalities also began to engage in the regulation of sex work by charging inflated prices for individual escort licensing fees and operation licenses for body rub and massage parlours (Robertson 2003; Powell 2015). The effect was largely to insulate middle and upper-class (white) men from the declining profits of the capitalist system, while exposing sex workers and their (white) working-class male clients to criminalization, scrutiny, surveillance and judicial extortion.

In 1978, the solicitation law was challenged by the Supreme Court of Canada in *R. v. Hutt* (Robertson 2003). This case featured a police officer who charged a sex worker with solicitation after he asked her to enter the undercover officer's car and discuss the terms and prices of her services (Robertson 2003). The judge ruled that this behaviour did not constitute an inconvenience to the public and that a car cannot be considered a public place (Robertson 2003). Under

the context of the law current at the time, solicitation would be synonymous with "…accosting or importuning in a manner that is pressing or persistent" (R. v. Hutt, S.C.R. 1978, s. 476, p. 17). In order to prove solicitation took place, moreover, the police had to provide evidence that solicitation had occurred more than once (Ross 2010). Without a clear definition of what the legally sanctioned behaviour of solicitation actually entailed to justify arrest, the ruling impeded the ability of police to enforce the law (Ranasinhe 2010; Gordon 2006). In order to maintain the social regulation of sex work, the state repealed the solicitation law in 1985 and replaced it with Bill C-49: *An Act to Amend the Criminal Code*, or what is referred to as the 'communication law' (Ranasinhe 2010; Ferris 2015).

Bill C-49: An Act to Amend the Criminal Code (1985)

The communication law criminalizes any attempt at communication for the purposes of sex work. In its broad sweep, it defines cars as public places and criminalizes the clients of sex workers if they block traffic or pedestrians (Ranasinhe 2010). Bill C-49 also introduced non-gender binary language so it could encompass both male and female offenders (Hanger and Maloney 2006). Under this provision, anyone in a public place can be charged with communication if the person:

> (a) stops or attempts to stop any motor vehicle,
> (b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or
> (c) stops or attempts to stop any person in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offense punishable on summary conviction (Criminal Code, R.S.C. 1985, s. 213(c))

This new law went directly against the recommendations set out by the Fraser Committee Report, which urged that sex workers be granted legally prescribed places (such as private

dwellings) from which to work (Lowman 1989; Ranasinhe 2010; Ferris 2015). According to the House of Commons, the purpose of Bill C-49 is to "help the citizens of this country who live in certain of our major urban areas and the police forces of the country to regain the streets" (House of Commons Debates, as cited in Campbell 2015:31). The Commons purported that Bill C-49 can prevent sex workers from operating altogether or, at least, within public view (Campbell 2015). These prerogatives dovetail nicely with neoliberalism's focus on the protection of property as a means to restore capitalist profitability, and serve to pacify (white, male) settlers who fear a decrease in their own profits under the neoliberal regime. From the perspective of the state, Bill C-49's effect was largely to ensure the complicity of settler labour during a time of economic crisis.

In practice, however, the communication law is a hazard to the safety of sex workers. The communication law, for example, forces sex workers to screen clients, negotiate terms and condom usage in secluded and unsafe areas (Van der meulen et al. 2013). The law effectively ostracizes sex workers by criminalizing any communication they may have with community members (Scott 1987). Even those who are simply suspected of sex work have their presence scrutinized by police whenever they appear in public (Scott 1987). Police use their discretion to decide what is considered 'communication for the purposes of prostitution' and, by extension, who is considered a 'prostitute' (Scott 1987). They use this discretion to control populations (in this context, indigenous and women 'of color') that threaten the profitability of the capitalist-colonialist system (Gordon 2006). Its practical effects manifest in exercising control over the means of production (e.g., their bodies) rather than submitting to 'wage slavery' and by providing services that contravene the ideological discipline essential to the working class (see Hepburn 1977; Reiman

and Leighton 2010). At any rate, the communication law broadened the scope of previous anti-sex work efforts and ultimately allowed authorities to arrest more sex workers in the years following the implementation of Bill C-49 than ever in Canadian history (Statistics Canada 2016). While this did nothing to decrease instances of street-level sex work, it had a direct impact on the safety of sex workers (Robertson 2003; Lowman 1989). The year following the introduction of the communication law, the amount of sex worker homicides increased dramatically in British Colombia (Lowman 1989). These events led John Lowman to conclude that there is a clear connection between the criminalization of the activities related to sex work and the violent victimization of sex workers (Lowman 1989).

A number of challenges were brought against the communication law between 1985 and 2007 (R. v. Mclean, R. v. Skinner, R. v. Jahelka, R. v. Janoff; as cited in Robertson 2003). Various groups took this opportunity to warn about the harms of the newly introduced legislation. The Fraser Committee Report and the Toronto Board of Health, for example, both recommended that sex work be decriminalized (Ferris 2015). The Federal, Provincial, and Territorial Deputy Justice Ministers' Working Group on Prostitution also recommended the elimination of the bawdy house law and suggested that the government shift its focus away from the criminalization of sex work and towards the reduction of violence against sex workers (Ferris 2015). In each instance, however, the courts ignored these recommendations and upheld the constitutional validity of the communication law (Robertson 2003).

Bill C-36: The Protection of Communities and Exploited Persons Act (2014)

The courts ignored the merits of the alternatives to criminalization until 2010, when sex workers Terri Jean Bedford, Amy Lebovitch and Valerie Scott successfully used section seven of

the *Charter of Rights and Freedoms* to challenge the constitutionality of provisions such as the bawdy house (s.210(1)(2)(a), (b), & (c)), living on the avails (s.212(1)(j)) and communication laws (s.213(1)(c)) (Ferris 2015). In what came to be known as the 'Bedford trials', Justice Susan Himel found that these sections of the Criminal Code posed an undue burden on the safety and security of sex workers (Department of Justice 2014). The bawdy house provisions, for example, prevented sex workers from working indoors where they are proven to be safer (Department of Justice 2014; Hon Chu and Glass 2013; Bruckert & Law 2013; Shaver 2014). The risk to sex worker safety was deemed to outweigh the purported moral hygiene benefits of the legislation, which was to 'combat neighborhood disruption' and to 'safeguard public health and safety' (Department of Justice 2014). In addition, the 'living off of the avails of prostitution' offence was ruled to be ineffective in its objective to target exploitative behaviour since it does not distinguish between those who exploit sex workers and those who could potentially be hired to increase the safety of sex workers or otherwise provide legitimate services for sex workers (e.g., security guards, private drivers, accountants) (Hon Chu and Glass 2013). The communication provision, lastly, was determined to deprive sex workers of the ability to screen and negotiate with potential clients within the safety of public view and was considered a "grossly disproportionate response to the nuisances caused by street prostitution" (Department of Justice 2014). In 2010, Justice Himel's decision was granted a stay pending an appeal to the Ontario Court of Appeals (Ferris 2015).

Justice Himel's decision marked a brief period in Canadian history where sex workers were free to perform their labour without fear of criminalization. Sex work was briefly considered to be a form of legitimate labour deserving of the modest respect and protections afforded to

those compelled to sell their labour-power for their material reproduction. While beneficial for sex workers, however, these changes had massive ramifications for the state. The decriminalization of sex work meant that the binaries upholding the legitimacy of colonial rule were coming undone. In addition to the binaries of male/female, indigenes/settlers, capital/labour, and white/people 'of colour', the ruling called into question the notion that sex work is women's labour and ought to be performed without pay and kept within the private realm; that licit sexuality can only exist under the patriarchal control of a husband; and, most importantly, that sex work is exclusively racialized and is a symptom of indigenous, immigrant and women 'of colour's' promiscuity. By blurring these distinctions, the decriminalization of sex work challenged the hegemonic dominance of white femininity and WMCP. What was previously thought of as a negatively racialized or a 'fallen' white woman's profession, was recognized as a legitimate opportunity to earn income and acquire fungible property.

The decriminalization of sex work, moreover, forced the state to differentiate between sex work that is performed willfully and sex trafficking. This necessity prevented the state from denying sex workers the ability to immigrate legitimately; from falsely labelling all migrant sex workers as victims of trafficking and deporting them for such; and, from wasting resources on those who are not trafficked. As a result, authorities are impeded in their ability to maintain Canada as a white space, and to prevent any further blurring of the racial divides essential for colonial rule.

As a result, owing to the prospect for radical alteration of the ideology of labour as commodity as well as colonial relations of ruling, Justice Himel's decision was challenged via a series of appeals. In 2011, the decision was appealed by the Attorney General of Ontario and

Canada (Ferris 2015). In 2012, the Ontario Court of Appeal upheld Justice Himel's decision on bawdy houses, but decided that the communication law would remain (Campbell 2015; Ferris 2015; Hon Chu and Glass 2013). The 'living off of the avails of prostitution' provision was also modified to only include profits that were gained through exploitation (Campbell 2015). There are, however, no guidelines to explain what should be considered exploitative (Campbell 2015). In 2013, however, the Supreme Court of Canada overturned the Appellate Court's retention of the 'communication' and 'avails' laws. The Supreme Court upheld Justice Himel's original decision *in toto*, thereby formally and finally striking down the communication, bawdy house and 'living off of the avails of prostitution' provisions of the Criminal Code (Ferris 2015). Another one-year stay was granted on this decision by the courts, compelling Parliament to either rewrite or abandon the criminalization of sex work (Ferris 2015).

The gains brought about by Justice Himel's decision, however, were officially reversed just a year later by Bill C-36: *The Protection of Communities and Exploited Persons Act* (2014). This new legislation criminalizes the purchase of sex, but leaves the sale of sex itself decriminalized. The Bill also re-enacts the very same laws that were deemed unconstitutional by the Ontario provincial Superior Court of Justice and the Supreme Court of Canada, including the bawdy house provisions, the 'avails' provision and the communication provision (Hon Chu and Glass 2013). The court hearings leading up to the implementation of Bill C-36 made it clear that the state's priority is to push sex work outside of public view in order to protect its hegemonically dominant position (Lawrence 2015). The courts, for example, heard more from religious organizations than from actual sex workers concerning the Bill (Vice Documentary, "The New Era of Sex Work" 2015). As of yet, the constitutionality of Bill C-36 has yet to be tested.

Bill C-36 mimics a Swedish Bill that came into effect in 1999, titled *Prohibiting the Purchase of Sexual Services* (Hon Chu and Glass 2013). In addition to Sweden, European countries such as France, Iceland, Northern Ireland, Norway, Scotland and the United Kingdom have all embraced some version of this model (Coy 2017; Hon Chu and Glass 2013). Much like Canada, Sweden relied on vagrancy laws to regulate sex work before the introduction of what is now referred to as the 'Swedish' or 'Nordic' model (Hon Chu and Glass 2013). One major difference between Sweden and Canada's anti-sex work laws, however, is that while Sweden's laws are aimed at the abolition of sex work in the name of 'gender equality', Canada's laws claim to prevent 'neighborhood disruption' (Hon Chu and Glass 2013). According to the Canadian government, the harms caused by the criminalization of activities related to sex work does not outweigh its purported benefits, which include preventing the exploitation of sex workers by pimps, prohibiting bawdy houses and preventing organized crime through the criminalization of communication (Hon Chu and Glass 2013). Angela Campbell points out that these intentions are evident in the title of the Bill, which suggests that 'the community' and 'exploited persons' need to be protected from the harms of sex work, thus warranting criminal intervention on behalf of the state (Campbell 2015:29). From this perspective, sex work is the killer (Lawrence 2015).

The Nordic model's recent popularity among European countries and Canada can be attributed to the spread of neoliberal political ideology. Bill C-36, for example, is a direct extension of the individualistic thinking inherent to neoliberalism. Bill C-36 obscures systemic issues such as colonialism, poverty and gendered discrimination that are responsible for pushing some individuals into the sex industry and is responsible for sex worker's heightened risk of violent victimization once in the industry (Lawrence 2015; Sibley 2015). The Bill depicts all sex work-

ers as victims, physically forced into the sex trade by pimps and/or abused by johns. Importantly, the Bill avoids any mention of those who are coerced into the trade by systemic and thus less visible reasons (Lawrence 2015) or those who enter the trade as a matter of choice. The Bill's logic assumes that those who 'choose' to enter such a volatile trade are putting themselves at risk and therefore deserve to become violently victimized (Ferris 2015). This is parallel to the logic that miners ought not to have the protection of legislation on grounds that by virtue of being a miner, they accept the risk of explosions, gas poisoning and mine collapses (Reiman and Leighton 2017). Here, the neoliberal language of 'choice' and 'risk' is used to distance the social relations and moral responsibility of the state for directly shaping individual lives and collective experience. The Bill, therefore, represents a tool that serves to legitimate Canada's history of subjecting sex workers to violence through the criminalization of their work.

In addition to propagating neoliberal ideologies, Bill C-36 also supports neoliberalism through its use as a tool to restore capitalist profitability. As discussed previously, the protection of market interests is increasingly being prioritized over the protection of people (Ferris 2015). Bill C-36 reflects this change by empowering police to protect profits through the regulation of space (Bernstein 2004; Hubbard 1998), and by justifying the increased regulation of undesirable (read: unprofitable) populations (Mitchel and Heynen 2009; Campbell 2015; Maynard 2017). The police's reinvigorated interest in the regulation of space and protection of profits stems from a desire to pacify white settlers who are concerned about high unemployment rates, stagnant wages and limited access to social supports. The Bill allows discontents felt by white, working-class settlers towards capital and the state to be individualized and canalized onto sex workers and other undesirable populations who are depicted as responsible for their own victimization

and therefore unworthy of assistance from police, social assistance or the healthcare system. Bill C-36 has thus played a vital role in legitimating the theft of land and control of settler labour during a time when falling rates of profit pose a challenge to white supremacy.

Research from a variety of sex work scholars demonstrate that Bill C-36 poses a risk to the safety of sex workers (Sayers 2014; Bracket 2015; Shaver 2014; Hon Chu and Glass 2013; POWER 2012; Campbell 2015; Young 2014). The Canadian government itself does not deny the fact that its legislation makes the lives of sex workers more hazardous, as demonstrated by a quote from Conservative Senator Donald Plett in response to concerns about sex worker safety:

> The overall intent of this legislation is to abolish prostitution, not to make it a safe occupation. Both of you have talked a number of times about how this is making it more dangerous for prostitutes. Of course, we don't want to make life safe for prostitutes; we want to do away with prostitution. That's the intent of the bill (Senate Committee on Legal and Constitutional Affairs 2014, as quoted in Bruckert 2015:3).

Here, Senator Plett confirms that the agenda of Bill C-36 is to abolish sex work, or at least to "do away" with its most visible aspects. Indeed, the Bill disproportionately targets outdoor sex workers, who are estimated to make up over ninety percent of arrests but only five to twenty percent of the overall sex trade (Bruckert 2015; POWER 2012; Van der Muelen 2013). The Bill's malign indifference contributes to the violent victimization of the most marginalized group of sex workers (Sayers 2014; Lowman and Fraser 1995; Durisin 2010). To the extent that outdoor sex work makes up for high a percentage of arrests and surveillance, as I surmise here, the aim is not simply to drive women's sexuality into the domestic sphere, it is also to morally regulate the leisure and sexual activity of working class men.

Contrary to Senator Plett, however, Bill C-36 does nothing to reduce or abolish the sex trade. To do so would require it to address the structural problems (e.g. economical, social and political) that coerces some individuals into the sex trade and causes some to be violently victimized. Indeed, one major criticism of Bill C-36 is that it fails to accomplish just this and instead depicts all sex workers as helpless victims of their own poor choices (Bruckert 2015; Shaver 2014). The Bill avoids an examination of the raced, gendered and classed relations that, for example, normalize a disproportionate amount of violence against indigenous women; or, that legitimates discrimination against people 'of colour' and women in the labour market, thus coercing some into the sex trade. By falsely perpetuating the idea that sex work is inherently violent, Bill C-36 obscures the broader socio-economic conditions responsible for higher rates of poverty, exploitation amongst those who are negatively raced and/or gendered and, of course, the prerogatives of patriarchy (Shaver 2014). Bill C-36 can also conceal how the health and safety concerns of sex workers also extends to workers in the licit labour market, though it must be noted that even here, in sweat shops and other markets where slavery is rife, capitalism routinely subordinates 'informal' labour to achieve higher rates of profitability through exploitation (see Chen 2007; Ruggiero 2000; Associated Press 2016). Thirty-four percent of Canadian nurses, for example, report being victims of a physical assault, while taxi drivers report an assault rate that is 20 times higher than that of the general Canadian population (Shaver 2014). By depicting sex work as inherently violent, the state sidesteps its fiduciary responsibility to provide fair working conditions to sex workers on the same basis as other workers. The Bill's representation of sex work, moreover, negates responsibility of the state and civil society to address violence against sex

workers while supporting a political climate where victims are blamed for assaults, forcible confinement and murder.

Instead of addressing these issues, the Canadian government focuses on appearing to 'rescue' sex workers. The state has done so by investing $10 million in programs that assist those who "want to leave this dangerous and harmful activity" (Government of Canada 2014). In order to qualify for support under these conditions, a sex worker must consider themself a victim and recognize "their need for rehabilitation" (Bruckert 2015:2). The state also invested another $10 million towards increased law enforcement efforts (Government of Canada 2014). These efforts, ironically, are the very same that endanger sex workers. They enforce provisions within Bill C-36 that force sex workers into dangerous situations and prevents them from using strategies to protect themselves, as the next few sections of this study will demonstrate.

286.1 (1): Obtaining Sexual Services for Consideration

Bill C-36 contains multiple provisions that endanger the lives of sex workers. First, under provision 286.1(1), Bill C-36 criminalizes the purchase of sexual services[35] for the first time in Canadian history. According to this provision:

> Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of:
>
> (a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of,

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[35] This provision covers all acts that are 'sexuality gratifying' where a contract was entered into before the act took place. The vagueness of this definition leaves it up to individual case law to determine what is and what is not considered a 'sexual service for consideration'. For example, lap dance, massage parlours and self-masturbation have been found to constitute sexual services, which notably are instances in which women are in control of their bodies and are not subject to exploitation as employees. Stripping and pornography, on the other hand, contexts in which women sell their labour-power, do not constitute sexual services (Government of Canada 2014)

> (i) in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a school or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present, (A) for a first offence, a fine of $2,000, and (B) for each subsequent offence, a fine of $4,000…
>
> (Criminal Code R.S.C. 1985, c. C-46, s. 286.1 (1))

This provision, accordingly, allows authorities to arrest those who are thought to be purchasing sex anywhere and at anytime (Shaver 2014). Criminalizing the clients of sex workers' forces sex workers to screen and negotiate with their clients hastily and in seclusion, thus diminishing the ability of sex workers to demand safer sex and equitable working conditions (Hon Chu and Glass 2013; Sayers 2014). Indeed, studies have shown that in Montreal and Ottawa, the criminalization of johns has resulted in increased violence against sex workers and poor health outcomes amongst street-level sex workers (Hon Chu and Glass 2013). Fear of being arrested prevents sex workers from reporting violent clients and sharing this information with other sex workers, and prevents sex workers from accessing the health care services they require (Hon Chu and Glass 2013). This is compounded with the fact that with less johns on the street, competition has risen to the point where sex workers may feel coerced to offer cheaper prices and/or unprotected sex (Hon Chu and Glass 2013). If the client does become violent, the rushed nature of the transaction leaves the sex worker little opportunity to escape or to alert others for help (Hon Chu and Glass 2013). Clients, moreover, can become more difficult to assess if they are anxious about being arrested (Dodillet and Östergren 2011).

This provision also has a profoundly negative effect on the social supports essential to the safety of sex workers. First, the criminalization of the purchase of sex has strained relationships between sex workers and police more than was already the case. Sex workers are reluctant to re-

port victimization for fear that they will be arrested as a result of the activities surrounding their work (Hon Chu and Glass 2013; Sayers 2014). Police are also known to look for condoms as proof of sex work, forcing sex workers to not carry them (Hon Chu and Glass 2013). Second, this provision has impacted working relationships between sex workers who are now forced to work in more isolated areas in order to prevent the arrest of their clients (Hon Chu and Glass 2013; Shaver 2014). This prevents sex workers from warning one another about aggressive clients and/or reporting suspicious behaviour (Shaver 2014). Third, research also demonstrates that the criminalization of the purchase of sex has prevented clients from otherwise third party reporting of abusive behaviour towards sex workers (Hon Chu and Glass 2013; Shaver 2014; Dodillet & Östergren 2011; POWER 2012). Clients who previously worked collaboratively with sex workers to report abusive clients to the police are increasingly reluctant to approach the police after the purchase of sex had been criminalized (NSWP 2011; Hon Chu and Glass 2013). Fourth, recent press exposés in Canada and the U.S. show that police officers are more likely to exploit perceived or actual sex workers (Curtis 2016; Democracy Now 2016; McLaughlin et al. 2016). Finally, sex workers also report they feel more stigmatized by social and healthcare workers as a result of Bill C-36, leading them to avoid these services altogether (Hon Chu and Glass 2013).

Bill C-36 also assists in perpetuating harmful stereotypes that have a negative effect on the safety of sex workers. First, it supports the notion that all sex workers are the victims of their customers (Shaver 2014). While human trafficking for the purposes of sexual exploitation certainly exists, it does not make up the entirety of the sex trade, as suggested by the framers of Bill C-36. This prohibitionist perspective, moreover, is incapable of viewing sex workers as both in-

dependent beings with agency *and*, simultaneously, as subjects constrained by raced, gendered and classed relations. Secondly, the criminalization of all clients prevents sex workers from developing long-term relationships with preferred clients who have demonstrated they treat sex workers with dignity and respect (Shaver 2014; Weitzer 2009; Lowman and Atchison 2006). These long-term relationships are important for the physical security and financial stability of sex workers (Shaver 2012).

286.2 (1) Material Benefit from Sexual Services and 286.3 (1) Procuring

Bill C-36 introduced provisions 286.2 (1) and 286.3 (1) into the Criminal Code, which criminalizes anyone who derives financial benefit from a sex worker. This includes not only managers and supervisors, but also those who are hired by sex workers. According to this provision:

> Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years (Criminal Code R.S.C. 1985, c. C-46, s. 286.2 (1)).

While the technical paper outlining Bill C-36 states that the material benefit provision cannot be used to criminalize the everyday transactions of sex workers, the ambiguity of the provision in combination with the lack of existing case law leave this law open to perversion (Government of Canada 2014; Sayers 2014). This provision thus has the potential to continue to make it illegal for third parties to be hired by sex workers, including drivers, security, accountants, secretaries, landlords and so forth (Sayers 2014). Sex workers are, therefore, prevented from renting a workplace and moving their work indoors, hiring security guards, screening potential clients, hiring drivers to get them to and from appointments and so forth (Hon Chu and Glass 2013; Shaver

2014). In short, this provision forces sex workers to work where they are most likely to be victimized.

Provision 286.3(1) of the Criminal Code, moreover, criminalize escort and companionship agencies that hire sex workers as employees. The section states that anyone who "recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration…is guilty of an indictable offence" (Criminal Code R.S.C. 1985, c. C-46, s. 286.3 (1)). The provision is criticized by academics for its inability to differentiate between exploitative and non-exploitative relationships between management and sex workers (Shaver 2014; Gillies 2013). Section 286.3(1) subsequently perpetuates the notion that all third parties are abusive towards sex workers (Shaver 2014). Regardless of this law, many sex workers consider working for a third-party to be desirable (Gillies 2013). Escort agencies often do the work of scheduling and screening clients, transporting sex workers and providing security (Gillies 2013).

The procuring law has had serious effects on the ability of third-party employers to provide a safe workplace for sex workers. Because agencies have to distance themselves from the sexual aspects of their business for fear of criminalization, they cannot clearly set the terms for each sex worker's service (Gillies 2013). They, for example, cannot inform the client about the services that are offered, prices and about mandatory condom use (Gillies 2013). The procuring law also has other unintended consequences, such as preventing employers from articulating clear job descriptions and wages during the employment process. The provision also prevents sex workers from reporting unsafe working conditions to health and labour boards (Gillies 2013; Shaver 2014). The law also denies sex workers the opportunity for economic advancement by becoming managers and business owners themselves (Gillies 2013). Overall, the criminalization

of employers hinders the ability of sex workers to ensure that they have access to a safe and healthy workplace.

213.1 (1) Communicating to Provide Sexual Services for Consideration and 286.4: Advertising Sexual Services

The communication provision found to be unconstitutional during the Bedford appeals, was re-enacted with slightly different wording under Bill C-36. According to the provision:

> Everyone is guilty of an offence punishable on summary conviction who communicates with any person — for the purpose of offering or providing sexual services for consideration — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre (Criminal Code R.S.C. 1985, c. C-46, s. 213.1 (1)).

Thus, anyone found to be selling sex in a public place is criminalized under this provision. The provision has similar consequences to the ones warned about in the Bedford appeals: forcing sex workers to work in isolation where they cannot properly screen clients or share information with other workers; negatively impacting relationships between police and sex workers; and, displacing them from their regular clients (Shaver 2014; Lowman 2005; Krusi et al. 2014; Hon Chu and Glass 2013; Sayers 2014). Unsurprisingly, the bulk of sex work related offenses occur under the communication law.

In addition to communicating in public, sex workers are also prohibited from advertising their work in print or electronic media. According to provision 286.4 (1), "everyone who knowingly advertises an offer to provide sexual services for consideration" commits a criminal offence (Criminal Code R.S.C. 1985, c. C-46, s. 286.4 (1)). While Justice Department officials have stated that sex workers cannot be prosecuted for publishing their own advertisements, there is nothing in the legislation to differentiate between sex workers and third-party advertisers (Crawford 2014). The ambiguity and wide scope of this provision leaves police with the discretion to arrest

sex workers for advertising their own services. This fact prevents sex workers from working indoors, limits opportunities for sex workers to discuss terms and prices,

and criminalizes advertising services that host spaces for sex workers to share information about dangerous clients, strategies for safety and tips for navigating third-party employers (Bruckert and Law 2013; Shaver 2014).

Bill C-36 and Human Trafficking

Bill C-36 purports to 'harmonize' its proposed anti-sex work laws with existing human trafficking laws (Government of Canada 2014). In other words, Bill C-36 conflates migrant sex work with human trafficking and contends that there can be no consent involved in the sale of sex across borders (Sayers 2014). Sex workers who refuse the label of victim are forbidden entry to Canada on grounds that temporary work visas cannot be granted in cases where there is a "heightened risk of abuse or exploitation of workers" (Government of Canada 2012). Migrant sex workers have to claim they were trafficked in order to gain temporary access to social supports and healthcare services before they are deported (Weitzer 2005; Sayers 2014). Bill C-36 thus creates false victims and diverts resources away from those who are actually trafficked (Sayers 2014; Bernstein 2010; Kempadoo 2005).

Much like the 'White Slavery Panic' (1909) discussed earlier, recent changes to anti-trafficking laws do not reflect an actual increase in the amount or severity of human trafficking (Sibley 2014). Human trafficking continues to occur at disproportionately lower rates compared to those who consensually sell sex (Sibley 2014; Weitzer 2005). Human trafficking, however, is depicted as typical in order to legitimate the implementation of harsher laws. This has two benefits for the state. First, by framing the migration of sex workers as an issue of sexual violation,

the state obscures the structural conditions that forces some individuals to sell their labour-power and ultimately migrate in search for work (Cheng and Kim 2014), while negating that sex work can and is also freely chosen. Significantly, owing to its role in global capitalism, Capitalist-colonial states such as Canada can deflect responsibility for their role in the creation of plentiful flows of forced labour and migrants that arise from its hegemonic global position. Instead, this responsibility is shifted onto an imaginary, racialized 'Other': human traffickers from various third-world countries who prey upon women as a result of their 'backward' culture and primitivism (Kempadoo 2011). Second, it legitimates the use of further laws that prevent migrations, securitize borders and further criminalize the sex trade, thus maintaining Canada as a white space. In short, the state's recent interest in tightening anti-trafficking laws stems from a desire to maintain borders as well as the ideological divide between 'races'.

Various scholars argue that the recent tightening of anti-trafficking laws seen internationally represents a form of neoliberal governance (Cheng and Kim 2014; Parent et al. 2013; Bernstein 2004; Sayers 2014). In other words, it is an attempt to reverse the declining profitability of the capitalist-colonial system by entrenching ideologies such as individualism and risk, while reinforcing ideas concerning the superiority of the white, male and middle class. The state accomplishes this by implementing anti-trafficking laws which "control female migrant labour, contain sexual excess, and maintain social hierarchies", all while operating under the guise of protecting women (Bernstein 2004; as cited in Cheng and Kim 2014:361). Sealing Cheng and Eunjung Kim (2014), for example, reveal the neoliberal restructuring of South Korea in 1997 led to the introduction of similar laws against sex work and migrant sex workers. South Korean officials determined sex workers to be victims if they had personal debt or worked for someone else;

authorities also labelled sex workers as criminals if they were involved in managing other sex workers (Cheng and Kim 2014). The new laws exacerbated sex worker stigma by protecting only those who are perceived to be 'authentic' victims (Cheng and Kim 2014). Cheng and Kim conclude that the new laws exacerbate sex worker stigma by protecting only those who are perceived to be 'authentic victims' and serves to "translate the protection of women's and human rights into the 'protection of feminine virtues'" (Cheng and Kim 2014:360). Such laws, wherever they occur within the context of a capitalist, colonialist and patriarchal social order, we may reason, exist not to protect sex workers, but to maintain the ideological boundaries between the colonizers and the colonized, white femininity and promiscuity, as well as between the working and ruling classes.

In addition to strengthening neoliberal forms of governance, indigenous-feminist scholar Sarah Hunt has also warned against the recent tightening of anti-trafficking laws and its consequences for indigenous women. According to Hunt, "the increased use of anti-trafficking approaches have gone hand-in-hand with the condemnation of Indigenous women's involvement in sex work. Hunt is critical of the ways that the Pickton case is held up as proof that trading and selling sex is inherently violent (as quoted in Kaye 2017:xi; see also Hunt 2010; Hunt 2016). Hunt contends that it was during the Robert Pickton trial that trafficking came to be conflated with sex work and the disappearance and murders of indigenous women more generally (Hunt 2010, 2016). Previous to the trial, the trafficking of indigenous women and girls was rarely mentioned within anti-trafficking discourse (Kaye 2017). The conflation of sex work and sex trafficking has resulted in the reproduction of racial boundaries that define white women as respectable, deserving victims and indigenous women as promiscuous degenerates whose violent victimiza-

tion is inevitable. The voices of sex workers have been forced out of anti-violence initiatives, even though it was their advocacy that led to Robert Pickton's conviction (Hunt 2010). The recent tightening of anti-trafficking laws, therefore, do nothing to prevent acts of violence from being committed against those most likely to be victimized. Instead, the tightening of anti-trafficking laws represents an additional harm to indigenous women both non-sex workers and sex workers.

The Role of Anti-Sex Work Legislation and the Reproduction of the Capitalist-colonialist System

This chapter demonstrates the implications of anti-sex work legislation for indigenous women and peoples and for settler labour are stark, and have wide-ranging connections to the perpetuation of capitalist, colonialist and heteropatriarchal relations of ruling that continue today. From the onset of colonization, anti-sex work legislation was used by the state to secure white supremacy and claims to indigenous land. Anti-sex work legislation, for example, was used to criminalize indigenous-settler unions that had become common during early settlement. After the arrival of large numbers of white settler women to the colony, the state feared that settler men would refuse to abandon their indigenous companions and the settler colony altogether. The state also feared that the children of indigenous-settler unions would challenge white settler's prioritized access to the ownership of property. Both outcomes would have had severe consequences for colonial rule. By ideologically sexualizing indigenous women and connecting them to the newly criminalized crime of 'prostitution', however, the state could ensure the perpetuation of white supremacy. Anti-sex work legislation, therefore, was important during the onset of colo-

nization for two purposes: for ensuring the control of settler labour, and for perpetuating colonial rule through the continued degradation and annihilation of indigenous populations.

Anti-sex work legislation was also used to uphold the state's control over labour and land during the industrialization of Canada. During this time, anti-sex work legislation was used to quell racial tensions that were the result of a declining economy for working-class settlers. While industrialization was profitable for large businesses and governments, it was also associated with a housing crisis and a decline in wages. At the same time, immigration had increased dramatically as a way to ensure a cheap and adequate labour supply for the construction of the Trans Pacific Railway. The result was an explosion of anti-immigrant sentiment on behalf of white settlers, who feared that their prioritized access to the labour market was being threatened by the cheap labour of immigrants. To quell these tensions, anti-sex work legislation was introduced to hinder the economic activities of Chinese, Japanese and Korean immigrants by restricting their ability to hire white women. The legislation was introduced under the guise that immigrants are sexual predators awaiting the defilement of virtuous, white women. The anti-sex work legislation introduced during the industrialization of Canada, therefore, served to control the labour of settler women in ways that would secure the superior position of white settlers within the colonial-capitalist system. In doing this, the legislation also erased the risk successful immigrant entrepreneurs 'of colour' posed to WMCP.

Finally, the state used anti-sex work legislation to secure its control over indigenous land and settler labour during the neoliberal period. From the 1970s and onward, anti-sex work legislation has been used by the state to mitigate threats to colonial stability caused by plummeting rates of profit. Neoliberal ideology, in turn, has been used to justify the harmful consequences of

the anti-sex work legislation introduced during this period, as well as to pacify white settlers who are concerned about high unemployment rates, stagnant wages and limited access to social supports. Anti-sex work legislation, therefore, played a key role in legitimating the theft of land and control of settler labour during a time when falling rates of profit threw the ideological supremacy of white settlers into question.

To support the state's claims to land during the neoliberal period, for example, anti-sex work legislation was introduced that would enable police officers to criminalize suspected sex workers whenever they appear in public — not unlike the 'pass system' introduced under the *Indian Act* (Sayers 2014). Section 213.1(1) of Bill C-36 gives police discretionary powers to harass and relocate individuals who are considered threat to the colonization of land, a threat to white respectability and a threat to property values. Bill C-36 also serves to protect the profits of property owners by pushing street-level sex workers out of public view where they are more likely to be victimized. The anti-sex work legislation introduced during this period, moreover, normalizes neoliberal ideologies such as 'individualism' and 'risk' by placing the blame for the violent victimization of sex workers onto the workers themselves.

These recent developments in anti-sex work legislation pose considerable harm to indigenous women, who are estimated to represent fifty-two to seventy-five percent of the street-level sex workers in the impoverished Vancouver Downtown East Side (Lowman 2011b; CIHS 2014). As a result indigenous women have become Canada's fastest growing prison population, though indigenous people comprise only four percent of the Canadian population they represent more than a quarter of all prisoners (Sapers 2016). This figure has doubled since 1980 when indigenous men and women made up ten percent of all Canadian prisoners and a 25 percent in-

crease since the passage of the 1996 *Sentencing Reform Act*. (Sapers 2016). The neoliberal ideologies underpinning Bill C-36 and the other pieces of legislation introduced during this period, therefore, serve two purposes as I see it: a) to contain when not eliminate indigenous peoples because of the threat they pose to colonization and b) in regulating labour through anti-sex work legislation, to restore profitability by prioritizing property interests over human rights.

As with in the other time periods explored in this study, the anti-sex work legislation introduced during the neoliberal period plays a vital role in the pacification and control of settler labour. Not unlike what occurred during the 'White Slavery Panic', the continued devaluation of sex worker's labour by Bill C-49 and Bill C-36 ought to be imagined as tools of control with two simultaneous effects. On one hand prohibitionist morality laws prevent male settlers from seeing themselves in solidarity with sex workers *qua* workers whose labour is devalued. The second is that through a regime of social control, desire and leisure perceived to be inconsistent with the rigid ideological morality of bourgeois society constitutes a ready-made procedure for he politics of respectability (see Hepburn 1977). Indeed, the unemployment rate of 'Canadian-born' labourers has steadily increased since the onset of neoliberalism — especially amongst men (Statistics Canada 2006).[36] Economists suggest, moreover, that if statistics were to include part-time workers who are willing but unable to find full-time employment, the official unemployment rate would double (Boshra and MacEwen 2013). The result has been a largely 'discouraged' labour force that has stopped searching for decent employment entirely: men's labour force participation

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[36] It is important to note that the unemployment rates of indigenous peoples and people 'of colour' have been the most affected by neoliberalism (Luxton and Braedley 2010). According to Sheila Block and Grace-Edwards Galabuzi, "racialized men are 24% more likely to be unemployed than non-racialized men" (Block and Galabuzi 2011:4). Racialized women, moreover, are 48% more likely to be unemployed compared to their white counterparts (Block and Galabuzi 2011).

rate has dropped from 78.5% in 1982 to seventy-one percent in 2012 (Laurier Centre for Economic Research & Policy Analysis 2014). While working-class, settler men have responded to negative changes in the labour market in various ways, one method has been to support the degradation of female labour and violent victimization of women. By criminalizing the activities surrounding sex work, for example, Bill C-49 and Bill C-36 justify the removal of undesirable populations from spaces that are deemed profitable — even if these means include violent victimization and death. The refusal of state officials to differentiate between consensual sex work and sex trafficking, moreover, creates a moral panic that is not unlike what occurred during the White Slavery Panic. In both instances, legislation is used to shift the state's responsibility in the creation of forced flows of migrant labour onto imaginary, racialized scapegoats. By supporting this legislation, settler men are able to preserve their superior positioning within Canada's labour market by reproducing the very same colonialist and patriarchal social relations that deem their work valuable and worthy of a wage.

The criminalization of sex work also serves to undermine any potential instances of solidarity between sex workers and those labouring within the formal economy. By denying sex workers the ability to claim they are performing legitimate and productive work, anti-sex work legislation obscures the connections between the exploitation faced by sex workers and labourers in the formal economy (Durisin 2010). Anti-sex work legislation thus prevents sex workers and wage earners from becoming allies in the fight for better working conditions. On an individual level, anti-sex work legislation also prevents solidarity between sex workers and their clients. Research shows that the criminalization of the purchase of sex under Bill C-36 prevents clients from reporting abusive behaviour towards sex workers to police (Hon Chu and Glass 2013;

Shaver 2014; Dodillet & Östergren 2011; POWER 2012). Clients who previously worked collaboratively with sex workers to ensure their safety are increasingly reluctant to approach the police for fear of being arrested (NSWP 2011; Hon Chu and Glass 2013). These outcomes are especially worrisome considering that recent trends suggest that Canadian police are opting to target and arrest the clients of sex workers over the sex workers themselves (Hon Chu and Glass 2013). This latter point supports my contention that disciplining and regulating (white) male settler labour is one of the corner stones of anti-sex work legislation.

Thus from the onset of colonization, anti-sex work legislation has been used by the state as a tool to reinforce hegemonic control over settler labour and to legitimate the removal and eventual elimination of indigenous peoples from their land through processes of criminalization. Whether it be to discourage previously sanctioned indigenous-settler unions; to quell racial tensions resulting in a sudden influx of cheap, racialized labour; or to respond to continued unrest regarding plummeting rates of profit and employment rates, anti-sex work legislation plays a key role within a wider system of hegemonic control designed to sharpen the ideological boundaries between whiteness and indigeneity in times of capitalist crises and colonial instability. Anti-sex work legislation, therefore, is key to much more than the maintenance of patriarchal social relations. Anti-sex work legislation, and the state's desire to regulate sexuality more generally, is rooted in the complex and dynamic interaction between ableism, colonialism, heteronormativity, imperialism, sexism and racism.

Chapter Five: Conclusion - Looking to the Future

In conclusion, while the regulation of sexuality plays an important role in anti-sex work legislation, this study reveals that the state's desire to regulate sexuality is rooted in the complex and dynamic interaction between ableism, colonialism, heteronormativity, imperialism, sexism and racism. This study has identified three prior and contemporary periods in which anti-sex work laws were enforced in the context of capitalist crisis and colonialist instability. I assert the aim of anti-sex work laws in these periods is to sustain the hegemonic dominance of capital accumulation and white superiority through controlling indigenous peoples and regulating (white) male settler labour: the consummation of the Canadian settler-colonial system (1850 - 1900), industrialization (1900 - 1920) and neoliberalism (1970s - current). These are periods in which the production of white, middle-class personhood (and, in contrast, degenerative indigeneity) and the normalization of colonialism and capitalism were of the upmost importance.

Each period represents a different challenge for indigenous women as the colonial state reasserts its authority. The first period begins with the arrival of Canada's first settlers, and explores how previously sanctioned relationships between indigenous women and settlers became a threat to the superiority of white, middle-class personhood. The state feared, for example, that the children of indigenous-settler unions would gain legal ownership of property (Erickson 2011; Carty 1999) in ways that would contest white settler domination and the Crown's monopoly over land. The state responded by further sexualizing the already negatively raced and gendered body of the indigenous women through the use of anti-sex work legislation. The *Contagious Diseases Act* (1865) and the *Vagrancy Act* (1869), for example, were both used at the discretion of police as a means of harassing and surveilling indigenous women. The *Indian Act* (1876), moreover,

introduced laws and punishment specific to indigenous women who sold sex and those who would purchase their services. This legislation set clear ideological and spatial boundaries between indigenous peoples and settlers and served to ideologically degrade the indigenous women who became associated with 'prostitution'. Indigenous women needed to be ideologically degraded and sexualized in order to construct newly immigrated white women's hegemonic superiority and that of the patriarchal and socio-political dominance of white men.

The second period moves on to examine Canada's transformation into an agricultural and industrial capitalist system during the turn of the nineteenth century (Lawrence 2003; Bright 1995). In the context of establishing Canada as a 'white man's country', state officials were concerned that the anonymity of newly established urban life would enable widespread miscegenation by encouraging white settler women to work outside the home. This anxiety about controlling white women's autonomy was amplified by their exposure to the recent influx of immigrants whose whiteness was dubious (Valverde 2008). The state feared that these social transformations would threaten the stability of colonial rule by blurring the distinction between settlers, indigenous peoples and people 'of colour'. Authorities responded by abandoning its lenient attitude toward anti-sex work laws and by enforcing discriminatory immigration and labour policies, including *An Act to Prevent the Employment of Female Labour in Certain Capacities* (1912). This legislation served to reinforce racial and gendered boundaries by depicting immigrants as predators and by further undermining the ability of immigrant and women labour to compete with that of white, male settlers (McLaren 1986). Much of the anti-sex work provisions introduced up until this point remained in place until the mid-1970s, when the profitability of the capitalist-colonialist system began a noticeable decline (Porter 2012; Smith & Butovsky 2016).

The third and final period examines a more recent attempt to secure economic, political and social stability through the intensified criminalization of sex work: Bill C-36: *The Protection of Communities and Exploited Persons Act* (2014). This Bill has been shown to further physically endanger the lives of women who have been sexualized and dehumanized over a century and a half of colonialist rule. The result has been a dramatic increase in the amount of missing and murdered indigenous women across Canada (Lowman 2000). By historicizing anti-sex work legislation and theorizing its connection to the reproduction of the capitalist-colonialist state, this study demonstrates that the criminal law is a tool to help reinforce control by capitalist elites and the hegemonic superiority of white settlers, while simultaneously subjecting indigenous women to disproportionate levels of violence.

I have forwarded a speculative theory that accounts for the ways in which anti-sex work legislation assists in the advancement of the mutually imbricated projects of Canadian capitalism, colonialism, patriarchy and racism. I have developed this account of social control and sexual regulation by conceptualizing how: a) anti-sex work legislation reproduces colonial rule through the sustainment of land appropriation and, b) how it is used as a proxy for the management of settler labour. This speculation, in combination with the theoretical insights of Marxist-feminism, critical race theory and critical race feminism, Gramsci's theory of hegemony, has been used to theorize that the body of the indigenous woman is a metaphorical topography upon which raced and gendered oppressions are both constructed and mobilized for war and conquest by colonizers. The ideological sexualization of indigenous women's bodies aids in their subordination and serves to pacify settlers who are fearful for the devaluation of their own labour through a shared anti-indigenous animus (Federici 2004). There is, however, no contradiction

between the ideological basis to 'top-down' racism and that of the horizontalized white racism which is a cultural unity between white elites and working class settlers (see Robinson 2000)

As this study has hoped to demonstrate, anti-sex work legislation has played a vital role in this process. During the onset of colonization, it assisted in redrawing the racial divides that had been blurred as a result of concubinage. During the industrialization of Canada, anti-sex work legislation aided in quelling racial tensions that had resulted from increased migration and declining wages for the white, male working class. The legislation was used to hinder the economic activities of immigrants, indigenous people and communities 'of colour' and to secure the level of white supremacy necessary to justify the prioritized treatment of settlers. Lastly, anti-sex work legislation is currently being used to mitigate the declining profits of the capitalist system that began shortly after the end of World War II. The legislation helps to restore profitability by prioritizing property interests over human rights; for example, by pushing street-level sex workers out of public view where they are more likely to be victimized. It also normalizes neoliberal ideologies concerning 'risk' by placing the blame for the violent victimization of sex workers onto the sex workers themselves. Anti-sex work legislation in Canada, therefore, has been essential for maintaining the ideological divides that make it possible to dehumanize indigenous peoples and appropriate their land, and for controlling any resistance through the management of settler labour.

It is hoped that this speculative theoretical project will have a positive impact on future prospects for solidarity between feminist, anti-racist and socialist circles. By extending the work of authors like Sarah Hunt (2013), Naomi Sayers (2014) and other critical race scholars who understand sex work to be a form of labour, I have aimed to advance a theoretical framework that

both incorporates and transcends the parameters inherent in current debates and research about sex work, particularly with those that understand sex work as something that is either 'coerced' or 'chosen'. This method allows this study to acknowledge not only classed and gendered factors, but also the experiences of indigenous women in particular and women 'of colour' more generally. In the context of sex work research, moreover, this method is capable of disrupting the socially constructed binary that depicts indigenous women as promiscuous degenerates and white (middle-class) women as chaste and virtuous beings. Agency, therefore, must be understood as a complex interplay between one's position within a particular set of socio-economic relations, as well as the particular capitalist-colonialist, racial and hetero-patriarchal political project that one is subjected to. It is important for future prospects for solidarity between feminist, anti-racist and socialist circles, therefore, that future research highlights the voices of indigenous and other critical race scholars to establish possibilities for social transformation that will enable the fullest actualization of the potentialities of indigenous and non-indigenous peoples. Without transcending the polarizing distinction in sex work theory, future research (both within the realm of sex work research and beyond) will continue to acknowledge only classed and gendered factors at most, as what has happened already within the reproductive rights movement (Smith 2005).

Solidarity across these movements is essential for the full support of indigenous self-governance and economic autonomy. To this end, debates in sex work research must continue past decriminalization to consider the wider social relations that serve to dehumanize indigenous women. Indeed, decriminalization alone will do little to prevent the incessant murdering of indigenous women and boys across Turtle Island (Bruckert and Hannem 2013; Hunt 2013; Sayers

2016). Activists within feminist, anti-racist and socialist circles can support indigenous communities by acknowledging that the issue of anti-sex work legislation extends beyond hetero-patriarchal and capitalist control (Hunt 2013). As this study has hoped to prove, anti-sex work legislation and the inequality experienced by indigenous peoples in Canada is directly related to colonialism, and, therefore, can only fully be addressed through efforts to decolonize both the land and our minds. To this end, Sarah Hunt (2013) suggests the following strategies specific to the issues faced by indigenous women and indigenous sex workers:

First, Hunt (2013) contends that the reduction of stigma towards sex workers must begin within indigenous communities. According to Hunt, "many indigenous people have internalized the attitudes about our sexuality taught to us through residential schools and generations of dehumanization under the Indian Act" (Hunt 2013:93). The result has been a gradual disappearance of traditional indigenous teachings of acceptance and respect (Hunt 2013).

Secondly, Hunt reflects on how centuries of colonial rule have negatively impacted the daily lives of indigenous sex workers. She suggests that activists ought to work toward supporting solutions to the violence, poverty and substance dependencies that are plaguing indigenous communities (Hunt 2013). She adds that action must be guided by a rights-based approach whereby those who choose sex work have the right to perform their work safely, while those who are forced into the trade have the right to leave it safely.

Third, Hunt asserts that safety and agency of indigenous sex workers can only be improved if the voices of indigenous sex workers become prioritized (Hunt 2013). Speaking on behalf of indigenous sex workers implies that they are helpless victims and contributes to the paternalistic logic that denies indigenous women's agency. Fourth, and related to her third point,

Hunt recommends that activists fight against victim-blaming, paternalistic rhetoric that serves to blame women for the violence they encounter outside of the home (Hunt 2013). The restriction of mobility, moreover, has been a central component of the oppression faced by indigenous communities under colonialism. The struggle must therefore be extended to include the right to indigenous sovereignty and the right to resist forced relocation, as well as to support the ability of indigenous sex workers to move freely between cities.

Lastly, Hunt suggests that in order to combat the issues specific to indigenous women, activists must acknowledge that indigenous women have historically had their sexuality regulated through a variety of legal and legislative instruments specific to them *because* they are indigenous (Hunt 2013; Sayers 2014). Sex work scholarship, accordingly, must critically interrogate the suite of laws that target indigenous women, such as laws associated with the 'war on drugs' and child welfare (Sayers 2014).

Limitations and Directions for Future Research

This speculative and wide-ranging project leaves many questions unanswered, which in turn creates wide prospects for future research. The macro scale of this research, for example, leaves out many details regarding the treatment of indigenous women by the colonial officials enforcing anti-sex work legislation. This issue is compounded by the lack of first-person historical accounts from the perspective of indigenous women explaining how sex-work legislation was enforced on an individual scale. The result is that the voices of indigenous peoples affected by this legislation, including that of immigrants and people 'of colour', are excluded from this study. While nothing can be done to correct the racism of previous time periods that subordinated

the voices of indigenous people, it is important that sex work research focusing on more recent events prioritize the voices, both of activists and sex workers who are indigenous and 'of colour'.

Most importantly, future sex work research must make efforts to reverse the sexualization and racialization of indigenous women by adopting a clear anti-colonial approach. Without the decolonization of Turtle Island, criminal legislation will continue to be implemented to protect the unequal social relations upon which colonial rule depends. For this reason, I urge fellow settlers to support the emancipation and decolonization efforts of indigenous peoples. I do not, however, suggest that settlers support these efforts in the name of 'rescuing' indigenous women. As this study has demonstrated, the Canadian state's efforts to enforce hegemonic rule upon its colony has also had negative effects for settlers also (Mensah and Williams 2017). While settlers benefit the most from colonial rule, their labour-power is still closely linked to the success of the colonial-capitalist system, and, therefore, must be controlled. Thus, settlers must take time to acknowledge the connections between the state's control of their labour-power and the degradation of indigenous peoples. To echo the words of the Murri indigenous activist group in Queensland, Australia: "If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together".

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