EPISTEMOLOGIES OF IMPERIAL FEMINISM(S): VIOLENCE, COLONIZATION, AND SEXUAL (RE)INSCRIPTIONS OF EMPIRE

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Abstract

This doctoral thesis project brings together Indigenous theory and post-colonial feminism under a decolonial framework to highlight the significance of feminist moral epistemologies in establishing global hierarchical systems. I argue that when situated within the sexual matrices of coloniality, feminist moral regulation knowledge production in Canada institutionalizes hierarchical social ordering through the de-mediation of non-secular agency and sacred Indigenous self-consciousness. This dissertation warns feminist moral regulation scholars of the contamination of feminist knowledge produced about the "sexual Other" that remains colonized within the methodological grids of the epistemic structures of secular-coloniality. It highlights how a focus on epistemology allows us to understand the role of feminism's contingent investments in imperial knowledge systems and the effects this has for structuring neocolonial governmentality and settler colonial domination, in the service of sexual empire. In it, I employ deconstruction and genealogical analytics to reveal how structures of empire are intertwined with discourses of sex and colonial law to trace how such intertwinements shape the production of subjectivities, liberal state-making projects, and colonial enterprises under the promise of "sexual progress" and political freedom. This framework allows me to explore the co-production of knowledge systems within neocolonial orders by focusing on philosophical debates about human rights, gender and racial (in)security, liberal secularism, transnational imperial feminist power. Central to the argument that I pursue in this dissertation is that in the wake of neo-liberalism and neo-colonialism, feminist knowledge about sex work and morality is not mediated by a singular site of annunciation via moral regulation theory. I argue, instead, that moral regulation feminist theorizations of sexual morality are also conditioned by the epistemic and methodological project of imperial feminist praxis. Therefore, this dissertation investigates the epistemological dimensions of moral regulation

feminist knowledge production and excavates the modalities of power that drive this discipline and explores the epistemological regions from which it speaks.

For Zuba. Without you none of this would have been possible.

“All is well.”
~ Claire

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Introduction

Feminism, Sex, and Power

> This self-questioning does not mean that I have stopped struggling or fighting over injustices—whether they pertain to issues of gender, ethnicity, class, or sexuality—that currently compound my social existence. What it does mean is that I have come to believe that a certain amount of self-scrutiny and skepticism is essential regarding the certainty of my own political commitments, when trying to understand the lives of others who do not necessarily share these commitments.
>
> —Saba Mahmood, *The Politics of Piety*

The questions and themes that are outlined in this dissertation stem from my frustration with the way that contemporary struggles over sexual freedom are being theorized and understood by Euro-Canadian feminist theory. I had just completed a master's degree in the Department of Law and Society, York University, when news broke that Canada was adopting a new social policy approach towards its sex trade. On December 7, 2014, the Government of Canada adopted the *Protection of Exploited Persons and Communities Act* (PECPA), authorizing new legal measures proposed to mediate Canada's sex trade industries. The bill was introduced in the House of Commons on June 4, 2014, by Peter MacKay, Minister of Justice and Attorney General of Canada. The legislative approach in the PECPA ultimately shifts the way in which the Criminal Code addresses voluntary prostitution activities between consenting adults. That is, the bill effectively prohibits the purchase of sexual services, making prostitution between adults a de facto illegal activity for the first time in Canada's history.[1] In receiving royal assent, the enactment amends Canada's Criminal Code aimed primarily at criminalizing those who obtain or purchase sexual services, suggesting that an inherent element of prostitution is the practice of exploitation that leads to the objectification of the human body, a process that is argued as responsible for normalizing violence and thus causing irreparable harm to society in general.

As news quickly spread about this unprecedented shift, responses began to surface among Canada's news outlets and on social media. Kerry Porth, board chair of Pivot Legal Society, a Vancouver-based sex worker advocacy organization, condemned the bill for not prioritizing "my voice, and those of other current and past sex workers who should have been prioritized as we have direct experience and expertise to share with the committee about how Bill C-36 will affect sex workers."[2] Porth, among others, clapped back at Parliament's proposed framework by arguing that it recriminalizes sex trade workers by making prostitution itself illegal, emphasizing how it invites an abusive power into their lives through the expansion of carcerality, which pushes them further along the margins of society.[3] This denunciation, then, is in part a response to a celebratory optimism that presupposes the PECPA as it is predeceased by the landmark constitutional challenge, *Canada (Attorney General) v. Bedford*, which feminist celebrated a landmark feminist Supreme Court of Canada decision. In short, *Canada v. Bedford* refers to the December 20, 2013, Supreme Court of Canada decision that found that Canadian Criminal Code's s. 210 (the bawdy-house provision) violates sex workers' constitutionally protected right to security of the person—protected under s. 7 of the Canadian Charter of Rights and Freedoms—insofar as it prevents sex workers from working in a fixed location or indoors; that s. 212(1)(j) (the provision prohibiting living off the avails of prostitution) infringes upon sex workers' constitutionally protected right to security of the person, emphasizing a need to differentiate between those who live off the avails of prostitution and those who exploit prostitution; and that s. 213(1)(c) (the communication provision), which prohibits communicating in public for the purpose of prostitution, violates sex workers' constitutionally protected rights to security of the person insofar as it prevents sex workers from being able to screen clients as well as set the terms and conditions of the exchange.[4]

Moreover, *Bedford* made significant contributions in attempting to expand the rights of Indigenous women, as much of the decision focused on their experiences in the street-level sex trade.[5] In fact, the success of the applicant's historic legal challenge hinged upon the specific experiences of Indigenous women that were taken up in legal reflections about Robert Pickton and the missing women of Vancouver's Downtown East side, overrepresented by Indigenous women.[6] Nevertheless, the provisions would remain in force until December 19, 2014, providing Parliament with some necessary time to come up with a new approach to prostitution for Canada to adopt. The findings of the *Bedford* decision were celebrated, for instance, by constitutional lawyer Alan Young, who spearheaded the legal challenge and who suggested that the decision "showed that their security and liberty are impaired because they were in danger, and it's not in accordance with the principles of fundamental justice … Decriminalization is really just a first step towards legalization."[7]

The reception of these legal measures in Canada by sex trade advocates and their feminist allies tends to be reflective of the two dominant feminist theoretical approaches to the sex trade—that is, the "pro-sex v. anti-sex" and "sex-as-work v. sex-as-violence" feminist debates.[8] My master's thesis examined these debates in depth. I examined, for instance, how this framework which polarizes the prostitution debates in Canada draws its theoretical insight from the competing discourses about criminalization/decriminalization.[9] The contributions to our understanding of sex work that this polarized framework has made have been well documented.[10] I also examined how, on the one hand, a "pro-sex" feminist position argues that women in the sex trade are caught up in the illegal/illicit status of the labour. In addition to raising the level of criminalization, this also structures layers of exploitation insofar as it prevents sex trade workers from gaining access to both their statutory labour rights and their rights as citizens.[11] According to this position, sex trade

workers function within the domain of *homo economicus*, which sees barriers to accessing safe labour conditions and its market forces as producing sex trade workers' precariousness. It likewise argues that an "anti-sex" ideology denies sex workers their agency and bodily autonomy, instead suggesting that sex trade workers can and do have positive experiences working in the sex trade and further emphasizing the elimination of reconstructions on sex workers' conduct as a fundamental component to sexual liberation. In an effort to achieve the right of women to participate in the market, it is argued that the criminalization of sex-as-work is a violation of women's constitutional rights, adding that women's subordination is in part made possible by political and legal constraints that stymie women's access to public, political, and economic spheres.[12]

On the other hand, I examined how the "anti-sex" feminist position is centred on the abolition of sex work. This position understands the sex trade as an industry based on the abuse of women's human rights, and its ideas are upheld by a "sex-as-violence" feminism, which argues that prostitution is an expression of patriarchal domination under capitalism.[13] These feminists theorize prostitution as institutionalizing patriarchal domination, which becomes customary and part of what it means to participate in expressions of masculinity, masculine sexuality, and male domination. Similarly, it is suggested that the women who enter prostitution do so as the products of patriarchal and capitalist violence, which entraps women in social, political, and economic precarity.[14] For my master's thesis, I thus carried out an epistemic reading of the linkages between these seemingly polarized positions, arguing that an epistemic reading denaturalizes the supposed tensions between the two feminist sex work theories, thus highlighting their discursive overlaps and exposing their unity at the intersection of whiteness and liberalism. This allowed for a nuanced analysis of colonization's epistemic logics within the context of feminist sex trade politics in

Canada.[15] I further argued that an epistemic reading provides additional insights "into a contemporary feminist tendency to cite sexual politics as being the central constitutive feature in the origin of a crisis of power and domination prevalent within our society, particularly in the context of prostitution."[16] I found that the dominant binary framework tended to obscure the overlapping tendencies of both positions and the fundamental realties of coloniality that structure sexual realties. I proposed, instead, a feminist reading practice that excavates coloniality, and which "allows for an exploration of alternative accounts that structure theories of prostitution, tracing root causes and circumstances that participate in the production of prostitute subjectivity, which tend not to be taken up in the dominant feminist scholarship."[17]

However, another prominent feminist framework for understanding the politics of sex work in Canada is the moral regulation approach.[18] For example, debates about sexual morality and moral legalism pervade *Canada v. Bedford*.[19] The findings in *Bedford* were supported by feminist social science research that made up the fact-findings of the constitutional challenge, which called into question whether "moral disapproval of prostitution represents a constitutionally permissible legislative objective."[20] A moral regulation feminist position in the case of *Bedford* understands sex work as a stigmatized form of labour.[21] When examining sex through the prism of morality and legalism, this feminist approach tends to argue that anti-sex ideology is informed by systems of sexual morality that fundamentally contribute to sex workers' oppression by regulating their bodies, choices, and capacity to make decisions about the security of their person.[22] Hence, rather than reduce sex work to a totalizing experience of violence and exploitation, theories of moral regulation and the law suggest that what is primarily at issue is the relationship between sex, morality, and power, and how their networking gets mobilized by the law to deprive sexual minorities of their rights and liberties.[23] Such ideas "demanded a rethinking of 'normal,'"[24] which

levies challenges against stigmatization and sexual governance.[25] Therefore, studies of moral regulation are not new to feminist debates about sex work, and, while not an exhaustive list, some prominent Canadian scholars of this field include Mariana Valverde, Amanda Glasbeek, and Chris Bruckert. These feminist scholars have, through ethnographic studies, painstakingly documented accounts of sex workers' experiences,[26] theorized stigmatized sexual labour,[27] undertaken sociologies of law to expose legal violence,[28] and traced genealogies of sexual morality that participate in the construction of "deviant" sexual subjectivities alongside Canada's nation-building practices.[29] Their contributions to the field of sex work studies are absolutely indispensable and, in my experience, have helped to establish one of the prevailing feminist theoretical and methodological approaches to understanding the politics of sex work in Canada.

In this dissertation, then, building from my master's thesis, I focus my attention on moral regulation feminist engagements with the sex work debates in Canada. A central argument that I pursue in this dissertation is that, in the wake of neo-liberalism and neo-colonialism, feminist knowledge about sex work and morality is not mediated by a singular site of annunciation via moral regulation theory. I seek, rather, to identity competing and contradictory logics, methodologies, and disciplinary practices of this approach in how it apprehends sexual politics in Canada. I will suggest that feminist scholars of sex and moral power produce narratives that miss the nuanced and contradictory ways that imperial feminist subjectivities are produced through their epistemic politicization. In contrast to this approach, I aim to highlight historically specific systems of knowledge production and methodologies that organize and translate feminist colonial difference. Moreover, I will argue that moral regulation feminist approaches to sex work miss the multiple ways that Indigenous knowledges, cosmologies, and ontologies are negated as a precondition to the Euro-Canadian feminist ability to stage their intellectual aspirations. I will

argue that questions of sexual morality are inseparable from coloniality and secularity, maintaining that colonial and imperial expansion is not reducible to land theft and acquisition, or resource and labour extraction and exploitation, but is also an epistemic and methodological project relating to a feminist praxis that is undertaken for the purpose of producing sexual subjects who are invariably rendered palatable for servicing the needs of empire.

According to Anna M. Agathangelou and L.H.M Ling, it is important to build on Hardt and Negri's notion of hegemony to grasp the full range of power in the context of colonial and imperial encounters. Agathangelou and Ling's own notion of hegemony differs from Hardt and Negri's in important ways. For example, while Hardt and Negri understand empire as secure, universalized, and certain, run by a self-regulating capitalist system, Agathangelou and Ling expand upon this understanding by rooting the term in the domain of epistemology where it has two important goals: on the one hand, its goal is to establish itself as the only available possibility for all, and on the other, it is to deny, dismiss, or erase the possibility of other worlds. Thus, contra Hardt and Negri, hegemony is not just the collusion between state and civil institutions to preserve elite interests—as Gramsci theorized, for instance—but also the systematic effort to wipe out all other ways of seeing, doing, being, and relating in the world.[30] Thus, the limitations of Hardt and Negri's notion of hegemony provides an opportunity to rethink the relationship between sex and power by analyzing it through the prism of empire.

Elsewhere, Agathangelou, Bassichis, and Spira do this by theorizing sexual empire. In brief, these scholars explain that sexual empire does not refer simply to the negation of the colonized Other as a practice in colonial eradication. It is far more complex than that. It also demands the constant performance and disavowal of the racially and sexually constituted aberrant Other. This functions as an imperial cognitive architecture, one that is concerned with the

production of thought processes that determine and structure what kind of gender and sexual subjecthoods can be imaged and realized.[31] Such performances and disavowals solicit our investment in the (non)spectacular logics of violence that empire depends on to (re)consolidate itself. It thus mobilizes the production of fears and desires to reinvest subjects in colonial and imperial notions of being, inclusion, safety, and freedom. As such, sexual empire is the imperial project of making subjects and ontological productions as "the process of seduction to violence that proceeds through false promises of an end to oppression and pain."[32] This requires attention to the structural underpinnings of feminist social and sexual relations embedded within the intellectual divisions of labour. Studies of sexual empire therefore stress a need to articulate the ways in which feminist sensibilities are mobilized by regimes of global imperialism in order "to make urgent the producing of solidarities not premised on exploitation, profit, or death."[33] Moreover, to grasp the far-reaching influence and impacts of sexual empire, feminist studies of sex and power must also situate their knowledge-production praxis within the context of the academic-industrial complex.[34] The academic-industrial complex refers to global arrangements of power that make possible particular knowledge relations and social relations of power. Thus, Agathangelou, Bassichis, and Spira link academic methods, pedagogical approaches, and the valorization of certain disciplines of thought over others to historically contingent epistemic investments in and global arranges of colonial and imperial militarization and lockdowns. At the heart of the academic-industrialized machine, then, are the ways in which feminist knowledge production networks with neo-imperial domination.

The aim of my project, then, is to expand on this analytic framework by thinking about power, sex, and morality. I thus shift away from a level of analysis that focuses on the limitations of comparison as I have previously identified. This project's preoccupation is less with feminist

meaning-making practices and the way those meanings are given legitimacy by the state and legal discourse but, rather, is more concerned with the work performed by feminist epistemology and its networking with juridical-legal architectures in the making of sex subjects, in crafting life worlds, and the ethical practices and affective attachments that underwrite such political capacities. Ultimately, I aim to show how in evading meaningful engagement with the imperial knowledge question, feminist scholars of sex and morality are symptomatic of a larger epistemological problem rooted in Europe's historical project to sustain its authority and impetus in dominating the world.

Therefore, my contribution to the field of sex work studies is not only about colonial epistemics but also about how we think about moral regulation. What is distinct about my project is that I bring together Indigenous theory and post-colonial feminism under a decolonial framework to highlight the significance of feminist moral epistemologies in establishing global hierarchical systems. Here I am inspired by the work of Janice Acoose (Saulteaux), Lana Ray (Anishinaabe), Leanne Simpson (Nishnaabeg), Sarah Hunt (Kwakwaka'waka), Linda Tuhiwai Smith (Ngāti Awa and Ngāti Porou), Glenn Coulthard (Dene), and John Borrows (Anishinaabe). These scholars' critiques of Eurocentric knowledge systems and research methodologies are multifaceted and complex, providing indispensable insights into how sex and colonial morality are networked through global asymmetries of power and juridical-legal complexes. They reveal how these intersections shape colonial state-making projects and imperialist enterprises under the guise of "sexual progress" and political freedom. Moreover, they are attentive to how feminist theory operates as a specific form of domination as an essential aspect of the modernist colonial project.

I am likewise inspired by post-colonial and decolonial scholars Anna M. Agathangelou, Johannes Fabian, Talal Asad, Saba Mahmood, Zahir Kolia, and Gayatri Chakravorty Spivak,[35] as

well as African scholars Oyèrónkẹ́ Oyěwùmí, V.Y. Mudimbe, and Zubairu Wai. From the vantage point of racialized subjects, these post-colonial and decolonial scholars provide insights to the spatial and temporal coordinates of global power. They extend our thinking on sex, morality, and epistemic violence by demonstrating the reconstructing power of feminist theory, especially when feminist approaches remain invested in colonial divisions of labour and secularized moral political philosophies. They are thus attentive to structures of global power and colonial systems of representation that produce and define feminist subjectivities, realities, and their domains of apprehension, as well as what modalities of global power produce them, the political practices they make possible, and the political implications this has for governing sexual subjects. African theorists likewise undertake methodological critiques of colonial archives that pervade Western intellectualism. Their insights help explicate the banality of violence involved in the dissemination of representational systems of the imperial Same and the processes of racialized gendering brought on by imperial feminist representational alterity. More so, they warn of the contamination of feminist knowledge produced about the "sexual Other" that remains colonized within the methodological grids of the epistemic structures of imperial feminist knowledge systems.

Together, then, these theorists provide insights critical to this project in complicating the "innocence" of Euro-Canadian feminist political imaginaries that foreground theories of sexual morality. They situate feminist political imaginaries within global forms of ordering and order-making in world politics, specifically those related to the reproduction of sexual imperialism. With this insight in mind, I will contend that, when read through the secular, feminist moral regulation studies of sex engender feminist disenchantment. I argue that as a specific orientation of anti-Indigenous intellectual racism, feminist disenchantment embodies an imperial feminist epistemology. Indigenous, post-colonial and decolonial, and African thinkers thus allow me to

unpack feminist disenchantment by analyzing the relationship of moral regulation to coloniality, secularity, and sex. Further, they offer desperately needed intellectual opportunities for thinking about how to put into practice feminist decolonial research ethics by encouraging Euro-Canada feminist studies of sex and moral regulation to extend their reading practices beyond the matrices of imperialist intellectualism.

In staging this claim, three salient themes emerge, the exploration of which I will weave throughout this dissertation. The first theme is concerned with the production of feminist sexual subjectivity. Where I depart from moral regulation scholars is in their theory of agency. As I will show throughout this dissertation, agency for moral regulation feminism is rooted in possessive and radical individualism based on Eurocentric notions of autonomy and self-ownership and the right to be one's own exclusive sovereign. I read this, however, as an uncritical embracing and provincializing of a secular-liberal humanism that is foregrounded as a radical feminist sexual future. I argue, instead, that such a construction, when situated within the sexual matrices of coloniality, institutionalizes hierarchical social ordering through the de-mediation of non-secular agency and sacred Indigenous self-consciousness. The problem is that moral regulation feminist debates in Canada reflect upon political projects that are presupposed and enabled by the structural violence of secular colonialism and its accompanying knowledge regimes. Moreover, the locus of enunciation of these knowledge regimes is rooted in the imperial project, upon which elite feminists in the academy act as benefactors while simultaneously remaining silent.

The second theme relates to feminist boundary making. For instance, I critique feminist methodological fidelity to genealogies that celebrate public/private divides that locate sexuality and sex in the latter. I argue against this rigid distinction because it naturalizes the imperial task of establishing order based on secular idioms of power that demarcate strict boundaries between the

kinds of feminist knowledge about sexual freedom that are desirable and discernible within sex work debates. The problem is that dividing up feminist knowledge in this way assumes that private forms of reason are separated from public politics. I will show that these domains are both overlapping, co-constituting, and often contradictory. Moreover, retaining these divisions collapses, for instance, religious moralism and Indigenous enchantment into the homogenous domain of private contemplation and cultural symbolism. Segregating Indigenous enchanted forms of life to the latter seeks to limit Indigenous political influence and action with sexual politics as a precondition of feminist secular ethics.

The third theme is concerned with feminist research methodologies. In each chapter, I thus examine the research methodologies employed by feminist scholars of sex and morality in relation to Canada's sex trade debates. This serves to unpack how feminist scholars instrumentalize secular-colonial assumptions that are embedded in dominant feminist methodological accounts of how the domain of the sexual is constructed, regulated, and policed. I argue that such methodological practices engender feminist gatekeeping and disenchantment. In so far as feminist sex work scholar's subsequent pronouncements on emancipation are inscribed within the hierarchal structure of the colonial-capitalist global system, moral regulation feminist insights enable and reproduce racialized and colonialized intellectual divisions of labour that devalue non-secular knowledge systems that are subsequently deemed illegitimate to the study of "authentic" feminist sexual politics. This is pursued to open-up ways to reconceptualize sexual freedom and decolonial forms of resistance, which remains essential to any feminist freedom project.

In *Epistemologies of African Conflicts*, Zubairu Wai maintains that every discourse has its conditions of possibility within a specific mode or frame that make the production of knowledge about it possible.[36] This includes both the socio-historical region of emergence and the

epistemological context within which discourses are produced. Scholarly reflections and policy debates, then, must be historicized and contextualized to give face to the systemic forces, social processes, institutional practices, and power relations that provide the foundation and backdrop to their structure. This explores the specific ways that questions about discourses are proposed, understood, and responded to. In undertaking this level of analysis, Wai suggests advancing by way of an epistemological critique in order to expose the power-political fields of knowledge production and research. Such a method seeks to intervene in the established modes of thought, discourse, action, and ideas to denaturalize and contest their uncritical acceptance. Importantly, an epistemological critique interrogates an accepted set of assumptions about what constitutes knowledge discourse and examines the power structures within which they are produced. Honouring Wai's methodological enterprise, I advance an epistemological critique of feminist sex work studies in Canada throughout this dissertation. As such, I raise questions about feminist moral epistemology (i.e., the field of feminist knowledge and the structures within which it is produced) and feminist power (i.e., how power works to produce feminist subjectivities, define feminist realities, and structure the paradigms within which they are apprehended). I deal, then, with questions often overlooked by dominant perspectives on feminist theories of sex and morality by examining the epistemological dimensions of moral regulation feminist knowledge and the modalities that drive the place to and from which they speak. Taking *Canada v. Bedford* as my point of departure, I employ deconstruction and genealogical analytics to analyze feminist scholarship on sex to reveal the historical contingencies and power/knowledge networks of this feminist praxis and examine the implications of this praxis for Indigenous anti-colonial gender and sex struggles.

This dissertation is organized into five chapters and a conclusion. Each chapter builds from the last, but each can also stand on its own. In this way, the chapters speak to one another but also remain unique in their individual contributions. Because *Canada v. Bedford* inspired the questions raised throughout this dissertation, I open with an examination of this case in chapter 1. I begin by looking at the question of sex at the intersection of moral regulation and critical legal studies. Taking *Bedford* as my point departure into feminist studies of the domain of the sexual, I first map the larger theoretical terrain I will undertake in subsequent chapters and introduce the relationship of sex to coloniality as read through the prism of secular law. Alongside Indigenous scholars and scholars of coloniality, I challenge the neutrality of the construction of feminist socio-legal facts and suggest that *Bedford*'s approaches to sex, law, and morality are highly political acts. Specifically, I argue that *Bedford*'s feminist framing of prostitution narrowly reduces sex to a conduct. As such, sex becomes a function in the reproduction of colonial sexual economies. I argue that such an analytic move is epistemically rooted in John Locke's theory of colonial possession and his notion of a disembodied Cartesian subjectivity. *Bedford* thus prioritizes neo-liberal feminist theories of economic stimulus that seek to monetize sex under neo-liberal coloniality. I suggest that this is not possible without contesting and de-mediating Indigenous sacred conceptions of sex and gender and non-secular political-legal orders. The contested terrain of Indigenous cosmologies, then, is a foundational precondition to feminist sex work legal challenges and their contestations of sexual moral legalism. In this chapter, then, I query whether a feminist reading of sex through secular law assumes an already legally bounded and secularized notion of sex and subjectivity. Moreover, I question feminist investment in the matrices of epistemic coloniality by discussing how feminist knowledge about sex work and morality plays a substantive role in the mobilization of colonial-legal power.

In chapter 2, I shift my focus to moral regulation and feminist anthropology. I examine how legal challenges, including *Bedford*, draw on ethnographic research described as "sex worker–centered research methods" that centralize the lived experiences of sex workers in social justice legal challenges. However, I enter these debates from a position of understanding the discipline of anthropology as extremely compromised, maintaining that it functions as a technology of colonial temporal power and violence. Thus, I show that the insights gained from ethnographic studies of sex work resonate with Gayatri Chakravorty Spivak's theory of epistemic violence and her critique of the native informant, as well as Johannes Fabian's examination of temporalities of difference and V.Y. Mudimbe's thinking on epistemological ethnocentrism. I argue that despite some of the important empirical insights these studies bring to the apprehension of the conditions of Canada's sex trade, this approach comments upon colonial spatiotemporality that archives Indigenous difference in the construction of the moral regulation feminist self and, hence, acts as the intellectual justification of feminist imperial domination.

In chapter 3, I continue with my examination of feminist research methodologies. Here, I refocus my attention on *Bedford*'s sexual labour structure of analysis to think through how moral regulation scholarship draws on materialist feminism to theorize sexual liberation. This approach locates its pronouncements about sex trade realties within an analysis of stigmatized labour and discursive theories of morality. In this chapter, I am interested in understanding how this feminist position, through its epistemic attachments to colonial materialism, seeks to provincialize secular-liberal humanist sex worker subjectivity, which safeguards neo-liberal coloniality's futurity under a universal rubric of sexual labour and sexual agency. I argue that sex-as-work materialist feminist theories oscillate between Marxist and liberal categories that sanitize logics of colonial morality and its expressions of anti-Indigenous sexual domination. I thus contribute to moral regulation

feminist debates about Indigenous genealogies of sex work and coloniality, which connects feminist theories of moral power to the sexual terrains of neo-imperial economies. I do so by further situating moral regulation theories of sexual labour and power within the global racialized political economy and epistemic structures of neo-liberal coloniality, which, I argue, shapes feminist social reproduction and the production of moral regulation feminist sexual subjectivities.

In chapter 4, I build from insights drawn out in chapter 3. Here, I outline why scholars of sex and moral regulation employ Foucauldianism to address what they identify as theoretical gaps of materialist feminism for tackling the complexity of sex worker struggles over agency, equity, and identity. I thus examine feminist Foucauldianism as it relates to sex work in Canada, and I contend that its theories of sexual morality remain bound by a liberatory form of agency that is incapable of envisioning sexual freedom outside of the bounds of a secular-liberal progressive imaginary. I argue that moral regulation post-structural theories of power and resistance are based on a Foucauldian dialectic of resignifying or subverting sexual norms. Furthermore, I argue that this dialectic evacuates the possibility of imagining Indigenous anti-colonial sexual futurities. This is because Indigenous agency cannot be reduced to the metaphysical qualities of liberatory agency, or to the virtues of exclusive secular humanism that potentiates moral regulation scholarship's theory of sex worker subjectivity and the necessity of resisting normative dominance. On the one hand, Indigenous conceptions of sex, agency, and liberation remain deeply imbricated in non-secular relational forms of space, time, and sovereignty that extend beyond the secular-liberal concepts of individual empowerment. On the other, they move within and beyond the frames of space and time of moral regulation feminist historicism, thus disrupting assumptions about rigid boundaries that make up the moral regulation feminism's political domains of the social and sexual. Moreover, I argue that in remaining faithful to liberatory notions of agency, moral

regulation feminism undermines the post-structural contention that Foucauldian theories of power embody a radical non-linear temporality. I argue, instead, that moral regulation theories of sexual governmentality default to Eurocentric and biocentric progressive notions of agency, time, and the body.

In the fifth and final chapter, I queer sexual morality. This closing chapter seeks to punctuate the larger theoretical aims of this dissertation, that is, to show how sex work scholarship in Canada is embedded in forms of sexual imperialism that reproduce racialized hierarchies at the intersection of morality and sex. I draw my insights from Indigenous "queerings" of sexual politics in Canada. In conversation with Leanne Simpson (Nishnaabeg), I reflect on the experiences of Indigenous Two-Spirit and queer (2SQ) peoples with respect to colonial gendered and sexual domination. Alongside Simpson, I underscore the ethical and political stakes of epistemic segregations, feminist disciplinary boundary making, and keeping within the academy. I further locate this discussion in a reflection of Anna M. Agathangelou, Dana M. Olwan, Tamara Lea Spira, and Heather M. Turcotte's discussion of the academic-industrial complex. Thus, this chapter is cautionary. It warns moral regulation feminists of the colonizing implications of feminist theory that seek to purify non-secular heterogeneous elements of gender and sexual ontologies from its emancipation projects. I argue that such practices institutionalize and engender a disenchanted feminism that is complicit in the reproduction of sexual empire. I thus argue that moral regulation studies of the sexual are deeply invested in disenchantment and as such, network with global capitalism and imperialism's false promises of safety and inclusion that take place at the expense of expelling Indigenous sexual humanisms from their disciplinary projects.

In a brief concluding chapter, I revisit ideas of power, knowledge, and violence, as well as their implications for feminist praxis. I underscore why it is critical that Euro-Canadian feminist

studies remain vigilant about unpacking the modalities of the kinds of truth claims they make about sexual discourse, and how such claims can be both liberating and complicit in reproducing the sexual marginality on which they comment. This is because, as Wai explains, knowledge production is a political exercise that "is always a privileged gaze, relying on a particular type of power—a power that defines, disciplines, and orders according to hierarchies and temporal scales."[37] When understood from this vantage point, feminist knowledge production becomes complicit in fashioning the norms, structures, and practices within which sexual politics is reproduced as an object of Western fantasy, imperial desire, and European white supremacist rule. In this way, feminist epistemology risks speaking exclusively to and from the West's imagination of its own power that defines its place in the world at the apex of knowledge hierarchies. This process demands a repeated establishment of non-European conceptual systems of thought as marginal, contestable, irrelevant, aberrant, or irrational. This, I maintain, is at the core of imperial feminist sexual empire. Knowledge operates as a modality of power that necessarily privileges world visions and feminist futurities at the expense of others. Ultimately, I argue, this resituates imperial feminism as the ultimate and universal standard of judgement that accounts for sexual marginality and politics in an essential way.

Notes

[1] Bill C–36: An Act to Amend the Criminal Code in Response to the Supreme Court of Canada Decision in *Attorney General of Canada v. Bedford* and to Make Consequential Amendments to Other Acts, 41st Parliament, 2nd Session, 2014, https://www.parl.ca/LegisInfo/en/bill/41-2/C-36.

[2] Kerry Porth, "Justice Committee on Bill C-36 Ignored Sex Workers," Pivot Legal Society, July 14, 2014, https://www.pivotlegal.org/justice_committee_ignored_sex_workers.

[3] See, for instance, Chris Bruckert, "The Protection of Communities and Exploited Persons Act: Misogynistic Law Making in Action," *Canadian Journal of Law and Society* 30, no. 1 (April 2015): 1–3, https://doi.org/10.1017/cls.2015.2.

[4] *Bedford et al. v. Attorney General of Canada*, 2010 ONSC 4264 (hereafter *Bedford*, 2010), https://www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html?searchUrlHash=AAAAAQAMQmVkZm9yZCAyMDEwAAAAAAE&resultIndex=1; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 (hereafter *Bedford*, 2013), https://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72.html.

[5] Aboriginal Legal Services of Toronto, "*Bedford* Factum of the Intervener," 2013, SCC 34788, https://www.scc-csc.ca/WebDocuments-DocumentsWeb/34788/FM055_Intervener_ALST.pdf.

[6] *Bedford*, 2010, para. 22; *Bedford*, 2013, para. 158.

[7] Alan Young, "Decriminalizing Prostitution," *The Agenda with Steve Paikin*, TVO Canada, 2013.

[8] Chris Bruckert and Stacey Hannem, "Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work," *Canadian Journal of Law and Society* 28, no. 1 (April 2013): 43–63, https://doi.org/10.1017/cls.2012.2; Elizabeth Bernstein, "What's Wrong with Prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labour," *Hastings Women's Law Journal* 10, no. 1 (Winter 1999): 98, https://repository.uchastings.edu/hwlj/vol10/iss1/6.

[9] Mary J. Bunch, "Communicating for the Purposes of Human Rights: Sex Work and Discursive Justice in Canada," *Canadian Journal of Human Rights* 3, no. 1 (2014): 42; Sonia Lawrence, "2013: Constitutional Cases in Review," *The Supreme Court Law Review* 67 (2014): 3–40, https://digitalcommons.osgoode.yorku.ca/sclr/vol67/iss1/1.

[10] See, for example: Emily van der Meulen, Elya M. Durisin, and Victoria Love, eds., *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013); Elya M. Durisin, Emily van der Meulen, and Chris Bruckert, eds., *Red Light Labour: Sex Work Regulation, Agency, and Resistance* (Vancouver: UBC Press, 2018).

[11] Chris Bruckert and Colette Parent, "The Incall Sex Industry: Gender, Class, and Racialized Labour in the Margins," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Publishing, 2016), 303–30.

[12] Suzanne Bouclin, "Bad Girls Like Good Contracts: Ontario Erotic Dancers' Collective Resistance," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Publishing, 2016), 331–45.

[13] See, for instance, Andrea Dworkin, *Pornography: Men Possessing Women* (London: The Women's Press, 1981); Melissa Farley et al., "Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder," *Feminism & Psychology* 8, no. 4 (November 1998): 405–26, https://doi.org/10.1177/0959353598084002.

[14] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989); Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths about Prostitution and the Global Sex Trade* (Washington, DC: Potomac Books, 2013).

[15] Faye M. Fraser, "The Politics of Prostitution in Canada: Race, Aboriginal Women and the *Bedford* Decision" (master's thesis, York University, 2014).

[16] Ibid., 6.

[17] Ibid.

[18] See Amanda Glasbeek, ed., *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* (Toronto: Canadian Scholars' Press, 2006); Amanda Glasbeek. *Feminized Justice: The Toronto Women's Court, 1913–34* (Vancouver: UBC Press, 2009).

[19] *Bedford*, 2010, para. 217–43.

[20] Ibid., para. 217.

[21] Bruckert and Hannem, "Rethinking," 58.

[22] Andrea Sterling and Emily van der Meulen, "'We Are Not Criminals': Sex Work Clients in Canada and the Constitution of Risk Knowledge," *Canadian Journal of Law and Society* 33, no. 3 (December 2018): 291–308, https://doi.org/10.1017/cls.2018.13; Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and Its Implications," *Canadian Journal of Law and Society* 28, no. 1 (April 2013): 21–41, https://doi.org/10.1017/cls.2012.4https://doi.org/10.1017/cls.2018.13.

[23] Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: McClelland & Stewart, 1991).

[24] Dominique Clément, "'Rights without the Sword Are but Mere Words': The Limits of Canada's Modern Rights Revolution," in *A History of Human Rights in Canada: Essential Issues*, ed. Janet Miron (Toronto: Canadian Scholars' Press, 2009), 51.

[25] Deborah Brock, "Sexual Regulation: Sexing Governmentality; Governing Sex," in *Criminalization, Representation, Regulation: Thinking Differently about Crime*, ed. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press, 2014), 176.

[26] Durisin, van der Meulen, and Bruckert, eds., *Red Light Labour*.

[27] Stacey Hannem and Chris Bruckert, eds., *Stigma Revisited: Implications of the Mark* (Ottawa: University of Ottawa Press, 2012).

[28] Glasbeek, *Feminized Justice*.

[29] Valverde, *The Age of Light*.

[30] Anna M. Agathangelou and L.H.M. Ling, *Transforming World Politics: From Empire to Multiple Worlds* (London: Routledge, 2009), 2.

[31] Anna M. Agathangelou, Daniel Bassichis, and Tamara L Spira, "Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire," *Radical History Review* 2008, no. 100 (Winter 2008): 120–43, https://doi.org/10.1215/01636545-2007-025.

[32] Ibid., 122.

[33] Ibid., 137.

[34] Anna M. Agathangelou et al. "Sexual Divestments from Empire: Women's Studies, Institutional Feelings, and the 'Odious' Machine," *Feminist Formations* 27, no. 3 (Winter 2015): 160.

[35] Although I recognize that Spivak does not necessarily identity with either of these designations, I include her work in these deliberations because her examination of the matrices of post-colonialism and feminist disciplinary violence not only resonate with many of the critical dialogues staged by the post-colonial and decolonial scholars cited here, but they are also indispensable to any feminist engagements that question coloniality, global power, epistemology, and sex.

[36] Zubairu Wai, *Epistemologies of African Conflicts: Violence, Evolutionism, and the War in Sierra Leone* (New York: Palgrave Macmillan, 2012).

[37] Ibid., 56.

Chapter 1
Feminist Colonial Proceduralism: *Canada v. Bedford* and Cartesian Fundamentalism

> Neither legal interpretation nor the violence it occasions may be properly understood as apart from one another.
>
> —Robert M. Cover, "Violence and the Word"

Introduction

I open this dissertation with a reflection on *Canada v. Bedford* because it is considered a historic moment in the struggle for sexual freedom and has been recognized around the world as contributing to the ongoing feminist movement for sex workers and social justice.[1] By undertaking a reading of *Canada v. Bedford*, this chapter opens by focusing on the relationship between sex and coloniality through the prism of constitutionalism. Many feminists have supported *Canada v. Bedford* because it highlighted how a criminalizing preoccupation with sex work has historically been "coupled with a philosophy of legal-moralism according to which the state may legitimately use law to prohibit behaviour that conflicts with society's collective moral judgments."[2] Feminists in Canada have thus argued that anti-sex work legislation has been informed by systems of morality that contributes to sex worker oppression.[3] In Canada, feminist scholars of sex, morality, and the law have made significant contributions to these socio-legal debates.[4] For instance, moral regulation scholar Amanda Glasbeek asks that we understand morality as a "comprehensive politics" that is "concerned with self-transformation," conjoining political developments with moral imperatives related to sex.[5] Sex and morality, then, are not just social processes independent from political regulation. For Glasbeek, understanding the relationship between sex and politics requires apprehending how morality buttresses nation-building projects that are explicitly

gendered and sexualized forms of governance and reproduced by legal discourse. As Glasbeek demonstrates, Canada's prohibition of activities related to prostitution is a primary example of the normalization of moralized sexualized governance that exemplifies the adverse impacts that moral regulation has on those populations deemed "deviant." Importantly, then, *Canada v. Bedford* is the culmination of a twenty-year constitutional struggle staged by sex worker activists and feminists that has sought to address the stigmatic nature of Canada's Criminal Code.

In response to the feminist celebratory optimism conditioned by *Bedford*, I also ask that when thinking about the politics of Canada's sex trade that we understand it as a transcendental question—that is, one which views the production of knowledge about sex as inseparable from immateriality. This is done by locating feminist critiques of legal moralism within the sexual matrices of coloniality. On that account, I give particular attention to Indigenous critiques of settler colonial law and knowledge. Specifically, in contributing to these feminist conversations alongside Indigenous scholars and scholars of coloniality, this chapter seeks to challenge the neutrality of feminist socio-legal knowledge regarding legal moralism by suggesting that these approaches are highly political acts that are preconditioned by colonialism's secularized conceptual grammars, and thus are bound by a secular moralism that preconditions feminist modes of thought and action as expressed in *Bedford*. I argue that *Bedford* celebrates John Locke's theory of colonial possession and Cartesian subjectivity in its production of sex worker subjectivity. I raise this to question the implications of understanding sex through secular law, and thus question whether doing so assumes an already legally bounded and secularized notion of sex and subjectivity that evacuates the possibility of articulations that exceed this framework for making sense of the relationship between sex, power, and violence.

In this chapter, I also aim to highlight how colonial projects intersect with institutions of violence in various ways. Some of those projects, as noted by Linda Tuhiwai Smith (Ngāti Awa and Ngāti Porou), "have been driven by lawyers and constitutional experts," and others by the social sciences.[6] In my reading of *Canada v. Bedford*, I trace the reproduction of colonial violence at the intersection of both. As such, I also contribute a reflection on the evidentiary rules of practice that decided the legitimacy of feminist knowledge and facts presented throughout the constitutional challenge. I contend that the submissions of facts on which the legal arguments were based are rooted in Enlightenment philosophies of Cartesian fundamentalism and misanthropic skepticism,[7] that is, the permanent suspicion of Indigenous humanity via the contested terrain of Indigenous non-secular legal epistemologies. I argue that feminist evidentiary contributions that seek to satisfy the need to know and extend the boundaries of existing knowledge through processes of systematic legal inquiry are preconditioned by a mind/body/soul–society/nature split that foregrounds the constitutional authority to determine the fundamental principles of sexual justice in Canada. In reading *Canada v. Bedford,* I thus map the registers of secular colonial law to excavate the foundational violence of epistemology that underwrites feminist legal struggles with respect to Canada's sex trade. I therefore open this dissertation by introducing a discussion of the politics involved in the constructions of socio-legal facts and question feminist investment in the matrices of epistemic coloniality. With an analysis of feminist theories of violence related to sex, morality, and the law, I discuss how feminist knowledge about sex work and morality is never neutral but plays a substantive role in the mobilization of colonial-legal power.

The Bedford Decision in Focus

In 2013, sex trade workers drew attention to the oppressive nature of anti-prostitution laws in *Canada v. Bedford*. *Bedford* is a Canadian constitutional challenge that was proposed in order to allow a shift away from a policy that previously supported prohibition laws that criminalized activities related to prostitution. According to those laws, sex workers ought to be protected, yet the laws imposed dangerous restrictions on how sex workers were allowed to operate and went so far as to criminalize those who sell sexual services.[8] *Bedford* thus sought to find certain provisions of Canada's Criminal Code (henceforth "the Code")[9]—including the bawdy-house provision,[10] the provision criminalizing living off the avails of prostitution[11] and the provision against communicating in public for the purposes of prostitution[12]—to be unconstitutional, arguing that they deprived sex trade workers of their rights to security of the person. For these reasons, the Supreme Court's decision has been celebrated by many feminists.[13] In Canada, it underscored feminism's role in limiting the state's power to oppressively intervene in the lives of gendered and sexual minorities in Canada.[14] This is significant because the state's long-standing intervention in prostitution was a legal practice that feminist sex worker advocates argued was supported by "opinion,"[15] "morality,"[16] and "ideology"[17] rather than evidence. As Hudson and van der Meulen explain, "the stigmatization and penalization of sex workers may motivate and even tacitly endorse violence, harassment, and intimidation, to the extent that this helps portray sex workers as second-class citizens and deviants with diminished moral agency," but *Bedford* forced open the "question [of] whether Parliament could be singled out on these grounds."[18] Bruckert, van der Meulen, and Durisin also note that *Bedford* gave important attention to sex workers' agency by noting that not all sex work was inherently violent. For these sex work scholars, this is powerful "given the discursive linkages often made between sex work, morality, and exploitation."[19] Thus, in many

ways the deliberations throughout the *Bedford* decision highlighted how the law is steeped with morality, which has the function of depriving sex workers of their liberty and putting their freedom and security at risk.[20]

For sex worker activists, *Bedford* thus embodies a Supreme Court check-and-balance on arbitrary state power that "highlights the role of the courts and their relationship to the other branches of government."[21] This is because it rejected arbitrary power that sought to impose limitations that were unnecessary to achieving the law's objective. Sonia Lawrence also notes that *Bedford*'s evidentiary record was massive, constituting some 25,000 pages of evidence in the form of eighty-eight volumes that were shaped and informed by written submissions of women with experience in the sex trade and "the written word of experts rather than in-court testimony."[22] For Lawrence, this highlights how this evidentiary burden reveals the frames "in which a whole truth is possible, and the limits of the whole truth are discernable."[23] Doctrinally, however, Lawrence also notes that an interesting feature of *Bedford* is its treatment of *stare decisis,* which is a common principle of law that states that courts are bound to follow the precedents and decisions of earlier cases (i.e., standing by things decided). *Bedford* maintained that "the principles of *stare decisis* are well-known: consistency, certainty, predictability, and sound judicial administration," and likewise that "adhering to precedent promotes these values … [and] enhances the appearance of justice," and that "courts could not function if established principles of law could be reconsidered in every subsequent case."[24] However, a "ridged adherence" to *stare decisis* can also be problematic in that approaches to Charter interpretations are contextual,[25] and therefore "a flexible approach to the application"[26] was put before the courts in revisiting the question of regulating Canada's sex trade.

As Lawrence informs us, *Bedford* set a landmark standard for revisiting previous Supreme Court decisions, as some of the issues raised by litigants in *Bedford* were formerly decided in the *Prostitution Reference* (1990), a Supreme Court decision that found that a violation of s. 2(b) of the Charter could be justifiably saved under s. 1 of the Charter because it was proportionate with the goal of eliminating prostitution.[27] The *Prostitution Reference*, however, dealt only with the vagueness principle of fundamental justice and the right to liberty, while in *Bedford*, the applicants argued that the impugned provisions violated both their liberty and security.[28] In this way, *Bedford* held that constitutional rights cannot be subordinate to the common law principle. Lawrence contends that the language of the decision was "sharply critical of the role the provisions played in increasing the vulnerability of sex workers."[29] This is particularly true "in the context of the murders of female sex workers from Vancouver's Downtown East Side that garnered significant attention across the country and in some ways clearly primed the Court to accept the arguments made by the litigants themselves."[30] The question became "not just 'what new issues might arise?' but also, 'what old issues might bear reconsideration?'"[31] *Bedford* therefore put forward that the Court was entitled to reconsider whether "the social, political, and economic assumptions underlying the Charter's s. 1 analysis in the *Prostitution Reference* are no longer valid."[32]

In *Bedford*, the recognition of the potential for imprisonment of sex workers was sufficient to warrant scrutiny of s. 7, and therefore the liberty principles of interest were engaged in order to determine whether the deprivations of life, liberty, and security of the person exposes a significant causal relationship between the state action and the deprivation.[33] This threshold was staged by the applicants,[34] who raised the issue of "significant and material changes in the social and legislative facts that constitute the factual matrix of the case" wherein "such change in the matrix may arise from the availability of new social science expertise and data and/or from rights claims

that raise a different perspective."[35] As an intervener in the decision, the David Asper Centre for Constitutional Rights maintained that the factual matrix of a Charter case is often made up of social and legislative facts that "play a substantive role in the determination of whether other sections of the Charter have been breached. For example, social facts play a significant role in determining whether there has been discrimination under s. 15 or in respect of determination of gross disproportionality."[36] In *Bedford*, Justice Himel underscores this in stating, "the applicants argue that, in light of new evidence and a material change in circumstance since the *Prostitution Reference*, the s. 1 analysis should be reconsidered."[37] Justice Himel continues:

> The *Prostitution Reference* only dealt with the right to liberty and the vagueness principle of fundamental justice and that it is impermissible for Parliament to send out conflicting messages … The applicants point out that s. 7 jurisprudence has greatly developed since 1990 by subsequent decisions … Second, the applicants submit that the context in which this case is being heard has changed dramatically … Twenty years ago, the Supreme Court did not have most of the empirical evidence that is before this court when it decided that the communicating provision was a reasonable limit on freedom of expression. This evidence is said to reveal a material change in circumstances, which demonstrates that the law cannot be reasonably justified.[38]

These "new circumstances" included, for instance, empirical data that indicated that discourse around sex work had changed and that the long-standing legal-moralist prohibition approach needed to be revisited.[39] *Bedford* thus sought to highlight how previous state interactions with the sex trade, including previous Supreme Court decisions, were informed by sexist moral and ideological positions that compounded this marginality by further stigmatizing sex workers due to

criminalizing aspects of their lives.[40] This is significant because the s. 7 claim brought into focus the way in which criminal law risks depriving sex trade workers of their liberty through imprisonment. Doctrinally, it also called into question the relationship between choice and causation.

The federal government attempted to reject this idea by making the "argument that the dangers and risks which formed the core of the case were not in fact caused by the *Criminal Code* provisions at issue, but by the actions of third parties—the criminal behaviour of people who inflict physical harm on sex workers."[41] Hence, *Bedford* sought to deliberate the criminal and non-criminal aspects of sex work and elaborate on questions of choice versus causation for entering into the sex trade. Feminists have long engaged in this debate. At its core, it is a part of long-standing feminist discourse on structural inequalities, coercion, sexual labour and contracts, and feminist theories of agency versus violence.[42] In *Bedford*, this debate was staged as part of a discussion about violence against street-based sex workers. In the decision, violence was conceived of as an issue of individual acts, which led to a polarized framing of sex work as a matter of choice versus coercion. Constrained-choice and free-choice sex work in this sense were framed within an absolute dualism—there are those who choose sex work and those who do not, and there are those who inflict violence against sex workers and those who do not. The problem, however, is that this dualism, which individualizes sex trade politics, fails to adequately account for the role of state violence in the experiences of those who work in the sex trade. Feminists argued it obfuscates the complexity and diversity of sex worker experiences including those who do associate their experiences with coercion and exploitation.[43] The challenge, however, sought to question the state's position on individualized acts of violence versus its role in "protecting" those who enter the trade out of necessity and circumstance.[44] This is important, because in Canada some

feminists do not agree that sex work is inherently violence but, rather, understand sex work as a form of legitimate employment and labour.[45]

In *Bedford*, this was articulated by social science evidence offered by academics[46] who studied the subject internationally and domestically.[47] Specifically, some Canadian scholars argued that moral legalism continues to be used as a justification for social and criminal sanctions against sex workers.[48] This called into question whether "moral disapproval of prostitution represents a constitutionally permissible legislative objective,"[49] meaning, it probed how moral ideological leanings informed criminalization discourse and whether such sentiments constitute a legitimate justification for criminalizing activities related to prostitution when Canada itself recognized sex work as not an inherently illegal activity. Here, the applicants provided evidence to argue that sexual commerce is not inherently violent. In particular, they highlighted feminist concerns that Canadian approaches to the issue have remained essentially unchanged for nearly 100 years and are responsible for violating sex worker liberties, arguing that anti-sex work moral ideologies have been disguised as vagrancy laws.[50] For instance, before the federal government extended jurisdiction over criminal law in 1867, the criminalization of prostitution-related activities in Canada was classified as a status offence subject to vagrancy charges. Such prohibitions, van der Meulen and Durisin note, viewed prostitutions as a public nuisance and health issue. Informed by moral and social purity movements imported from British religious rights movements, women thought to be engaging in prostitution between 1867 and 1870 were detained under Canada's *Contagious Diseases Act* under suspicion of having a venereal disease.[51] Vagrancy laws such as this normalized sex work stigmatization by politicizing it as social malady and a disease-ridden threat to the purity of the nation, despite little to no evidence to support these ideas. In 1869, Canadian politicians similarly passed a series of laws coding prostitution as a moral issue

under *An Act Respecting Vagrancy* that also sought to criminalize "procurers, prostitutions, managers, and bawdy-houses"[52] and that disproportionality charged sex-working women. Later, in 1892, Canada ratified its first Criminal Code, which included a widespread series of prohibitions against prostitution and "other offences against morality."[53] Largely in response to social and moral reformers who pushed for the eradication of prostitution under campaigns concerned with the sexual exploitation of women, "Canadian laws pertaining to prostitution were developed into a highly complex series of provisions that sought to protect (white) women from the wiles of the procurer, pimp, and brothel keeper."[54] van der Meulen and Durisin also highlight how in the post-Confederation context, an 1879 amendment to the 1876 *Indian Act* criminalized Indigenous women who were suspected of selling sex in bawdy-houses or other locations. In part to safeguard the segregation of Indigenous and non-Indigenous peoples, the "enforcement of the law meant Indigenous women could be forced out of towns" as "Indigenous women's sexuality was seen as threatening to the colonial project."[55] In *Bedford*, it is likewise affirmed that "Canada's vagrancy laws, inherited from England and unchanged for over 80 years, were removed from the Criminal Code in 1972."[56] For example, the provisions aimed at street prostitutes were only recently replaced by s. 195.1, which prohibited "solicitation" for the purpose of prostitution in *R v. Hutt* (1978).[57]

Social science researchers who made submissions to *Bedford* thus provided genealogies of Canada's legal history of criminalizing prostitution-related offenses to give context to the long-standing coercive nature of state interference.[58] This demonstrated "the tension that exists around the moral, social and historical perspectives on the issue of prostitution and the effect of certain criminal law provisions on the constitutional rights of those affected."[59] It also allowed applicants to trace the historical harm of anti-prostitution criminal prohibitions that have resulted in

"significant social stigma attached to prostitution."[60] These prohibitions, it was argued, were largely responsible for creating some of the current conditions of sex worker oppression[61] in that anti-prostitution prohibitions are responsible for the underreporting of violent crimes committed against sex workers due to sex worker "fear of police scrutiny and the possibility of criminal charges."[62] *Bedford* revisited, then, whether the original objectives of the Criminal Code provisions remain constitutionally valid, or whether they were complicit in depriving sex workers of constitutionally protected rights.

Importantly, on the question of state violence, Christa Big Canoe (Anishinabek) and Emily Hill, acting as counsel on behalf of Aboriginal Legal Services Toronto (ALST), submitted to the Supreme Court of Canada (on appeal from the Court of Appeal for Ontario) a factum as an intervening party to *Canada (Attorney General) v. Bedford* (2013).[63] In it, ALST makes reference to the "uncontradicted fact"[64] that Indigenous peoples are disproportionately represented in street-based and violent spaces of Canada's sex trade.[65] For ALST, this conclusion is drawn from various case studies, [66] as well as case law,[67] that find that "the impacts of colonialism have pushed many Aboriginal people to the extreme margins of society, and it is at those margins that we find those who engage in street-based sex work and survival sex."[68] Colonialism, ALST notes, in the context of Canada's Indigenous people, refers to "state policies that were adopted with the specific purpose to destroy Aboriginal people as a people."[69] ALST continues: "What is it that contributes to the marginalization of Aboriginal women and men so that they are disproportionately over-represented among those people who engage in survival sex and who die while so engaged? It is, as this court found in *Ipeelee*, the impact of colonialism."[70]

Likewise, with specific reference to the overrepresented Indigenous women missing from Vancouver's Downtown East side, ALST noted that "Aboriginal women were simply not seen by

police, government, or policy makers as worthy of concern,"[71] and, hence, "the legal regime played an important role in shaping the relationship between the police and women."[72] Understanding Indigenous experiences within this historical context of colonial legality underscores Indigenous sex worker "marginalization that has resulted from colonialism."[73] For ALST, this approach provides a more nuanced understanding of Indigenous sex trade realities rather than simply focusing on "random acts of individualized violence," which they argue mischaracterizes the reality. As well, on the question of constrained choice/causation, ALST notes that the survival sex is defined as a person choosing to engage in prostitution in a situation where they have very few or no other choices. For them, the risks and dangers associated with street-based sex work and the survival sex trade hardly make it a career choice that many individuals would seek out. Survival sex workers are the "most vulnerable and most marginalized of all prostitutes and are the least likely to move off the street, no matter what legal regime is in place."[74] Of relevance to ALST, then, is "the uncontradicted fact that a disproportionate number of street- based sex workers, including those engaging in survival sex, are Aboriginal."[75] This makes it even more important to understand the reasons why there is a disproportionate involvement of Aboriginal women and men in this activity.[76] ALST goes one to say that "while it is true that those who engage in survival sex have made a choice to do so, it is equally true that the range of choices available to them is severely constrained as the result of government action."[77]

Bedford also coincided with a time when Canada was enveloped in national reconciliatory discourse concerning Indigenous peoples and colonial violence, which included a state mandate to create a Truth and Reconciliation Commission (the TRC) to research ongoing colonial violence and make recommendations on how to move forward. Also tracing anti-Indigenous prostitution prohibition discourse to the post-Confederation period, the *Inquiry Into Missing and Murdered*

Indigenous Women and Girls would go on to highlight clauses in the *Indian Act* that criminalized Indigenous women and girls for prostitution related activities, despite there being no evidence that Indigenous women or girls were engaging in the sex trade more frequently than other women. This was partially informed by the sentiments of political leaders like John A. McDonald, who used racist and sexist tropes to characterize Indigenous women and girls as sexually "depraved" and "deplorable."[78] These sentiments socially sanctioned biases against Indigenous women and girls about their sexual availability. Such mischaracterizations, the *Inquiry* points out, continue to pervade contemporary legal responses to violence against missing and murdered Indigenous women (MMIW), as the case of Robert Pickton and Cindy Gladue demonstrates. The mass politicization of inquiries into MMIW and anti-Indigenous violence across Canada thus also helped to frame the public and socio-legal discourse around the constitutional *Bedford* challenge.[79] With this, arguments concerning how to decriminalize and legalize sex work were also weighed against arguments that maintained that "all prostitution is inherently harmful … because of systemic power imbalances,"[80] and Indigenous experiences were mobilized to support an understanding of the structural conditions of violence. Indigenous experiences are thus a fundamental component to the constitutional challenge's legal strategy at the Supreme Court level.

Bedford and Feminist Solidarities

Bedford introduces us to a few key feminist conversations regarding sex, morality, and the law. It opened a conversation about feminist critiques of moral legalism understood through the criminal versus non-criminal/criminalization versus decriminalization sex work debates. It raised questions about Indigenous experiences in the sex trade and thus gave insight into the relationship

between sex, Indigenous street-based prostitution, and criminalization. It also drew attention to the role of social sciences and the construction of social and legal facts by revisiting the treatment of *stare decisis,* and hence, constitutional deliberations of the adjudication of rights that linked feminist intellectualism to legal proceduralism and the codification of legal knowledge. This further pointed to the significant role feminist knowledge production plays in mediating and negotiating state power and violence.

Importantly, *Bedford* also crystalized an important point of agreement for the applicants, respondents, and interveners. In *Bedford,* there seemed to be an agreement that Indigenous women are overrepresented in street-based prostitution, and that "street prostitution is a dangerous activity."[81] The Women's Coalition, acting as intervener in 2013, echoed these sentiments.[82] They submitted that prostitution is a practice of sex discrimination that "exploits and compounds inequality on the basis of sex, aboriginality, race, poverty, age, and disability."[83] They argued that Aboriginal women are grossly overrepresented in Canada's sex trade, a condition that "is not by accident" and, as such "must be central to the analysis of the prostitution laws."[84] For the Women's Coalition, this is due to "the legacy of colonial law and policy that has frequently left Aboriginal women dispossessed of their lands, their language and culture, their 'status' under the law and their children."[85] They link this to the ongoing impacts of "residential schools, including poverty, addiction and cycles of violence and abuse, contributing to Aboriginal girls being taken into state care,"[86] and thus creating the conditions that make it possible for Indigenous women to bear the brunt of the routine of violence within spaces of prostitution. This is particularly underscored in the 2013 *Bedford* decision through discussion of the specific experiences of missing and murdered Indigenous women and girls, which was indexed by "the increased violence created by law,"[87] and

the crisis of "brutal violence"[88] linked to "high homicide rates"[89] and "Robert Pickton."[90] On Robert Pickton and Vancouver's Downtown East side, ALST similarly explained:

> The record in this case makes it clear that those involved in street-level sex work are the most at risk of all sex workers for physical harm arising from prostitution. A stark example is the case of Robert Pickton, where all 26 victims on the original indictment were young women who worked as prostitutes. Most were Aboriginal.[91]

For these interveners, it was imperative that the constitutional challenge attempt to address historical and material harms that Indigenous sex trade workers contend with by affirming Canada's constitutional, international, and treaty obligations, which includes the right of all Indigenous peoples to their self-determination being recognized and affirmed. This pushes for an acknowledgement that sex worker legislation and s. 7 of the Charter be interpreted in accordance with the other Charter rights that deal specifically with the realities of Indigenous women and Canada's international obligations.[92] For these interveners the question of sex work exceeds the deliberations of morality and the Criminal Code but also speaks directly to heart of Canada's colonial legal sovereignty and Indigenous peoples ongoing struggles over self-determination as Indigenous nations under occupation. As the members of the Women's Coalition argued,

> In particular, the guarantee of sex equality in s. 15(1) and s. 28, and the guarantee of Aboriginal and treaty rights in s. 25 of the Charter mandate an approach to s. 7 analysis that respects and promotes the equality rights of women, with particular attention to the circumstances of Aboriginal women. Section 15(1) is the broadest of all guarantees and applies to and supports all other Charter rights.[93]

For these reasons, sex worker advocates from various feminist circles support the attention to Indigenous women's experiences in *Bedford*. Brenda Belak, for example, expresses that *Bedford* attempted to "shift … the legal and public discourse around sex work from a focus on nuisance and public order to a focus on health, safety, and human rights … [and] those supporting the applicants addressed experiences of Indigenous women in sex work, sex work and women's autonomy, and technical aspects of legal fact finding and decision making."[94] The authors of the 2017 policy brief *Challenging Trafficking in Canada* also note that illegalization of sex work and a lack of labour rights for sex workers "run counter to the goal of supporting the human rights of workers and supporting persons in exploitative situations—goals that are supported by … the Supreme Court of Canada's decision in *Canada v. Bedford*."[95] This is particularly true for Indigenous sex workers, they note, because the state, police, and social services have been entities that have allowed "the conditions that create violent situations for [Indigenous sex workers] to begin with."[96]

This line of inquiry allowed the courts to centralize the substantive principles of fundamental justice by examining three overlapping procedural requirements: that "criminal laws must not be arbitrary, overbroad, or grossly disproportionate … which go to the heart of the debate of the Charter's democratic legitimacy."[97] This is because the laws were "inadequately connected to its objective."[98] Consequently, the institutionalization of the treatment of sex workers by criminal law, and the constitutional check on the power of criminal law, speaks to concerns about Canada's democratic legitimacy. *Bedford* affirmed to what extent such legal measures constitute reasonable limits on rights that could be demonstrably justified within a free and democratic society. Moreover, it spoke to the issue of democratic inclusion through liberal rights adjudication, which challenged the potentially undemocratic and coercive character of legal institutions when

used to maintain social order through extra-legal liberal-democratic state systems (i.e., systems of morality). It also spoke to how the sovereign power of the law permeates non-legal forms of power (morality and stigma). Discussions of sex, law, and morality thus highlighted how legal bodies operate as complex regulatory mechanisms of social organization by delineating power in the making of a "fundamentally just, free, and democratic society."

In this way, *Bedford* simultaneously reaffirmed Canada's rule of law principles of fundamental justice that are embodied by three principles: The "first recognizes that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power," the second "requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order," and finally, the third "requires that the relationship between the state and the individual … be regulated by law."[99] As Lisa Dufraimont explains, this meant that *Bedford* made a significant contribution to s. 7 jurisprudence, insofar as Indigenous experiences helped to clarify the tests for arbitrariness, overbreadth, and gross disproportionality, which laid out the test for future cases. This is summarized in brief as (a) "law is arbitrary when it limits section 7 rights in a way that bears no connection to its objective"; (b) "law is overbroad when some, but not all, of the limits places on section rights bear no connection to its object"; and (c) "the law is grossly disproportionate in extreme cases where the law's impact on section rights is so serious as to be totally out of sync with its objective."[100] The Supreme Court, then, had to measure its purpose by examining its rights-infringing impact, which made street-based prostitution and Indigenous experiences a focus of the legal challenge. What was being scrutinized, then, was the state's obligation to obey and promote compliance with its laws to safeguard the integrity of legislative authority and eliminate the pre-eminence of arbitrary state power. This is embodied perfectly in

Justice Himel's finding that s. 212(1)(j) of the Code—living off the avails—lacks a real connection to the facts of the objective. It left sex workers with the difficult choice of either being in compliance with the law or risking criminal conviction for securing steps to safeguarding the security of their person. As Justice Himel stated,

> Such an effect cannot be said to be connected to or consistent with Parliament's objective, as it may serve to increase the vulnerability and exploitation of the very group it intends to protect. For these reasons, I find that the living on the avails provision is inconsistent with its objective and is, therefore, arbitrary.[101]

Therefore, while *Bedford* is traditionally thought to reflect important strides in a feminist sexual movement via contestations of state power and its arbitrary, overbroad, and disproportionate impacts—and it many ways it does—it also underscores feminism's role in the defining of fundamental principles of justice that are found in the basic tenants of Canada's legal order. Feminism, then, becomes inseparable from the technical legal aspects of the rule of law. It plays a role in safeguarding its principles of fundamental justice and affirming the parameters of "living under a rule of law" and what that entails—for instance, "that (all persons) are entitled to be informed as to what the State commands or forbids."[102] Moreover, this reading of *Bedford* also highlights the complicated relationship that Indigenous people have with the Canadian government. *Bedford* indexes the ways in which Indigenous peoples are moved to reconcile the asymmetrical colonial relationship between themselves and the state by mobilizing colonial state legal apparatuses. It also indexes the way in which Indigenous experiences in the sex trade are mobilized by feminists to redefine the status of legal precedents in Canada, in that the experiences of Indigenous women, especially, became a focal point of the landmark decision to revisit the principle of *stare decisis* at the Supreme Court level. In so doing, alongside critiques of morality,

sex work, and criminalization, feminists across the board agreed about the necessity of contesting state violence, and the authority of the common law principal *stare decisis* was brought into question by centralizing Indigenous experiences, which ultimately challenged and redefined fundamental principles of sexual justice.

Canadian Legal Authority: John Locke and the Rule of Law

For some Indigenous scholars and scholars of colonialism to better understand the asymmetries of legal power, one must also approach the topic with a genealogy of John Locke's theories of law and civil society, which, for Zahir Kolia, established cultivation via land privatization as "the basis for settler colonial claims of land propriety over the Americas."[103] Specifically, John Locke's theories of law and civil society, which are the foundational tenants of modern constitutionalism, sought to extinguish Indigenous conceptions and land relations to authorize Locke's theory of property. It demanded, Kolia notes, the de-mediation of extra-human agency from objects, like land, vis-à-vis Indigenous conceptions. John Borrows (Anishinaabe) elaborates on this by pointing out how Canadian rule of law is given legitimacy by Locke's theories of subjectivity and civil society because within these theories Locke proposed a thesis of natural progress and a theory of civil society and social contract that was dependent on the rejection of Indigenous systems of governance.[104] For Harold Johnson (Cree), Locke, in legitimizing his theory of possession, property, and social contact, positioned Indigenous nations as an illustration of what happens when a community lacks "proper governance" and legitimate sovereignty as it is defined by Eurocentric principles of colonial administration.[105] This is because Locke's thesis, as outlined in *Second Treaties of Government*, reflected upon forms of "legitimate" and "illegitimate"

government that politicized sovereign authority and rejected the authority of Indigenous forms of sovereignty associated with primitive forms of government that he attributed to the state of nature.[106] As Locke writes,

> God hath given to mankind, by the unjust violence and slaughter he hath committed upon one, declared way against all mankind, and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts, with whom men can have no society nor security: and upon this is grounded that great law of nature.[107]

Locke also conceived of law and government as inseparable from the institution of private property, denoting both as necessary conditions of liberty that centre methodological individualism and rational actions (*homo economicus*).[108] Locke writes:

> Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own persons: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whoever then he removes out of the state that nature has provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property.[109]

Second Treaties outlined Locke's theory of colonial possession and his interpretation of individuated subjectivity. Through this, he theorized his modern subjects as self-reflective and possessive, with the capacity to be accountable for their actions. This ontological assumption of a self-owning subject at the same time constructed a colonial ontology of Indigenous peoples as largely incapable of self-government or ownership, because Locke understood them as remaining within a state of nature unable to "progress" into civil society without European intervention.[110] Because Indigenous people, for Locke, are unable to transcend their materiality without assistance

from Europe, he generated his theory of the Americas as representing the savage state that lacked "measures governing the possession of land"[111] while positioning Indigenous peoples as the implications of "anarchy" in the absence of sovereign rule. This was based on the *terra nullius* assumption of the "wild woods and uncultivated waste of America"[112] and his rejection of extra-human agency.[113] Indigenous peoples are constituted as irrational and incapable of acquiring land and owning the products of their labour because some do not necessarily separate land from human and extra-human forms of power and agency.[114] Thus, the rule of law for Locke is about the cultivation of civilization via reason and private property, and the "savage" embodied that which lacked the capacity for both, but which under the right conditions and environment could be socialized into transitioning from its savage state into civilization.

In this way, Locke used the example of Indigenous people to legitimize his defense of the state of nature. The spatiotemporal location of Locke's state of nature allowed for the positing of a free, equal, and rational individual, to which liberal theory and politics is in debt, as his state of nature provided a strong moral justification of social arrangements, hierarchical relations, and the enclosure of land as private property grounded in patriarchal authority.[115] As Seth notes, because "Locke located property rights and commercial transaction in the state of nature as natural to men and without reference to society," the "enforcement of such moral economic responsibility was not invested in an external authority but in the individual himself."[116] Juxtaposed with his Indigenous subject, Locke therefore conceived of an individual subjectivity as one that is indispensable to capitalist market relations—a figure who is autonomous and engages in contract and market economies as a necessary condition of their freedom. In Locke's formula, the "savage" is called upon to illustrate man's natural free, equal, and propertied condition. The Indigenous subject, bound by non-secular conceptions of land, space, and time, cannot be reconciled with the

autonomous individual of the market but, rather, stands in contrast as irrational, and as an example of the refusal to become a universal individuated being. To authorize his theory of property, then, Locke extinguishes Indigenous conceptions and relationships to land in order to also justify the enclosure of land via private ownership. Seth notes that "it is not a coincidence that Locke locates the irrationality of the Indian in the sphere of economic activity—in his supposed failure to cultivate and thereby appropriate the land as his private property."[117] With his logic, Locke proposed his land thesis of uncultivated and unfenced "wasteland," and this held in common until such time as individuals could appropriate that part of the earth through the application of their labour.

Audra Simpson (Kahnawà:ke) highlights the importance this has for Indigenous peoples. In particular she points out Locke's "conflation of property with a larger economy of social and political rank and value."[118] With this, Locke enunciates the hierarchies of social value and corresponding rights, which were tied to colonial social ranking defined by agrarian-based, panoptic view of humanity. This was predicated on an argument about the 'wild Indian' that knew nothing of land enclosure (private property). This "foil helped define property as only that which was mixed with labour and belonged to those who perceived it, on contradistinction to the living histories of Indigenous peoples in those places who laboured, but in different ways."[119] For Eve Tuck (Unangax̂) and Wayne K. Yang Lockean justifications of land enclosure and land seizure is also representative of the unique operations of settler-colonialism. As they note, settler colonialism is distinct, though inseparable, from others forms of colonialism. What is unique about settler colonialism, for them, is that "the most important concern is land/water/air/subterranean earth (land, for shorthand). Land is what is most valuable, contested, required. This is both because the settlers make Indigenous land their new home and source of capital, and also because the disruption

of Indigenous relationships to land represents a profound epistemic, ontological, cosmological violence. This violence is not temporally contained in the arrival of the settler but is reasserted each day of occupation."[120] In this way, settler-colonialism remains a structure rather than an event.[121] This is because settler-colonialism's goal is to remake land "into property and human relationships to land are restricted to the relationship of the owner to his property. Epistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage."[122] Thus, settler-colonialism requires the disappearance of Indigenous people's relationships to land that comprise Indigenous epistemologies, ontologies, and cosmologies because for the settler colonialism wealth is a fungible version of it.

In Canada, Locke's subjectivity/property nexus has had a tremendous impact on Indigenous women.[123] The forced displacement of Indigenous women from their lands, served to make way for the building of agrarian and farming economies, was preconditioned by notions of a secular and racialized society/nature distinction and informed by Locke's ideas regarding the primacy of the rational human acting upon the passive non-being of land and nature. As the 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls explains, this also included the de-mediation of extra-human agency from non-human nations. The buffalo, for instance, which some Indigenous nations depended upon, were hunted and removed from the land. The purpose was to take away Indigenous ways of life by attempting to eradicate Indigenous economic and trade relationships and immaterial conceptions of power. On an economic level, "the work they [Indigenous women] used to perform within the community to contribute to the economic health of the group was placed in jeopardy by the gendered norms of the farming system."[124] The government's imposition of agrarian polices for the purpose of clearing the land, which also accompanied the consolidation of the reserve system, also contributed to the devaluation of

Indigenous women's lives in several ways, including its attempts to remake Indigenous sex and gender roles by subsuming non-secular systems of Indigenous governance. In Canada, "the work women performed prior to being forced onto reserves, either with medicines, on the land, or within the context of trade, was directly threatened under the gendered assumptions of the *Indian Act* and of the reserve system."[125] Thus, the restructuring of Indigenous homelands and lifestyles, which was based on anxieties regarding non-material ontologies, disrupted kinship ties and separated communities from each other, "disrupting clans, houses, and familial systems that had promoted safety and community well-being for generations."[126] This is particularly important when thinking about the question of gender and sex, because as Joanne Barker (Lenape) points out, Eurocentric ideological impositions are uniquely gendered and sexualized insofar as many Indigenous conceptions of authority, self-determination and sovereignty are inextricably linked to "ethics and responsibilities of gendered and sex-based epistemologies, cultural protocols and practices, governance histories and laws, and sociocultural relationships."[127] Philosophical enterprises that seek to measure European civilization legitimize the gendered and sexualized normativities of Europe which have come to define the contemporary imperial-colonial relationship between Canada and First Nations. Leanne Simpson's (Nishnaabeg) discussion of Indigenous breastfeeding practices elaborates on this. Simpson discusses how for Nishnaabeg people, legal governance is assumed through the lifeforce of breastfeeding as "the very first treaty."[128] This solidifies an ethical relationship between human and non-human nations.[129] Significantly, Simpson demonstrates how these Indigenous sovereignties and legal traditions are inseparable from transcendental self-consciousness related to gender and sexual cosmologies. From the Nishnaabeg perspective, sex, law, and land are scared and not easily separated. There are no rigid boundaries between mind, body, and soul, and non-human forms of agency are not conceived of as passive objects to be acted

upon or as distinctly separate from human agency. Hence, women, sex, community survival, and non-human forms of agency are intimately interconnected. Indeed, Indigenous scholars have long critiqued the inherent secularity of such ideas that suggest that they are.[130]

Thus, Locke provided a strong justification for colonial dispossession of Indigenous peoples from their land that was predicated on the elevation of agrarian labour to the centre of civilization and the assumption that "North American Indians did not have any fixed property, a prerogative which could only be claimed through cultivation, 'improvement,' and labour."[131] *Second Treaties* sought to codify a notion of colonial "possession"[132] that required "visible signs" of labourers, and that determined the right to property of land and colonial land rights to one who "tills, plants, improves, cultivates, and can use the product so much in his property."[133] The implications of this are not negligible. For instance, Locke's theory of colonial possession was used by the Crown to justify the right to exercise control over Indigenous peoples and their lands in the treaty that established the foundational logics of Canadian legislative authority. In Canada, however, in the numbered treaties the state explicitly differentiated that treaties with Indigenous peoples are not the same thing as international treaties, meaning, treaties between nations, but rather that they are understood as internal agreements. This redefined the jurisdictional relationship between Canada and First nations not as nation-to-nation, instead, Canada's interpretation of its juridical relationship to Indigenous peoples limits Indigenous self-government to purely internal matters.[134] In addition, s. 35 of the Constitution Act 1982 addressed Indigenous rights as pre-existing and not grounded in Canadian law, including those of non-treaty peoples.[135] Some Indigenous peoples, however, understand treaties as part of an origin story that details the granting of rights from Indigenous peoples to settlers to be able to live and share "in the legal order that they had been stewarding for thousands and thousands of years."[136] Further to this, as Brenna Bhandar notes,

binding together subjectivity with access to land and the creation of the "Indian" as a juridical category—in conjunction with the deceitful treaty promises and reserve spaces of domination in which Indigenous "identity (or indeed, subjectivity itself) and property relations were bound to one another"[137]—is deeply informed by the property nexus of Locke's justification for ownership.

Borrows discusses this tension between Crown and Indigenous sovereignty indexed by the legal reasonings of *Delgamuukw v. British Columbia*, which addressed Canada's absolute legal authority to dictate the parameters of Indigenous rights and Indigenous people's retention of legal and governance structures. In short, *Delgamuukw* inquired as to whether the province of British Columbia had the power to extinguish Aboriginal rights after 1871, either under its own jurisdiction or through the operation of s. 88 of the *Indian Act.*[138] The original Delgamuukw, it should be noted, was a legal case involving the Gitxan and Wet'suwe'en's claims to ownership and jurisdiction over the 58 thousand km of their traditional homelands. When the BC Supreme Court rejected it, the case went to the Supreme Court of Canada. There the case was translated into terms legible to Canadian law—that is, to Aboriginal title and self-governance. Both terms significantly limited what they could claim, in accordance with settler law.[139]

Likewise, the *Indian Act* amended and consolidated all pre-Confederation laws respecting Indigenous peoples.[140] Glen Coulthard (Dene) notes, it is "a means by which the colonial state has sought to eliminate Indigenous peoples in order to gain access to our lands and resources."[141] Thus, it is a body of laws that seeks to confirm Canada's absolutely sovereignty by setting out how to control all aspects of Indigenous life.[142] *Delgamuukw*, however, attempted to define the nature and extent of Indigenous title in Canada. Critically, it also sought to contest the extension of the Supreme Court of Canada's rules of evidence to "accommodate" Indigenous traditions and attempted to clarify what kinds of evidence and legal reasonings can be appropriately submitted

to the courts regarding Indigenous land rights. The challenge, however, required Indigenous peoples to "prove" that "(a) the land must have been occupied prior to sovereignty, (b) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation, and (c) at sovereignty, that occupation must have been exclusive."[143] So, on the one hand, *Delgamuukw* established an elaborate and detailed account of the retention of oral histories and unbroken systems of Indigenous governance, and land rights and use for thousands of years.[144] On the other, it required the affirmation of the legitimacy for adjudicating colonial land rights to private property so that Indigenous claims could nonetheless be rendered invalid. This is because the courts required that Indigenous people "maintain primordiality," that is, "they were not the same people as their ancestors were."[145] Hence, similarly to Borrows contention, Samson maintains that *Delgamuukw* ultimately demonstrated "that the Canadian state considers Native people primitive, that no particular aboriginal right needs to be afforded to them."[146] With *Delgamuukw*, the Canadian state sought to confirm that Indigenous notions of rights and land are subsumed by Canada's Lockean model of colonial possession. Canada's claim to absolute sovereignty thus bears the traits of Locke's concepts of property and ownership in that it rationalizes the removal of Indigenous "common property" for individual use in a way that mirrors Locke's anarchy/civilization legal formula. This, Borrows shows, is not unique to *Delgamuukw* but, rather, is indicative of colonial law's claim to absolute legal sovereignty to administer legal principles of justice across branches of government.

Moreover, Borrows highlights that despite attempts to give legitimacy to Canadian legislative authority for safeguarding fundamental freedoms inherent in a "free and democratic society," Canadian colonial law, and Canada's rule of law when applied to the treatment of Indigenous peoples, violates its own fundamental principles of justice. This is because, as

Delgamuukw indicates, "it is an arbitrary exercise of power aimed at dismantling Indigenous systems of law and normative order,"[147] and Canada's exclusive sovereignty to determine the fundamental principles of justice that preside over the lives of Indigenous peoples suppresses "Aboriginal governance" and denies "these groups indispensable elements of law and order."[148] Accordingly, the courts will refuse to "sanction an exercise of arbitrary power"[149] because the rule of law assumes a limit on Parliament's legislative jurisdiction and the provincial legislatures, and therefore will find that legislation inconsistent with the rule of law to be *ultra vires* (i.e., beyond legal authority and power). However, the absolute assertion of sovereignty of the Supreme Court to adjudicate the fundamental principles of justice, Borrows underscores, is designed to override Indigenous self-governance as an exercise in arbitrary state power that is predicated on "doctrines of discovery, *terra nullius*, conquest, and adverse possession" that "have all been discredited in common law and international legal systems as legitimate bases to dispossess Indigenous peoples of their land."[150] It also indexes the "failure to recognize and affirm the positive and customary laws of Aboriginal peoples," which safeguards and embodies the "general principles of the ancient normative orders," thus violating "the second principle of the rule of law: the sustenance of normative legal order through the production and preservation of positive laws."[151] Canadian constitutionalism, then, denies positive and customary laws of Indigenous peoples, rejecting indispensable elements of Indigenous systems of law and order and thus destroying "the normative orderliness within Aboriginal communities."[152]

More to this point, the issues raised by Borrows about *Delgamuukw* also reflect what Coulthard has described as settler-colonialism's structure of domination as a process of non-reciprocal forms of liberal recognition and structured dispossession. This is because settler-colonialism does not depend on state violence alone, Coulthard notes, but rather, the structure of

its reproduction also rests on enticing Indigenous peoples "to identify, either implicitly or explicitly, with profoundly asymmetrical and non-reciprocal forms of recognition, either imposed on or granted to them by the settler state and society."[153] The problem is that settler colonialism's system of recognition is fundamentally hierarchical and as such retains the supremacy to define the asymmetrical parameter in governing how Indigenous subjects can think and act in relation to themselves, others, and to the land. Canadian liberal recognition politics are thus always bound by the structures of settler-colonialism with respect to land distribution, political power, and economic recourse interests of the settler state. The structure of settler-colonialism, thus, is sustained through representational politics.

John Locke, Cartesianism, and Colonial Law

Borrows' critique of colonial legal sovereignty via *Delgamuukw* provides important insight into the ways that Canada's legal authority seeks to de-mediate Indigenous extra-human agencies based on Lockean theories of property and subjectify. Locke's theories rely on the foundational premise of land as material substance devoid of any agency, which justifies the colonial dispossession of Indigenous peoples. For Radhika Mohanram, however, this dispossession is also dependent upon a Lockean notion of maturation and development that "hinges on the unmarked body, the disembodied."[154] For Mohanram, Locke's theory of subjectivity is central to understanding the sort of Cartesian violence so often deployed to demonize the non-European Other. Locke's theory of cognition defined the individual through a continuity of consciousness and gave structure to his social contract theory of liberal society, which required a binary system rooted in a Cartesian mind/body split. Locke's Cartesian dyad understood the body as static, which

allowed him to conceive of possession through his theory of the body as individual property. As Mohanram notes, for Locke, identity is located within the same body that operates as a vessel to affirm the identity of the individual by separating him from animals and other humans.[155] Moreover, with this concept of subjectivity there is also an accompanying temporality based on the notion of continuity. The "history of the individual—the individual within linear temporality—proves the continued existence of persons or thing."[156] This meant that, for Locke, no one thing could have more than one beginning or form of existence. This idea allowed Locke to centralize the body as static while the mind remains bound to time—with the potential for change through growth and development over time. Locke deployed this to construct a historical trajectory of secular linearity that supports distinctions between different sorts of humans. In so doing, he embraced a slippage of the concept of subjectivity as shifting from an awareness of one's body to self-consciousness that understands the continuity processes as a form of maturation of a rational man who progresses from body to mind. According to Mohanram, while Locke holds bodily identity as a necessary condition of separating man from "beast" in the construction of civil society in liberal humanist thought, he untimely theorizes the primacy of individuated identity as self-consciousness and giving primacy to subjectivity However, only consciousness can transform the self and enact the process of self-reform, uplifting the mind as the primary site of improvement and reformation. This functions to construct a hierarchy of the mind over the body, which is how Locke conceived of the body as individual property.

This is also how Locke's Indigenous subject can be perceived as incapable of transcending the state of nature through self-conscious transformation. Locke theorizes his Indigenous subjects as irrational and incapable of self-authorization because they do not necessarily conceive of land as a solely material object of acquisition and, hence, lack the capacity to own the products of their

labour through working the land. Locke's Cartesian leanings, which separate mind from body and man from nature, are antecedents to his view of Indigenous peoples as incapable of assuming the necessary condition of achieving independent self-consciousness, because Locke's view requires Indigenous immaterial and non-secular relationalities to land that structure Indigenous sacred socio-cultural and governing relationship be subsumed. This, Mohanram notes, "is a manifestation of the anxiety encoded within the disembodied subject."[157]

Moreover, property, for Locke, grants invisibility to his "ideal" subject, whereas poverty (the state of nature) makes it visible. Freedom and civilization, then, relate to the ability to transform the world, which is expressed as a disavowal of difference rather than an admission of difference. An admission of difference "would rob consciousness of its hierarchal status."[158] The disavowal is likewise central to the authority of Locke's development of an evolutionary thesis, in that the Lockean subject can avoid being reminded of his own bestial materiality. This further suggests that the marked body (poor, racialized, or gendered) is the product of traits inherent to that body. But as Mohanram notes, the problem is that there is a "double move of disavowing difference (between marked and unmarked) and simultaneous insistence of difference (between man and beast) that allows for the unmarked body to be presented as prior to consciousness, and as orgininary."[159] Occluded is how these categories are all social relations of domination and exploitation, naturalizing a continuum in his theory of representation that requires the "expunging of the body for the construction of subject status."[160]

Nelson Maldonado-Torres provides additional critical insights into the violence of Cartesian fundamentalism and traces it further to the Enlightenment theories of René Descartes and Hernán Cortés.[161] This is important to this discussion of sex and coloniality because Descartes's thesis consolidated the European notion of the separation between body and mind and became the basis

of the subject–object debates that underwrite much of the Western world's philosophical foundations.[162] Descartes shattered the Western psyche with his *cogito ego* ("I think, therefore I am") thesis. His distinct separation between the psyche and the world sought to make explicit a process that was undergoing assimilation in the Western psyche, a dualism that was concretely demarcated by the epochal shift in European thought characterized by the Enlightenment. It consolidated knowledge that reconstituted human hierarchies based on racialized forms of human difference built on notions of misanthropic skepticism.[163] For Maldonado-Torres, misanthropic skepticism heralds back to the Cartesian formulation about the division between *res cogitans* and *res extensa* (consciousness and matter), and translates into a divide between body and mind or between human and nature that is preceded by an anthropological, colonial difference between *ego congito* ("I think") and *ego conquiro* ("I conquer") which predates Descartes to Hernán Cortés.[164] It recalls the Manichean allegories of the relationship between colonizer and colonized that provide a model for understanding the relationship between the soul or mind and the body. This allowed for modern articulations of the body/mind and soul/self-dualism to be used as formulas to conceive of colonial relations as seen between men and women, with particular attention given to the status of colonized women whose bodies are seen as "fundamentally promiscuous," "highly erotic," and whose "primary function is fulfilling sexual desire and reproduction."[165]

This resonates with Janice Acoose's (Saulteaux) critiques of the institutionalization of representations of Indigenous women as "easy squaws."[166] In Canada, such depictions are used "to protect White Euro-Canadian Christian patriarchy against threatening disturbances that might upset the status quo,"[167] and perpetuate harmful and infantilizing stereotypes of Indigenous women that brand them as dirty and promiscuous, only capable of embodying the status of non-human. Acoose also notes that such depictions can be traced as far back as to the chronicles of men like

Columbus and Vespucci, who wrote of barely-human Indigenous women who, "when they had the opportunity of copulation with Christians, urged by excessive lust, they defiled and prostituted themselves."[168] For Acoose, such archived colonial imaginaries pervade contemporary Canadian discourses about Indigenous women and sex work by reducing these women to objects of sexual gratification. Echoing Acoose, Sherene Razack notes that tropes that conflate Indigenous sexuality as synonymous with prostitution and sexual promiscuity remain archived within Canadian consciousness and public discourse. For instance, this very thing can be observed within the dominate narratives of investigations into missing and murdered Indigenous women that reduce Indigenous women's experiences of violence to being the result of oversexed, degenerate women engaging in "high-risk" behaviours. As Razack argues, these racist tropes are evidence of the contested terrain of Indigenous women's humanity that is used to justify their exclusion from the social contract, and which, legitimizes the violence Indigenous women experience with impunity in Canadian society and its sex trades.[169]

Lana Ray (Anishinaabe) makes similar observations in her analysis of contemporary sex worker rights discourse and its linkages to the objectification of nature and how it envisions Indigenous economic relationships. Ray discusses how stripping nature of its sacred qualities allowed the justification of the domination of Indigenous land and women. While Indigenous women retain interconnected regenerative sacred relationships between land, knowledge, ancestry, culture, and place, for Ray, mainstream sex work rights discourse remains embedded within neo-liberal developmentalism, which disassociates Indigenous women from these powerful responsibilities by conflating Indigenous experiences and cosmologies related to sex and sex work with all other non-Indigenous experiences and cosmologies, thereby reproducing Cartesian violence. Such feminist frameworks are similarly supported by patriarchal and capitalist ideologies

that further reduce land and sex to secularized "things" in order to assert dominion for the purpose of profit-seeking. This "negatively impacts cultural sovereignty—an arguable precursor and necessity for self-determination."[170] It positions Indigenous "non-value producing" practices (sexual and land-based) within a context of "underdevelopment," suggesting that Indigenous women's land and sex are lacking to some degree but remain suitable for capitalist resource extraction. It further suggests that Indigenous sex workers merely require additional education on how to labour such "things" properly for the purpose of economic opportunity, ignoring that Indigenous women have their own worldviews when it comes to questions of economics, sex, land, and liberation.

Returning now to the skepticism of non-European humanity, Maldonado-Torres shows how it also speaks to the self-certainty of Descartes (i.e., European subjectivity), who understood the self as a thinking substance (*res cogitans*), which provided ways to interpret it and the people "found" in the New World. The concept of *ego conquiro,* however, is not questioned but instead provides the grounds for articulating *ego congito*. Hence, the certainty of the project of colonization and the foundation of *ego conquiro* remain intact, similar to Descartes's certainty about *cogito ego* regarding doubt or skepticism. Skepticism in this sense becomes the vehicle by which one reaches certainty and provides a solid foundation of the self that is central to European modernity. Maldonado-Torres writes,

> Beneath the "I think" we can read "others do not think," and behind the "I am" it is possible to locate the philosophical justification for the idea that "others are not" or do not have being. In this way we are led to uncover the complexity of the Cartesian formulation. From "I think, therefore I am" we are led to the more complex and both philosophically and historically

accurate expression: "I think [others do not think, or do not think properly], therefore I am [others are-not, lack being, should not exist or are dispensable]."[171]

Misanthropic skepticism and racism thus work together with ontological exclusion and define the imperialist attitudes towards Indigenous women that are preconditioned by an assumption of inherent sexual inferiority.[172] In terms of its ethnocentrism, the anthropocentric self-actualizing Cartesian subject of Western Enlightenment's secular humanist ethos projects its knowledge as unequivocal and universal, whereas Indigenous Otherness is conceived of as highlight erotic base instincts linked to sexual deviance and threatening to the European as the universal knower. The opposition of mind and body as the basis upon which Europe constructs and continues to assert its *cogito* towards Indigenous women defines these women as "radically different, inferior, and incapable of thinking."[173] Such characterizations of Indigenous women reference a politics of the mind, wherein Indigenous and non-Indigenous sex work is contrasted in jointly exhausting categories of powerless/powerful. The rights-seeking, neo-liberal, developmental approach, however, is politicized as the trajectory of social and sexual progress for women in the sex trade. The Indigenous sex trade worker as corporeal entity, erotic and suitable for reproduction, serves only as contrast to the universal non-Indigenous individuated sexual being. For Maldonado-Torres, this is predicated on the production of a typological order of racialized forms of human difference that is integral to the power and configuration of colonialism. Thus, he notes that the "significance of the Cartesian *cogito* for modern European identity has to be understood against the backdrop of an unquestioned ideal of self, expressed in the notion of the *ego conquiro*. The certainty of the self as a conqueror, of its tasks and missions, preceded Descartes's certainty about the self as a thinking substance (*res cogitans*) and provided a way to interpret it."[174] The Cartesian idea is therefore about the division between *res cogitans* and *res*

extensa, which has foregrounded colonial articulations of the mind/body that conceive of the model of a colonization relationship. This means, then, that we can view Locke's practical conquering self and the theoretical thinking substance of his theory of subjectivity as parallel in terms of their certainty.

Alongside Ray, I contend that the significance of this ontological distinction and characterization is the presumption that the Indigenous woman is not the bearer of knowledge or transformative power. Moreover, these insights are not incompatible with Coulthard's discussion of settler-colonial recognition politics. Namely, that there is a psychology inherent to colonial domination that demands a superiority/inferiority complex of Indigenous and settler subjects by the settler colonial social structure. In this way, there is a subjective dimension to settler-colonial violence. The subejctifying nature is exposed by the effects associated with *mis*recognition and the ways in which the settler-colonial gaze inflicts damage on Indigenous societies at both individual and collective levels, particularly in which Indigenous peoples are always rendered less-than-human and uncivilized. Thus, misanthropic skepticism may also reflect what Coulthard describes as the settler-colonial psychic structure that preconditions liberal recognition politics in Canada and its desire of land accumulation. It can be argued as well that this is this psychic structure that preconditions Locke's justification of land enclosure, private property, and colonial possession inherent to settler colonial rule of law.

Feminist Constructions of Facts: Cartesian Fundamentalism and Transcendental Violence

Borrows, Mohanram, Ray, Maldonado-Torres, and others all provide important insights into Cartesian fundamentalism. In this section, I would like to expand our analysis to include

additional discussion on how *Bedford* is implicated in the same modes of epistemic violence. Here, I index feminism's substantive role in the co-production of colonial violence through its construction of feminist socio-legal facts about sex work in Canada that underwrite the success of the constitutional challenge. Robert Cover reminds us that legal interpretations are themselves distinctly shaped by violence, as judges deal in "pain and death."[175] Judicial utterance is an institutional behaviour that solidifies pre-existing roles, bound by rules and principles that seek to codify "the appropriate," normative terms of the social organization of a society. Canadian legal-judicial interpretation is a practice thus "incomplete without violence—because it depends upon social practice of violence for its efficiency."[176] In this section I will therefore argue that *Canada v. Bedford* is preconditioned by Locke's Cartesian schemas of racial difference, and hence, its interpretations are based on the permanent suspicion and contested terrain of Indigenous being(s) and non-secular legal systems of governance. As a consequence, the authorization of *Bedford*'s legal authority to define the parameters of sexual liberty is a deliberative and interpretive exercise of violence that depends upon the satisfaction of colonial epistemic preconditions for its effectiveness.

By way of illustration, *Canada v. Bedford* opted for an evidence-based "gatekeeping" approach based on the two-step Mohan and Abbey requirements; this was believed to be the most practical method for addressing various concerns raised about legal relevance and reliability of expert opinions in the circumstances of the case.[177] *Bedford* thus deliberated over the impartiality and objectivity[178] of an expert's ability to offer evidence of the issues at hand, which requires "discretionary cost-benefit analysis to determine legal relevance."[179] Cost-benefit analysis of evidence thus becomes an element of collating a certain approach to power to sex workers' lives including standpoint self-representation that demands adhering to a standard of appropriateness

for the introduction and acceptance of qualitative research, and to a strict positivist legal order of evidentiary burdens. In *Bedford* the evidentiary rules suggest that,

> First, the party proffering the evidence must demonstrate the existence of certain preconditions to the admissibility of expert evidence. For example, that party must show that the proposed witness is qualified to give the relevant opinion. Second, the trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence. This "gatekeeper" component of the admissibility inquiry lies at the heart of the present evidentiary regime governing the admissibility of expert opinion evidence.[180]

Evidence, here, is primarily concerned with matching the "appropriate" set of investigative and interpretive strategies. What this centralizes is the role of the "expert" in assisting the Court and ascribing power to the legal outcome. The evidentiary burden thus positions feminist qualitative measurements to clarify whether s. 7 protections of life, liberty, or security of the person had been denied to sex workers by criminal laws, and whether these laws had an inherently bad, disproportionate, arbitrary, or overbroad impact on their lives sufficient enough to establish a breach of s. 7. In this way, feminist social research that was filtered through evidentiary rules of practices sought to make sense of human realities within a legal context in order satisfy a need to know and extend the boundaries of existing knowledge. We see this in submissions from "experts in research methodology"[181] and *Bedford*'s note that determining "reliability includes looking at the subject matter of the evidence, the methodology used by the proposed expert, the expert's expertise, and the extent to which the expert is shown to be impartial and objective."[182] Thus, "the method and degree to which qualitative researchers can make causal inferences was debated

amongst the experts in this case"[183] as "both parties alleged that certain experts were biased, that conclusions were generalized beyond the sample studied, [and] that studies were methodologically flawed."[184]

Importantly, the qualitative aspect of the change in "social, economic, and political landscapes"[185] of legislative facts that *Bedford* sought to revisit included not only an interrogation of new legislative ambiguities but also an examination of the changing contours of a "normative order."[186] The "new normative order" suggests that the legal and political goal of eliminating prostitution, which was the objective of the 1990 *Prostitution Reference*, was no longer contextually appropriate. This was due to "new" or "fresh" evidence that underscored relevant changes in the material, social, and legislative matrix of the case including fundamental changes in public consciousness about the social, political, and economic nature of the inquiry.[187] Through the submission of factums, the applicants sought to reject moral stereotypes and misperceptions about the sex trade in Canada, for instance, "the notion of the prostitute as a victim, maintaining that some turn to prostitution not out of desperation, but because they see it as a better option than other opportunities, such as unskilled labour."[188] Along with this, *Bedford* politicized the notion that prostitution, while legitimate work, is an extremely stigmatized,[189] "risky economic"[190] and "commercial activity,"[191] the criminalization of which is based on the "moral disapproval of prostitution."[192] Both the 2010 and 2013 decisions echoed these sentiments characterizing sex work as primarily an issue of "business relationships,"[193] "economic disadvantage,"[194] "economic activity,"[195] and "contractual rights"[196] to sell sexual services, with the applicants arguing that "it is no longer constitutionally valid to justify criminal law on the basis of moral legalism."[197] One such economic disadvantage caused by the moralization and subsequent criminalization of activities related to prostitution put forward by the applicants is prohibition against living on the

avails of prostitution. Among many things, this provision prevents sex workers from being able to own and operate a bawdyhouse.[198] The applicants submitted that owning and operating a bawdyhouse provided both clients and sex workers "a sense of security, dignity, and self-respect"[199] in their business relationships. Hence, *Bedford* put forward that the current normative order, which understands sex work as a stigmatized form of labour, helped legitimize the factual matrix of the case by presenting submissions that spoke to sex worker sexual agency,[200] personal autonomy,[201] sex work as legitimate economic response to material inequalities,[202] reconceiving sex as a conduct like any other involved in a contractual exchange,[203] and highlighting the benefits of the free economic exchange of sex for money. This feminist approach[204] was central to the argument that the Court's task is not to preside over moral perspectives on the issues,[205] but to determine whether certain provisions of the Criminal Code are in violation of the Charter.[206] *Bedford* notes, for instance, that "to impose a certain standard of public and sexual morality, solely because it reflects the conventions of a given community, is inimical to the exercise and enjoyment of individual freedoms, which form the basis of our social contract."[207]

Here, I wish to point out some of the dominant colonial epistemological and ontological assumptions in *Bedford*. To begin, it goes without saying that research is never neutral but always infused with power. As *Bedford*'s rules of evidence show, how research is conducted and given authority by "experts" is based on a set of rigid rules of practice that have the power to determine relevancy and weight of knowledge by deciding what is important and what is not, what counts as legitimate knowledge and what does not, and what is fact and what is not. Thus, the production of legal knowledge is a powerful interpretive act guided by a set of predetermined principles of clarification and administration. Even more important, Indigenous legal scholars and research experts remind us that agents of the law and social scientists take for granted the colonial and

imperial underpinnings of their own positionality within the politics of knowledge production. As with his critique of *Delgamuukw*, Borrows argues that Canadian courts use the rules of evidence as tools of oppression. The courts, he notes, argue that they decide cases in accordance with legal principles, such as objectivity and neutrality, rather than cultural ones.[208] Such statements, he contends, reflect Eurocentrism that borders on racism. It assumes that the legal principles upheld by Canada are not cultural principles of European imperialism that completely contradict objectivity and neutrality. These reflections are significant because they highlight how determining the fundamental principles of justice "is an important part of the colonization process because it is concerned with defining legitimate knowledge."[209] Those who "decide 'facts' … are inexorably defined from within the matrix of relationships they share with others,"[210] and these relationships in Canada are predicated on colonial conquest.

As such, Borrows draws attention to how a legal agent's ability to determine social and legal facts continues the tradition of codifying an adversarial legal orientation, because "Canadian sovereignty is extended over Aboriginal peoples even when courts receive and interpret 'factual' evidence from Aboriginal litigants."[211] Moreover, Canada continues to assign to itself the right to determine things such as the fundamental principles of justice that is "framed entirely in a positive liberal discourse of rights."[212] In this sense, Canadian law is invested in the power to disposes because the adjudication of rights are always conferred upon Indigenous peoples by the colonial state that declares itself the arbitrators of justice and freedom through to contestation and suppression of Indigenous forms of governance."[213] Linda Tuhiwai Smith (Ngāti Awa and Ngāti Porou) similarly reminds us that research is never value-free and objective, but that philosophers of science "refer to this attitude as positivism,"[214] which reflects an imperial imagination through the "promotion of science, economic expansion, and political practice."[215] This is based on

Europe's global imperial activities, which, in addition to economic, political, and military phenomena, also include complex ideological implications and "widespread cultural, intellectual and technical expressions."[216]

We see this in *Bedford* in how its evidentiary burden structured a dominant feminist narrative about economic stimulus via decriminalization. If we recall, the "new normative order" is based on a narrative of stigmatized labour and economic opportunity, which helped frame sex workers' needs with respect to decriminalizing unjust laws.[217] For instance, the applicants maintain that the bawdy-house provisions prevent sex workers from conducting their "lawful business"[218] indoors. Recommendations to address this included rewriting the bawdy-house provisions to enable "provinces and (municipalities) to regulate small-scale prostitution establishments through zoning, licensing, and health and safety provisions."[219] Additionally, *Bedford* maintains that sex workers who experience constrained choice—embodied by the experiences of Indigenous sex trade workers—"are not people who can be said to be truly 'choosing' a risky line of *business activity* [emphasis added]."[220]

With this, we can read *Bedford*'s economic account of sex work as mirroring some of Locke's Cartesian anxieties. *Bedford* proposes that sexual liberation can be achieved through economic exchanges, defined by a project of colonial possession as the desire to acquire land as private property—that is, in allowing sex workers to keep, own, and operate a common bawdyhouse. In this sense, when sex workers engage in the anonymity of the marketplace, the juridical vocabularies of Locke's *terra nullius* theory are activated, which assumes that the market is shared by those who share in the same accoutrements of his individuality and those who seek to appropriate land for profit. If we recall, for Locke, the acquisition of enclosed land as private property is a necessary condition for the free individuated subject's capacity to safeguard

sovereignty and reason. From this position, the decriminalization via constitutional discourse, as the embodiment of liberal government and civil society, can thus be rationalized as best suited to the interests and natural rights of the (rational) individuated sex worker subject. The sex worker who has the capacity to own and operate a bawdyhouse is therefore defined within Lockean terms of subjectification as an autonomous, self-regulating subject whose progressive subjectivity is unthinkable as separate from neo-liberal capitalist market relations. The push for the right to own and operate a bawdyhouse thus reflects a call to action for sex workers' rights to appropriate Indigenous land for the purpose monetizing sex under neo-liberal coloniality, which I read as rearticulating what Locke describes as labour, goods, and property as the inalienable right of the rational subject who must engage in contract and market relations. It is for this reason that I read *Bedford* as rearticulating Locke's Cartesian anxieties of the Indigenous subject because Indigenous subjects in the case of *Bedford* cannot be said to be truly "choosing" a risky line of business activity. The business-savvy sex worker is defined in relation to "the figure of the Savage, Indian woman or child, conceived as those who lack the capacity for self-possession," [221] who are conceived of as not self-actualizing because they do not own their bodies, and therefore are incapable of appropriating the products of their sexual labour—they are, according to *Bedford*, constrained by destitution.[222]

Alternatively, what is proposed is the development and neo-liberal privatization of sex (i.e., labour) through the appropriation of land and private property (i.e., the bawdy-house) for the purpose of monetizing sex under neo-liberal coloniality (i.e., privatized free-market exchanges of money for secularized sex).[223] I read this as a rearticulation of Locke's temporal project, which assumes the inevitable progression of *rational* subjects (neo-liberal sex workers) from the state of nature into civil society vis-à-vis Indigenous underdevelopment.[224] As Indigenous scholars have

pointed out, this approach to sex and sex work codes the sex trade as a universal question of economics and the neo-liberal privatization of business, the antecedent of which is a set of Enlightenment assumptions about the desacralization of sex and land. Framing such questions as a matter of "business relationships,"[225] "economic costs,"[226] and "economic harms"[227] speaks to what Ray previously described as the neo-liberal, neo-colonial imperative of extractivism, commonly pitched as capacity-building to stimulate Indigenous economic growth.

As Ray reminds us, this is based on a set of assumptions regarding the de-mediation of Indigenous non-secular cosmologies related to sex and gender responsibilities and is indicative of the goal of monetizing Indigenous sex practices under neo-liberal coloniality disguised as benevolently reconciling infringements on Indigenous sexual liberties. For Ray, the popularized argument that sex worker liberation is a question of job security and economic opportunity negates "that society has created a hierarchal system."[228] It obscures how discourses of economic development "(re)assert dominion over Indigenous women and land through their dehumanization, objectification, secularization and othering, and thus are acts of violence"[229] that reduce sex to a primary function of colonial economic reproduction. Thus, to make way for the bawdyhouse, land and sex must be reduced to strictly materialist objects suitable for neo-liberal profit extraction, devoid of extra-human agency. In this way, *Bedford* politicizes and further normalizes a secular humanist Enlightenment ethos, whereby *rational* humanist sex worker agents conceive of and extend their knowledge as universal, which takes place at the expense of Indigenous sacred conceptions of land and sex, conflating them with an imagined colonial landscape that views both as open for settlement and expropriation. Posited is a Lockean disembodied Cartesian sex worker subject, who alone owns their secularized sexual labour and the materialist products generated by it.

Sarah Hunt (Kwakwaka'waka) points to this level of interpretation as a form of law's discursive power and its role in "creating categories of knowledge that limit the possibilities in which we can think about the world and determining how we are able to become legible or legitimate subjects."[230] Because Canadian law constructs socio-legal discourse and material power out of colonial categories of knowledge, Indigenous sex workers experiences "are thus caught in a double bind of representation" as marginalized groups who "can only be heard in terms that have been set by norms emerging within dominant power relations."[231] As Hunt notes, the mediation of Indigenous life by hegemonic power structures serves "to erase Indigenous systems of knowing and being, and has delegitimized Indigenous socio-legal norms and identities."[232] What is negated, I argue, is the secularized Cartesian violence inherent to Canadian feminist legalist knowledge and the juridical authority of colonial law. This is important, because in this instance Hunt highlights how pro-sex work feminist prescriptions, for instance the bawd-house provision, embody both a global form of imperial knowledge shaping Canadian feminist theories of sex, land, and labour, and also, a unique expression of feminist settler-colonial domination within local and national contexts that white and neoliberal feminists are exercising in *Bedford*. That is to say that the neoliberal feminist desire to profit from sex in this is way an illustration of the settler-colonial need to exercise authority over Indigenous lands by seizing and enclosing it for the purpose of settler feminist entrepreneurialism. Moreover, the positioning of Indigenous women within *Bedford* and their asymmetrical proximity to white Canadian feminists renders Euro-Canadian feminists in *Bedford* simultaneously part of the structure of settler-colonialism in Canada. This takes place through a process of misrecognition inherent to *Bedford* as site of liberal recognition politics, and through the disciplining power that white women continue to exercise over Indigenous women and their lives under colonial occupation.

The *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Young Girls* is instructive here, in particular, for thinking about Cartesian fundamentalism and transcendental violence.[233] The report draws on Edward Duran's (Apache and Lakota) concept of the "soul wound" when speaking about legal violence. [234] Duran's notion of the soul wound acts as a metaphor for the colonial trauma Indigenous women in Canada experience.[235] It refers to the spiritual infliction caused by the imposition of colonial orders, which involves understanding that colonial trauma happens at a transcendental level. This approach to violence disrupts the dualist systems of Western philosophies because it pertains to the [im]balance of the mind, soul, and body of an Indigenous person that is caused by a colonial ordering of the world. The soul wound extends our thinking on legal violence as a distinct experience of colonialism and as a source of spiritual harm.[236] Critically, the report of the National Inquiry into Missing and Murdered Indigenous Women and Girls asks that we examine our systems of laws and its impact on Indigenous women.[237] It denotes the way in which soul wounding is structured through legislative processes that are based on "secular justifications, or reasons, for enacting them,"[238] and it belabours the need to take seriously Indigenous self-determination in areas "where bureaucratic and Indigenous values seem to clash."[239] The "powers of bureaucracy" have been designed to debilitate and silence Indigenous struggles.[240] This is in part because the rule of law's imposition of colonial structures that have been used to "extinguish [Indigenous peoples'] existence and resistance" by demanding strict adherence to the use of "public institutions and laws to reassert colonial norms."[241] The intention is to strip "Indigenous women of their rightful place within Indigenous societies and the outside world."[242] The report thus illuminates how colonial legal structures "altered social norms" of Indigenous relationships with the self and others, and continue to contribute to ongoing cycles of cultural and spiritual harm.[243] Thus, the issue of violence against Indigenous women and girls

"is not only a legal issue within Canadian law. It's an issue within our different Indigenous legal orders."[244]

Therefore, in *Bedford*, raising questions about "random sampling methods" [245] and the degree to which qualitative researchers could make causal inferences for properly considering and assessing the scope of the issue at hand may be important, but its evidentiary rules cannot escape the structural forces of settler colonialism. This is because *Bedford*'s factual matrices are entangled with the matrices of global coloniality as well as specific manifestations of settler-colonial violence. Reading sex in this way mediates sex through secular epistemic frameworks that reproduce Cartesian splits, hierarchical social ordering, and the de-mediation of Indigenous ontologies, which the National Inquiry maintains reproduces the soul wound. I contend, then, that the intersection of feminist knowledge with *Bedford*'s evidentiary rules and its treatment of *stare decisis*, though monumental for many, retain elements of a settler colonial metaphysics concerned with land appropriation and monetization that translates into the continued colonization of Indigenous women by Euro-Canadian feminists whose demands for "sexual liberty" continue to reflect "a view from the imperial centre of Europe."[246]

Final Thoughts

I opened this chapter with a discussion of *Bedford*'s treatment of *stare decisis*. This provided a backdrop to reading sex through the prism of secular colonial law. In so doing, I outlined some provisional thoughts on the relationship between sex, secularity, and coloniality. By situating feminist socio-legal discourses within the sexual matrices of coloniality, I challenged the neutrality of moral regulation feminist social science research by attempting to show that *Bedford*'s

constructions of socio-legal facts bring together positivist scientific inquiry (research methods and rules of evidence) and Lockean notions of subjectivity (a disembodied Cartesian subject). As a result, *Bedford* links sex to labour, sexual labour to private property, private property to freedom, and freedom to colonial possession. In so doing, *Bedford* prioritizes neo-liberal theories of business relationships and economic stimulus that seek to monetize sex under neo-liberal coloniality. I have suggested that this is not possible without the contested terrain of Indigenous legal epistemologies and Locke's de-mediation of Indigenous sacred conceptions of gender and sex.

In the next chapter, I will return to the question of research methodologies. I build on chapter 1 by reflecting on *R v. Anwar*, an Ontario Court of Appeals decision that followed *Bedford*. *Anwar* revisited questions left unresolved in *Bedford*, such as the Criminal Code provision prohibiting advertising for the purpose of selling sexual services. In *Anwar*, feminist scholars of sex and morality contributed anthropological research on the impacts of the impugned provisions to highlight the ongoing legal moralization of sexual commerce in Canada. In the next chapter I will this expand our thinking on the relationship between sex, secularity, and coloniality by undertaking a critical examination of feminist anthropology's instrumentalization of sex work's native informant. I will show that *Anwar* provides an opportunity to further excavate feminist methodological violence, because feminist anthropologies of sex work embrace an uncritical archivism that transforms sex work's native informant into a conduit of feminist imperialism.

Notes

[1] "Prostitution Laws: What Are the Nordic and New Zealand Models?" *CTVNews*, last modified December 21, 2013, https://www.ctvnews.ca/canada/prostitution-laws-what-are-the-nordic-and-new-zealand-models-1.1603213.

[2] Graham Hudson and Emily van der Meulen, "Sex Work, Law, and Violence: *Bedford v. Canada* and the Human Rights of Sex Workers," *The Windsor Yearbook of Access to Justice* 31, no. 1 (2013): 119, https://doi.org/10.22329/wyaj.v31i1.4318.

[3] Elya M. Durisin, Emily van der Meulen, and Chris Bruckert, eds., *Red Light Labour: Sex Work Regulation, Agency, and Resistance* (Vancouver: UBC Press, 2018), 1–47.

[4] See, for example, Amanda Glasbeek, ed., *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* (Toronto: Canadian Scholars' Press, 2006); Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913–34* (Vancouver: UBC Press, 2009); Andrea Sterling and Emily van der Meulen, "'We Are Not Criminals': Sex Work Clients in Canada and the Constitution of Risk Knowledge," *Canadian Journal of Law and Society* 33, no. 3 (December 2018): 291–308, https://doi.org/10.1017/cls.2018.13; Chris Bruckert, "*Protection of Communities and Exploited Persons Act*: Misogynistic Law Making in Action," *Canadian Journal of Law and Society* 30, no. 1 (April 2015): 1–3, https://doi.org/10.1017/cls.2015.2; Chris Bruckert and Colette Parent, "The Incall Sex Industry: Gender, Class, and Racialized Labour in the Margins," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Publishing, 2016), 306–30; Deborah Brock, "Sexual Regulation: Sexing Governmentality; Governing Sex," in *Criminalization, Representation, Regulation: Thinking Differently about Crime*, eds. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press, 2014), 175; Emily van der Meulen, Elya M. Durisin, and Victoria Love, eds., *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013); Stacey Hannem and Chris Bruckert, eds., *Stigma Revisited: Implications of the Mark* (Ottawa: University of Ottawa Press, 2012); Mary J. Bunch, "Communicating for the Purposes of Human Rights: Sex Work and Discursive Justice in Canada," *Canadian Journal of Human Rights* 3, no. 1 (2014): 39–74; Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and Its Implications," *Canadian Journal of Law and Society* 28, no. 1 (April 2013): 21–41, https://doi.org/10.1017/cls.2012.4; Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: McClelland & Stewart, 1991).

[5] Glasbeek, "Introduction," 3.

[6] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed. (London: Zed Books, 2012), 143.

[7] Nelson Maldonado-Torres, "On the Coloniality of Being: Contributions to the Development of a Concept," *Cultural Studies* 21, no. 2–3 (March/May 2007): 245, https://doi.org/10.1080/09502380601162548.

[8] *Bedford et al. v. Attorney General of Canada*, 2010 ONSC 4264 (hereafter *Bedford*, 2010),

https://www.canlii.org/en/on/onsc/doc/2010/2010onsc4264/2010onsc4264.html?searchUrlHash=AAAAAQAMQmVkZm9yZCAyMDEwAAAAAAE&resultIndex=1; *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 (hereafter *Bedford*, 2013, https://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72.html.

[9] Canadian Criminal Code, RSC 1985, c. C-46 (hereafter "the Code"), https://laws-lois.justice.gc.ca/eng/acts/c-46/.

[10] A "bawdy-house" is defined in s. 197(1) of the Code as a place "kept or occupied or resorted to … for the purpose of prostitution or practices of acts of indecency."

[11] Defined in s. 212(1)(j) of the Code as an indictable offence of living "wholly or in part on the avails of prostitution of another person."

[12] As outlined in s. 213(1)(c) of the Code, this includes stopping or attempting to stop someone in public for the purpose of engaging in prostitution or for hiring a prostitute.

[13] Lesley Robertson, "Hoping for a Feminist Supreme Court," *Slaw*, June 12, 2013, http://www.slaw.ca/2013/06/12/hoping-for-a-feminist-supreme-court/.

[14] Antonia Zerbisias, "What Is a Sex Act? Toronto Dominatrix Terri-Jean Bedford Demands Answers from Steven Harper," *Toronto Star*, January 8, 2014, https://www.thestar.com/news/gta/2014/01/08/what_is_a_sex_act_toronto_dominatrix_terrijean_bedford_demands_answers_from_stephen_harper.html.

[15] *Bedford*, 2010, para. 182, para. 353–58.

[16] Ibid., para. 242.

[17] Lisa Dufraimont, "*Canada (Attorney General) v. Bedford* and the Limits on Substantive Criminal Law under Section 7," *The Supreme Court Law Review* 67 (2014): 490, https://digitalcommons.osgoode.yorku.ca/sclr/vol67/iss1/15.

[18] Hudson and van der Meulen, "Sex Work, Law, and Violence," 129.

[19] Emily van der Meulen and Elya M. Durisin, "Sex Work Policy: Tracing Historical and Contemporary Developments," in *Red Light Labour*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 38.

[20] For more, see Emily van der Meulen and Elya M. Durisin, "Why Decriminalize? How Canada's Municipal and Federal Regulations Increase Sex Workers' Vulnerability," *Canadian Journal of Women and the Law* 20, no. 2 (2008): 289–311; Bruckert and Parent, "Incall Sex Industry"; Stacey Hannem and Chris Bruckert, "Legal Moralism, Feminist Rhetoric, and the Criminalization of Consensual Sex in Canada," in *Within the Confines: Women and the Law in Canada*, ed. Jennifer M. Kilty (Toronto: Women's Press, 2014), 318–43.

[21] *Bedford*, 2010, para. 2.

[22] Sonia Lawrence, "2013: Constitutional Cases in Review," *The Supreme Court Law Review* 67 (2014): 3–40, https://digitalcommons.osgoode.yorku.ca/sclr/vol67/iss1/1.

[23] Ibid., 3.

[24] *Bedford*, 2010, para. 67.

[25] Ibid., para. 214.

[26] Ibid., para. 68.

[27] See Reference re ss. 193 and 195.1(1)(C) of the criminal code (Man.), [1990] 1 SCR 1123, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/611/index.do.

[28] *Bedford*, 2010, para. 3.

[29] Lawrence, "2013," 34.

[30] Ibid.

[31] Ibid., 35.

[32] *Bedford*, 2010, 3.

[33] Ibid.

[34] David Asper Centre for Constitutional Rights, "*Bedford* Factum of Interveners," 2012, SCC 34788, https://www.scc-csc.ca/WebDocuments-DocumentsWeb/34788/FM097_Intervener_Asper.pdf.

[35] Ibid., para. 1.

[36] Ibid., para. 19.

[37] *Bedford*, 2010, para. 13.

[38] Ibid., para. 69–72.

[39] Hudson and van der Meulen, "Sex Work, Law, and Violence," 122.

[40] *Bedford*, 2010, para. 3–5.

[41] Lawrence, "2013," 35.

[42] For key texts on these debates, please see Amanda Glasbeek, *Feminized Justice*; Anna M. Agathangelou, *The Global Political Economy of Sex: Desire, Violence, and Insecurity in Mediterranean Nation States* (New York: Palgrave Macmillan, 2004); Bridget Anderson, *Doing the Dirty Work? The Global Politics of Domestic Labour* (London: Zed Books, 2000); Chris Bruckert and Stacey Hannem, "Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work," *Canadian Journal of Law and Society* 28, no. 1 (April 2013): 43–63, https://doi.org/10.1017/cls.2012.2; Andrea Dworkin, *Intercourse* (New York: Free Press, 1987); Catherine A. MacKinnon, *Towards a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989); Carole Pateman, *The Sexual Contact* (Stanford: Stanford University Press, 1988); Kamala Kempadoo, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* (Boulder, CO: Paradigm Publishers, 2005); Kamala Kempadoo and Jo Doezema, *Global Sex Workers: Rights, Resistance, and Redefinition* (New York: Routledge, 1998); Shannon Bell, *Reading, Writing, and Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994); Hannem and Bruckert, *Stigma Revisited*.

[43] While I do not wish to rehearse the extensive documentation of these feminist debates, nor the many ways that many feminists openly reject the assertation that sex work is inherently violent, I do wish to underscore that, in Canada, the debates have come to constitute a dominant feminist approach to the issue commonly understood as the criminalization/discrimination paradigms in so-called feminist wars. See, for instance, Kate Sutherland, "Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade," *Osgoode Hall Law Journal* 42, no. 1 (Spring 2004): 139–67, https://digitalcommons.osgoode.yorku.ca/ohlj/vol42/iss1/4; Melissa Farley, "Theory Versus Reality: Commentary on Four Articles about Trafficking for Prostitution," *Women's Studies International*

Forum 32, no. 4 (July–August 2009): 311–15, https://doi.org/10.1016/j.wsif.2009.07.001; Robyn Bourgeois, "Race, Space, and Prostitution: The Making of Settler Colonial Canada," *Canadian Journal of Women and the Law* 30, no. 3 (2018): 371–97, http://doi.org/10.3138/cjwl.30.3.002; Bruckert and Hannem, "Rethinking."

[44] *Bedford*, 2013, para, 86–89.

[45] See also, Agathangelou, *Global Political Economy*; Kempadoo and Doezem, *Global Sex Workers*; Emily van der Meulen, "When Sex Is Work: Organizing for Labour Rights and Protections," *Labour* 69 (Spring 2012): 147–67, https://id.erudit.org/iderudit/1011332ar.

[46] *Bedford*, 2010, para. 84. The 2010 social science research included but was not limited to submissions from the following: Dr. John Lowman (Department of Criminology, Simon Fraser University, British Columbia); Dr. Janice Raymond (Professor Emeritus, University of Massachusetts); Dr. Barbara Sullivan (Department of Political Science, University of Queensland, Australia); Dr. Eleanor Maticka-Tyndale (Department of Sociology and Anthropology, University of Windsor, Ontario); Dr. Ronald Weitzer (Department of Sociology, George Washington University, Washington, DC). While not an exhaustive list, some of the textual social science research presented in *Bedford* also included the following: Barbara G. Brents and Kathryn Hausbeck, "Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy," *Journal of Interpersonal Violence* 20, no. 3 (March 2005): 270–95, https://doi.org/10.1177/0886260504270333; Melissa Farley et al., "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder," *Journal of Trauma Practice* 2, no. 3–4 (2004): 33–74, https://doi.org/10.1300/J189v02n03_03; Leslie Ann Jeffrey and Gayle MacDonald, "'It's the Money, Honey': The Economy of Sex Work in the Maritimes," *Canadian Review of Sociology* 43, no. 3 (August 2006): 313–27, https://doi.org/10.1111/j.1755-618X.2006.tb02227.x; Tamara O'Doherty, "Off-Street Commercial Sex: An Exploratory Study" (master's thesis, Simon Fraser University, 2007); Ted S. Payls, *Research Decisions: Quantitative and Qualitative Perspectives*, 3rd ed. (Scarborough, ON: Thomson Nelson, 2003); Libby Plumridge and Gillian Abel, "A 'Segmented' Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers," *Australian and New Zealand Journal of Public Health* 25, no. 1 (February 2001): 78–83, http://doi.org/10.1111/j.1467-842x.2001.tb00555.x; Priscilla Pyett and Deborah Warr, "Women at Risk in Sex Work: Strategies for Survival," *Journal of Sociology* 35, no. 2 (August 1999): 183–97, https://doi.org/10.1177/144078339903500204.

[47] *Bedford*, 2010, para. 120–30.

[48] Ibid., para. 217–43.

[49] Ibid., para. 217.

[50] Ibid., para. 136.

[51] van der Meulen and Durisin, "Sex Work Policy," 27.

[52] Ibid., 29.

[53] Ibid.

[54] Ibid.

[55] Ibid.

[56] *Bedford*, 2010, para. 136.

[57] Ibid.

[58] Ibid., para. 229–57.

[59] Ibid., para. 2.

[60] Ibid., para. 116.

[61] Ibid., para. 336.

[62] Ibid., para. 35.

[63] Aboriginal Legal Services of Toronto (ALST), "*Bedford* Factum of the Intervener," 2013, SCC 34788, https://www.scc-csc.ca/WebDocuments-DocumentsWeb/34788/FM055_Intervener_ALST.pdf.

[64] Ibid., para. 3.

[65] Ibid., para. 7.

[66] For example, see National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, 2 vols. (Ottawa: Government of Canada, 2019), https://www.mmiwg-ffada.ca/final-report/; Amnesty International, *Canada Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada* (Amnesty International, 2004), https://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf; Gerry McNeilly, *Broken Trust: Indigenous People and the Thunder Bay Police Service* (Office of the Independent Police Review Director, 2018), http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf.

[67] For example, see *R v. Ipeelee*, [2012] 1 SCR 433, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8000/index.do*; R v. Barton*, [2019] SCC 33 para. 122, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17800/index.do.

[68] ALST, "*Bedford* Factum," para. 8.

[69] Ibid., para. 9.

[70] Ibid., para. 23.

[71] Ibid., para. 13.

[72] Ibid., para. 14.

[73] Ibid., para 15.

[74] Ibid., para. 2.

[75] Ibid., para. 3.

[76] Ibid., para. 8.

[77] Ibid., para. 22.

[78] National Inquiry, *A System of Total Control: Policing First Nations and Métis*, 254.

[79] Avnish Nanda, "Op-Ed: From *Bedford* to the MWCI, Chronicling the Legal Consequences of Pickton," *TheCourt.ca*, January 8, 2014, http://www.thecourt.ca/op-ed-from-bedford-to-the-mwci-chronicling-the-legal-consequences-of-pickton/.

[80] *Bedford*, 2010, para. 131.

[81] Ibid., para. 115.

[82] See Women's Coalition, "*Bedford* Factum of the Interveners," 2013, SCC 34788, https://www.scc-csc.ca/WebDocuments-DocumentsWeb/34788/FM075_Intervener_Coalition.pdf. The Women's Coalition members include the Native Women's Association of Canada (NWAC), the Canadian Association of Elizabeth Fry Societies (CAEFS), the Canadian Association of Sexual Assault Centres (CASAC), Action Ontarienne contre la Violence Faite aux Femmes (AOcVF), la Concertation des Luttes contre l'Exploitation Sexuelle (CLES), Le Regroupement Québécois des Centres d'Aide et de Lutte contre les Agressions à Caractère Sexuel (RQCALACS), and the Vancouver Rape Relief Society.

[83] Women's Coalition, "*Bedford* Factum," 2013, para. 2.

[84] Ibid., para. 6.

[85] Ibid.

[86] Ibid.

[87] *Bedford*, 2013, para. 18.

[88] Ibid., para. 8.

[89] Ibid., para. 138.

[90] Ibid., para. 158.

[91] ALST, *"Bedford Factum,"* para. 12.

[92] Women's Coalition, "*Bedford* Factum."

[93] Ibid., para 8. Note that s. 25 outlines that Aboriginal rights and freedoms not be affected by the Charter, stating that "the guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including: (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claim agreements or may be so acquired." Note also that s. 15(1) outlines equality rights before and under the law and equal protection and benefit of law maintaining that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Finally, s. 28 refers to the notwithstanding clause, which guarantees that "the rights and freedoms referred to in it are guaranteed equally to male and female persons," holding that, it is "clear that both women and men are equally protected under the Charter. This principle is also found in section 15."

[94] Brenda Belak, "*Canada v. Bedford*: A Breakthrough in the Legal Discourse," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 48–52.

[95] Kamala Kempadoo et al., *Challenging Trafficking in Canada: Policy Brief* (Toronto: Centre for Feminist Research at York, 2017),https://www.researchgate.net/publication/334849031_CHALLENGING_TRAFFICKING_IN_CANADA_POLICY_BRIEF 26,

https://www.researchgate.net/publication/334849031_CHALLENGING_TRAFFICKING_IN_CANADA_POLICY_BRIEF.

[96] Ibid., 14.

[97] Dufraimont, "*Canada (Attorney General) v. Bedford*," 484.

[98] Ibid., 487.

[99] *Bedford*, 2010, para. 439.

[100] Ibid., para. 491.

[101] Ibid., para. 379.

[102] Reference re ss. 193 and 195.1(1)(C) of the criminal code (Man.), [1990] 1 SCR 1123: 32.

[103] Zahir Kolia, "Colonial Theology: John Locke, Jean-Jacques Rousseau, Charles Darwin and the Emergence of the Colonial-Capitalist World System, 1500–1900" (PhD diss., York University, 2015), 99.

[104] John Borrows, "Sovereignty's Alchemy: An Analysis of *Delgamuukw v. British Columbia*," *Osgoode Hall Law Journal* 37, no. 3 (Fall 1999): 537–96, https://digitalcommons.osgoode.yorku.ca/ohlj/vol37/iss3/3.

[105] Harold Johnson, *Two Families: Treaties and Government* (Saskatoon: Purich Publishing, 2007).

[106] Zubairu Wai, *Epistemologies of African Conflicts: Violence, Evolutionism, and the War in Sierra Leone* (New York: Palgrave Macmillan, 2012), 40.

[107] John Locke, *Second Treaties of Government*, ed. C.B. McPherson (Indianapolis: Hackett Publishing, 1980), 11 para. 11.

[108] Stephen Gill, "Constitutionalizing Inequality and the Clash of Globalizations," *International Studies Review* 4, no. 2 (Summer 2002): 54, https://www.jstor.org/stable/3186353.

[109] Locke, *Second Treaties*, 19 para. 27.

[110] Ibid.

[111] Ibid., 23 para. 37.

[112] Ibid., 22 para. 36.

[113] Kolia, "Colonial Theology," 112.

[114] Bonita Lawrence, *"Real" Indians and Others: Mixed-Blood Urban Native Peoples and Indigenous Nationhood* (Lincoln: University of Nebraska Press, 2004), 191.

[115] See also Carole Pateman, *Sexual Contract*.

[116] Vanita Seth, *Europe's Indians: Producing Racial Difference, 1500–1900* (Durham, NC: Duke University Press, 2010), 88.

[117] Ibid., 95.

[118] Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 101.

[119] Ibid.

[120] Eve Tuck and Wayne K. Yang, "Decolonization is Not a Metaphor," *Decolonization, Indigeneity, Education, and Society* 1, no. 1 (2012): 5.

[121] See: Patrick Wolfe, "Settler colonialism and the elimination of the native," *Journal of Genocide Research, 8*, no. 4 (2007): 387-409.

[122] Tuck and Yang, "Decolonizing," ibid.

[123] National Inquiry, *Reclaiming Power and Place*, 125.

[124] Ibid., 252.

[125] Ibid.

[126] Ibid.

[127] Joanne Barker, *Critically Sovereign: Indigenous Gender, Sexuality, and Feminist Studies* (Durham, NC: Duke University Press, 2017), 5.

[128] Leanne Betasamosake Simpson, *Dancing on Our Turtle's Back: Stories of Nishnaabeg Re-Creation, Resurgence and a New Emergence* (Winnipeg: ARP Books, 2011), 106.

[129] Ibid., 39–47.

[130] See also Lawrence, *"Real" Indians*; Joyce A. Green, *Making Space for Indigenous Feminism* (Black Point, NS: Fernwood Publishing, 2007); Nathalie Kermoal and Isabel Altamirano-Jiménez, eds., *Living on the Land: Indigenous Women's Understanding of Place* (Edmonton: Athabasca University Press, 2016).

[131] Colin Samson, "The Dispossession of the Innu and the Colonial Magic of Canadian Liberalism," *Citizenship Studies* 3, no. 1 (1999): 15, https://doi.org/10.1080/13621029908420698.

[132] Locke, *Second Treaties*, 22 para. 36.

[133] Ibid., 22 para. 32.

[134] Bonita Lawrence, *Fractured Homelands: Federal Recognition and Algonquin Identity in Ontario* (British Columbia: UBC Press, 2012), 64-79.

[135] Section 35 of the *Constitution Act* outlines the recognition of existing "aboriginal and treaty rights," and reads as follows:

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> Definition of "aboriginal peoples of Canada"
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> Land claims agreements:
>
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> Aboriginal and treaty rights are guaranteed equally to both sexes
>
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.
>
> Commitment to participation in constitutional conference:
>
> 35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867*", to section 25 of this Act or to this Part:

(*a*) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(*b*) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

[136] John Borrows, "Drawing Out Law," filmed June 2015 at University of Victoria Indigenous Law Research Unit, YouTube video, 51:44, October 5, 2015, https://www.youtube.com/watch?v=axpw2FRt0ac.

[137] Brenna Bhandar, "Status as Property: Identity, Land and the Dispossession of First Nations Women in Canada," *Darkmatter Journal* 14 (May 2016): 1.

[138] "Delgamuukw v. British Columbia," Government of Canada, last modified September 15, 2010, https://www.rcaanc-cirnac.gc.ca/eng/1100100028623/1539611481373.

[139] Lawrence, "Fractured Homelands," 55-78.

[140] National Inquiry, *Reclaiming Power and Place*, 249–50.

[141] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 125.

[142] Lawrence, *"Real" Indians*, 25.

[143] Borrows, "Sovereignty's Alchemy," 572.

[144] Lawrence, *"Real" Indians*, 4.

[145] Ibid.

[146] Samson, "Dispossession," 18.

[147] John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 113.

[148] Ibid.

[149] Ibid., 117.

[150] Ibid.

[151] Ibid., 118.

[152] Ibid., 119.

[153] Coulthard, "Red Skin White Marks," 25.

[154] Radhika Mohanram, *Black Body: Women, Colonialism, and Space* (Minneapolis: University of Minnesota Press, 1999), 51.

[155] Ibid., 23.

[156] Ibid., 24.

[157] Ibid., 38.

[158] Ibid.

[159] Ibid., 39.

[160] Ibid., 49.

[161] Maldonado-Torres, "Coloniality of Being," 245.

[162] Ibid., 248.

[163] Ibid., 249.

[164] Ibid., 245.

[165] Ibid., 255.

[166] Janice Acoose, *Iskwewakkah' ki yaw ni wahkomakanak: Neither Indian Princess nor Easy Squaws* (Toronto: Women's Press, 1995).

[167] Ibid., 55.

[168] Ibid., 42.

[169] Sherene H. Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," in *Race, Space, and the Law: Unmapping a White Settler Society*, ed. Sherene H. Razack (Toronto: Between the Lines, 2002), 122–56.

[170] Lana Ray, "Pipelines, Prostitution, and Indigenous Women: A Critical Analysis of Contemporary Discourse," *Canadian Woman Studies* 3, no. 1–2 (2018–19): 112, https://cws.journals.yorku.ca/index.php/cws/article/view/37762.

[171] Ibid., 252.

[172] Zahir Kolia. "'I'm Making the Streets Safer Ma'am': Race, Coloniality, and the Redemptive Theologies of Pastoral Police Power," *Law, Culture and the Humanities* (October 2017): 11, https://doi.org/10.1177/1743872117737238.

[173] Zubairu Wai, "International Relations and the Discourse of State Failure in Africa," in *Recentering Africa in International Relations: Beyond Lack, Periphery and Failure*, ed. Marta Iñiguez de Heredia and Zubairu Wai (New York: Palgrave Macmillan, 2018), 49.

[174] Maldonado-Torres, "Coloniality of Being," 245.

[175] Robert M. Cover, "Violence and the Word," *The Yale Law Journal* 95, no. 8 (July 1986): 1609, https://doi.org/10.2307/796468.

[176] Ibid., 1613.

[177] *R v. Abbey*, [2009] ONCA 624, https://ca.vlex.com/vid/r-v-abbey-w-681736661.

[178] *Bedford*, 2010, para. 109.

[179] Ibid., para. 108.

[180] Ibid., para. 106.

[181] Ibid., para. 84.

[182] Ibid., para. 109.

[183] Ibid., para. 98.

[184] Ibid., para. 99.

[185] *Bedford*, 2013, para. 31.

[186] Ibid. For instance, whereas the 1990 *Prostitution Reference* sought to address the s. 2 rights of sex workers. *Bedford* sought to address whether or not sex workers' s. 7 rights were being infringed upon.

[187] David Asper Centre, "*Bedford* Factum," para. 27–33.

[188] Ibid., para. 120.

[189] *Bedford*, 2010, para. 115.

[190] *Bedford*, 2013, para. 7.

[191] Ibid., para. 81.

[192] Ibid., para. 217.

[193] *Bedford*, 2013, para. 18.

[194] *Bedford*, 2010, para. 274.

[195] *Bedford*, 2013, para. 86.

[196] *Bedford*, 2010, para. 179.

[197] Ibid., para. 240.

[198] Ibid., para. 11.

[199] Ibid., para. 28.

[200] Bruckert and Hannem, "Rethinking," 58.

[201] Bruckert and Parent, "Incall Sex Industry," 309.

[202] *Bedford*, 2010, para. 1.

[203] *Bedford*, 2013, para. 7.

[204] See also van der Meulen and Durisin, "Why Decriminalize?" 301

[205] *Bedford*, 2010, para. 25.

[206] Ibid., para. 2, para. 25.

[207] Ibid., para. 223.

[208] Borrows, "Sovereignty's Alchemy," 554–56.

[209] Smith, *Decolonizing Methodologies*, 175.

[210] John Borrows, "Listening for a Change: The Courts and Oral Tradition," *Osgoode Hall Law Journal* 39, no. 1 (Spring 2001): 29, https://digitalcommons.osgoode.yorku.ca/ohlj/vol39/iss1/1.

[211] Borrows, "Sovereignty's Alchemy," 553.

[212] Ibid.

[213] Ibid., 566.

[214] Smith, *Decolonizing Methodologies*, 166.

[215] Ibid., 23.

[216] Ibid.

[217] Bruckert, "*Protection of Communities*," 3.

[218] *Bedford*, 2010, para 8.

[219] Ibid., para. 150.

[220] *Bedford*, 2013, para. 86.

[221] Bhandar, "Status as Property," 2.

[222] *Bedford*, 2013, para. 64.

[223] Ibid., para. 64.

[224] Faye M. Fraser, "Sexual Re-Inscriptions of New World Times: Liberal Feminism, Evolutionism, and Sexual Commerce in Canada," in *Time and Temporality and IR of the Anthropocene*, ed. Anna M. Agathangelou and Kyle D. Killian (New York: Routledge, forthcoming).

[225] Bedford, 2010, para. 4.

[226] Ibid., para. 433.

[227] *Bedford*, 2013, para. 212.

[228] Ray, "Pipelines," 114.

[229] Ibid., 108.

[230] Sarah Hunt, "Decolonizing Sex Work: Trafficking, Sex Work, and the Violence of Law," *Atlantis* 37, no. 2 (2015–16): 27.

[231] Ibid.

[232] Ibid.

[233] National Inquiry, *Reclaiming Power and Place*.

[234] Eduardo Duran, *Healing the Soul Wound: Counseling with American Indians and Other Native Peoples* (New York: Teachers College Press, 2006). See also Judy Iseke, "Spirituality as Decolonizing: Elders Albert Desjarlais, George McDermott, and Tom McCallum Share Understandings of Life in Healing Practices," *Decolonization: Indigeneity, Education & Society* 2. no 1. (2013): 35–54, https://jps.library.utoronto.ca/index.php/des/article/view/19142.

[235] National Inquiry, *Historical, Multigenerational, and Intergenerational Trauma*, 113.

[236] National Inquiry, *Reclaiming Power and Place*, 112.

[237] Ibid., 10.

[238] Ibid., 213.

[239] Ibid., 45.

[240] Ibid., 376.

[241] Ibid., 76.

[242] Ibid., 30.

[243] Ibid., 113.

[244] Ibid.

[245] *Bedford*, 2010, para. 98.

[246] Smith, *Decolonizing Methodologies*.

Chapter 2
Feminist Anthropology: Sex Work and the Native Informant

> It is an (im)possible perspective … The native informant is not catachresis here, but quite literally the person who feeds anthropology.
>
> —Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason*

Introduction

In the previous chapter, I discussed *Canada v. Bedford*. This served to provide some provisional thoughts on the relationship between sex, secularity, and coloniality. By examining *Bedford*'s construction of socio-legal facts as read through the prism of secular colonial law, I unpacked how feminist theories of sex and morality are complicit in epistemic systems that reproduce a disembodied Cartesian subjectivity at the expense of de-mediating Indigenous non-secular conceptions of sex and legal epistemologies. In this chapter, I build on these insights with an examination of *R v. Anwar*, a legal challenge that emerge as a response to issues that remained unsettled after *Bedford*, in particular, the criminalization of sex worker speech and freedom of association. In so doing, this chapter undertakes a critical examination of sex worker–centred research approaches. While critiques of how the knowledge and speech of sex workers have been legally prohibited or absent in feminist research are not new,[1] I am interested here in how feminist theories of legal moralism centralize the voices of sex workers in their research projects. However, I enter these debates from a position of understanding the discipline of anthropology as a technology of temporal power and violence. I aim to show that the insights of a feminist anthropology of sex work resonate with, for instance, Gayatri Chakravorty Spivak's theory of epistemic violence, Johannes Fabian's examination of temporalities of difference, and V.Y. Mudimbe's thinking on epistemological ethnocentrism. This reveals how field work and the

process of organizing knowledge about sex work is never neutral but inevitably infused with power. I will argue that despite some the important insights these studies bring to the apprehension of the conditions of Canada's sex trade, this approach comments upon colonial spatiotemporal difference that simultaneously maintains a civilization/savagery schism that is indicative of a colonial archive of the European feminist self, and hence the intellectual justification of imperial domination.

This chapter is also inspired by the work of Linda Tuhiwai Smith (Ngati Awa and Ngati Porou). Smith informs us that research "is inextricably linked to European imperialism and colonialism."[2] For Smith, scientific research is implicated in the worst excesses of colonialism as indexed by the way knowledge about the Other is "collected, classified and the represented in various ways back to the West, and then, through the eyes of the West, back to those who have been colonized."[3] Locating sex worker–centred approaches within the discipline of anthropology and, specifically, feminist ethnographic encounters, I argue that such approaches are indicative of colonial calamity based on its "ethnographic gaze."[4] Audra Simpson (Kahnawà:ke) links the ethnographic gaze to Indigenous peoples continued struggled to survive settler colonialism, living under its conditions of occupation "its disavowals, and its ongoing life, which requires and still requires that they give up their lands and give up themselves."[5] Simpson therefore cautions us against placing Indigenous life exclusively within Western epistemes because such textual productions become more about the ethnographer than the community it purports to represent. More importantly, however, such textual representations are about effacement of Indigenous land relationships that "imbricated the ethnological, ethnographic, and cartographic with social and political theory and enabled the justification of dispossession."[6] Alongside Smith and Simpson, Zubairu Wai informs us that anthropological discourse is a political device that constructs its

objects through temporal power. It is, then, an epistemological and methodological device that functions as the intellectual justification of colonial domination on how it violently rejects and displaces its objects of study. By expelling the Other, anthropological discourse naturalizes "them to a time that is a lesser or earlier stage"[7] of the anthropologist's temporal location. Inspired by these insights, this chapter will argue that sex worker–centred approaches are more closely associated with a preoccupation with spatial and temporal colonial difference. These feminist preoccupations, I suggest, ultimately express a temporalizing colonial ethos "whilst simultaneously reordering and reconstituting"[8] the sex worker Other.

R v. Anwar: Feminist Anthropology and the Law

Following the successful 2013 Supreme Court challenge *Canada v. Bedford*, Parliament was given one year to revise its Criminal Code and to come up with a new approach to mediating the conditions of Canada's sex trade. In 2014, the Government of Canada released Bill C-36, or the *Protection of Exploited Persons and Communities Act* (PECPA).[9] In response to *Bedford*, the PECPA was designed with the intent to target those who exploit sex workers and, therefore, sought to address some of the violence sex workers experience as was affirmed in *Bedford*. The PECPA notes, for instance, that it is "intended to encourage those who sell their own sexual services to report incidents of violence and exploitation committed against them, rather than seeking to avoid detection by law enforcement."[10] However, feminist scholars quickly pointed out the moral undertones of Bill C-36. Chris Bruckert noted, for instance, that "the assertion that sex work is *inherently* violent and exploitative is a foundational assumption of the new legal framework—remove this assumption and we are left with little more than legal moralism."[11] Andrea Sterling

and Emily van der Meulen also call attention to how Bill C-36 effectively criminalized prostitution in Canada for the first time in that it targets sex work clients who seek to obtain sexual services.[12] They point to the communication provision, for example, which targets sex workers by infringing "upon their right to freedom of expression, none of which was in accordance with the principles of fundamental justice."[13] This provision prevents sex worker from taking the necessary precautions of screening for potentially dangerous clients, which, as was argued in *Bedford*, violates their s. 7 right to security of the person.

In response, at the level of the Ontario Appeals Court, a legal challenge was filed to amend this provision, and on February 21, 2020, Ontario Court Justice Thomas McKay found aspects of Canada's new anti-prostitution laws, outlined within PECPA, to be unconstitutional.[14] In *R. v. Anwar* 2020, Justice McKay ruled that under the Canadian Criminal Code, the charges of receiving material benefit (s. 286.2), of procuring (s. 286.3), and of advertising for the purpose of sexual services (s. 285.4) violates the Charter of Rights and Freedoms on the grounds set out under s. 1 (the fundamental freedoms clause) and s. 7 (which protects security of the person).[15] Of particular significance in this case is how Justice McKay built on Supreme Court Justice Beverley McLachlin's 2013 findings in *Canada v. Bedford*. *Bedford* dealt primarily with s. 7 of the Charter, which protects the right to life, liberty, and security of sex workers. Justice McKay, however, expanded his analysis of anti-prostitution laws in Canada to include a deliberation on the constitutionality of the Criminal Code's impact on sex worker rights with respect to Charter protections that guarantee freedom of thought and association.[16] The *Anwar* decision thus argued that by criminalizing third-party managers involved in the sex trade, the law did not allow sex workers the ability to form their own associations and protect themselves and, hence, found that the laws also violated their right to free expression. For instance, Criminal Code s. 286.3 makes it

a criminal offence to (a) procure a person to offer or provide sexual services for consideration; (2) recruit, hold, counsel, or harbour a person who provides sexual services; and (c) exercise control, direct, or influence over the movements of a sex worker. In addition, s. 286.4 states that anyone who knowingly advertises an offer to provide sexual services for consideration is guilty of (a) an indictable offence and liable to imprisonment for a term of not more than five years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term of not more than eighteen months.[17] In short, Justice McKay found that these anti-communication policies embodied by anti-advertising laws violate sex workers' freedom of expression and freedom from unreasonable government interference insofar as the laws force sex workers to operate without the ability to screen clients or negotiate terms and conditions of the exchange while forcing them to work alone. For Justice McKay, the law in question deprived "sex workers of those things that are natural, expected and encouraged in all other sectors of the economy,"[18] and therefore it could not be justifiably saved under s. 1 or 7 of the Charter.[19] *Anwar* also established that the moralization of the sex industry remained prevalent by highlighting how prohibiting communication for the purpose of activities related to sex work works against the security of person because "criminalization also continues the stigma associated with sex work."[20]

As in *Canada v. Bedford*, a significant factor that propelled the success of the *Anwar* decision was the understanding of a changing *normative order* with respect to how society understands the conditions of sexual labour in Canada.[21] *Anwar* notes that "the nature and practice of the sex industry in Canada has fundamentally changed over the past 20 years."[22] This claim was supported by submissions from feminist experts who spoke to anthropological studies of the impugned provisions,[23] which shed light on the changing contours of understanding the sex trade in Canada.[24] In *Anwar*, field research with clients and sex workers labouring in the trade were

presented. Andrea Sterling, who served as an expert witness, presented some of this evidence. Sterling gave testimony about research she had conducted in the field, where she examined the impacts of the advertising offense in s. 286.3 of the Criminal Code on the lives of sex workers.[25] Sterling's research is important because it took a community-based anthropological approach that dealt directly with those who have experiential knowledge of the sex trade and incorporated this knowledge into legal discourse to generate the power needed to move the law in a particular direction. She conducted semi-structured interviews that addressed anti-advertising and anti-communication provisions in PECPA to examine the impacts the provisions had on sex workers' ability to communicate both with one another as well as with clients. The testimony addressed what was described as the PECPA's recreation of "the very conditions found to have created a risk of harm to sex workers in the *Bedford* decision."[26] Sterling's research found that the sex workers who were the subject of her study felt that they were unable to communicate effectively with clients prior to meeting with them.[27] This put their security at risk because they were unable to take proper measures to screen potentially dangerous situations. Hence, counter to its stated objective, PECPA had not created the conditions that encourage sex workers to report incidents of violence to the police,[28] and Sterling's study therefore found that the PECPA had not met its legal objective.

Additionally, Sterling's testimony buttressed the *Bedford* decision because it reaffirmed what had been found in other studies; namely, that despite sex work involving some risk of experiencing forms of violence, the "Canadian experience does not reflect an assertion that sex work is inherently violent."[29] Moreover, it echoed recent Canadian research suggesting "that coercion and control of sex workers by third parties is not pervasive," and that a "significant proportion of third parties working in the sex industry have experience as sex workers."[30] *Anwar* ultimately found the offenses under s. 285.4 (advertising), s. 286.3 (procuring), and s. 286.2

(monetary benefit) to be unlawful. The Court found that the way these provisions were drafted was so broad that it exposed sex workers to criminal liability. They likewise denied sex workers the ability to work with non-exploitive third parties, thus increasing their risk of harm by restricting the way safeguards could be implemented. For example, the communication clause put limitations on sex workers' ability to communicate their terms and conditions to clients, as well as their ability to negotiate and effectively screen their clients, which was previously affirmed by *Bedford*'s successful Supreme Court challenge to increase the risk of injury or death. As such, the law was found to be disproportionate and the infringement unable to be justified under s. 1 of the Charter.[31] In this way, Sterling's field research played a substantive role in the mobilization of power that moved the law in a particular direction—that is, moving the legal approach to Canada's sex trade in the direction of decriminalization.

Anthropologies of Sex Work and Their Benefits

In the previous section, I discussed the substantive role that field research plays in addressing the conditions of Canada's sex trade. I highlighted that field research that centred the voices and experiences of sex workers supported decriminalization efforts and thus played a significant role in the mobilization of legal power. In this section, I wish to expand on this by extending our thinking on anthropological studies of sex work and their epistemic modalities of power. While standpoint feminists have long provided critical insights into the interconnections of gender, sex, and power,[32] the field of sex work studies has sought to tackle questions focused on the agency of those working within the industry,[33] while others concentrated on the industry's

public health aspects,[34] and others still on its socio-political production and regulation from the standpoint of those labouring within the trade.[35]

For Susan Dewey and Tiantian Zheng, the legal and moral criminality ascribed to sex workers creates a landscape of ethical considerations when conducting research in the field of sex trade studies. Rather than avoid such ethical dilemmas, these scholars suggest that opening up the field of sex work studies to anthropological investigation is key to encouraging a range of new possibilities for undertaking research on sex work that will complicate the "ethical codes that anthropologists might employ in their fieldwork."[36] This requires entering into a "hotly contested political and ideological terrain,"[37] in which social scientists who conduct studies in this field may adopt methods that are community-based with participatory research designs in order to facilitate collaborative and social justice–oriented research. Moreover, Dewey and Zheng contend that "anthropologists who study sex work are firmly positioned in the midst of these debates as they endeavor to conduct research that prioritizes the worldviews and cultural knowledge of research participants."[38]

Feminist knowledge production should be "driven by a participatory action research approach"[39] that involves the direct participation of a study's subjects in roles such as paid co-researchers, board members, consultants on research ethics, or through qualitative methods like in-depth, semi-structured interviews where appropriate. In this way, sex workers can operate as "key informants."[40] This is important because, as France M. Shaver has also pointed out, there are several challenges that research must contend with when focused on the sexual service industry.[41] For instance, research on sex work tends to involve comparison groups. Often, false equivalencies between groups results in research that is methodologically flawed in how it can falsify population perceptions. Because sex work is usually understood as an identity category rather than a revenue-

generating activity, for Shaver, research retains prevalent dichotomies that default to characterizations of sex work experiences within tropes of exploitation. Comparison groups skew data by the "prevalence of dichotomies, and the assumption that sex workers represent a homogeneous population."[42] Such challenges demand ethical, non-exploitive research designs with sex workers and other marginalized and stigmatized populations."[43] Partnerships between marginalized groups and the academic community can create substantial benefits. They "provide different perspectives, increase the synergy of ideas and resources, enhance the quality of the data, provide opportunities for capacity building, encourage reciprocal exchanges of skill and knowledge between the academy and the community, and increase public accountability."[44]

Given that a number of challenges arise when conducting research in the sexual service industry, it is critical, Shaver notes, that such projects undertake research methods that adopt "participant-centered and harm-reduction guidelines that protect sex workers while legitimating the role of the researcher."[45] When such approaches are taken, ethnographic studies, for instance, which deal with living individuals, social groups, and their living conditions and environments,[46] can produce research that promotes dialogues (reflexivity) between object and subject (researched and researcher) and encourages methodological complexity by positing agency to social and political actors (sex workers). Moreover, these investigative designs can also include field research methods such as interviews, observation, or working with and alongside the community of study,[47] which seek to reduce "the gap between researcher and the research subject" and can necessitate a more ethical research design that "minimizes risks to both participants and themselves."[48] The knowledge of sex workers is generated by focusing on their unique positionality and relationality as proper knowers who are uniquely situated in ways that posit intellectual questions about what is happening on the ground. Thus, by centring sex workers' experiential knowledge, social

scientists can attend to asymmetrical power dynamics of data collection practices that attempt to engage in discursive strategies that put the voice of sex workers under erasure.[49] As previously illustrated in *Anwar*, anthropological investigations, then, can contribute much to the field of sex work studies because they centralize the lived and embodied experiences of their subjects and, hence, structure epistemic power, which can challenge existing social orders and dominant knowledge formations. Such studies can thus respond to world-making practices of dominant ideological visions by promoting epistemic plurality, which humanizes its sex worker subjects, highlighting their social, political, and intellectual agency. This, Shaver notes, tends to be written over within academic and policy context.

In Canada, feminist anthropologies of sex work have contributed much to the field of sex work studies. For example, Teena Orchard, Sara Farr, Susan MacPhail, Cass Wender, and Dawn Young looked at how Canadian sex workers oscillate in and out of the trade depending on a constellation of forces like socio-economic status, social service provisions, the kinds of sex work performed, and policing and enforcement approaches.[50] The importance of this ethnography, the authors explain, is that the data provided a comprehensive understanding of the complexity of sex workers' lives by accounting for personal and structural factors that informed their trajectories into the sex trade. These "findings both reflect and inform some of the fundamental concerns within post-colonial feminist and pro-sex worker theory, mainly destabilizing the essentialist yet enduring idea that sex work takes place only or primarily on the street and is done only or primarily by dangerous, demoralized women whose fates are sealed on the street corner."[51] Elsewhere, Melissa Farley examined the psychological impacts of the sex trade.[52] With structured interviews the author examined the severity of PTSD across sex worker communities. Beginning from the perspective that prostitution "is itself violence against women,"[53] this study measured factors

contributing to the trauma experienced in the sex trade. What their study found was that "intrinsic to prostitution are numerous violations of human rights; sexual harassment, economic servitude, racism, classism, vulnerability to frequent physical and sexual assault, and being subject to body invasions which are equivalent to torture."[54]

Such analyses have prompted other feminist sex work scholars such as Chris Bruckert, who is a former sex worker, to encourage the production of sex worker ethnographies. Contrary to Farley, Bruckert argues that sex-as-violence feminist theories like Farley's reproduce moralism that normalizes violence against Canadian sex workers.[55] And for Bruckert and Hannem, sex work, like any form of work, carries risk of violence, but feminists who understand the industry as only violence skew this reality by moralizing sex.[56] To combat the moralization of sex, they call on feminists to centre the violence of those who have experienced it in the trade. The dilemma, they explain, is that assumptions about sex workers that are not consistent with their realities and that rationalize talking over/for sex workers "[deny] their voice and [negate] their agency" wherein "structural stigma-discourses of risk (to self and to society) are used to justify and legitimate regulation."[57] Consequently, because of the heterogeneity of sex worker populations and experiences, Francis Shaver, Cecilia Benoit, Smith, Michaela Smith, Chris Atchison, Lauren Casey, Rachel Phillips, Bill Reimer and Dan Reist maintain that essential to the institutionalization of data collection practices designed to safeguard sex workers safety is bringing "sex workers' voices to the table."[58] For them, this is an essential research practice for developing policies to improve sex worker safety.

Canadian feminist scholars of sex and morality have sought to redress this gap in social science research, which has been noted as contributing to a well-established pattern of sex workers having their voices silenced, marginalized, and spoken for in social, legal, and intellectual

practice.[59] The contributions of three volumes—*Stigma Revisited: Implications of the Mark*; *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*; and *Red Light Labour: Sex Work Regulation, Agency, and Resistance*—are particularly noteworthy in this regard. By conducting collaborative studies that are based on the experiential knowledge of those in the sex trade, these texts have been innovators in extending the critical insights of fieldwork, qualitative interviews, and the ethnographic project. Consider for instance, *Stigma Revisited*, in which "the narratives of marginalized persons, those who are experts in their own lives, are central."[60] The collection is rooted in ethnography and constructivism, which allows it to engage "with more contemporary debates about epistemology to recognize that academic knowledges are themselves the product of interaction between the researcher and the researched, each of whom bring a unique life history and perspective to the encounter."[61] What distinguishes this collection is the varied formats employed to analyze the stigmatization process, some in poems, some in qualitative interviews and personal reflections, and some in theoretical discussions. Importantly, it does so to interrogate how morality regimes intersect with structural stigma, which the collection's authors use to think through sex work as a form of stigmatized labour. In drawing on the knowledge of sex worker informants, the text is able to "provide an understanding of the power/knowledge that accompanies structural stigma," which works against the interests of sex workers and "needs to be challenge to make way for change and the breaking down of stereotypes."[62]

Chris Bruckert, for example, offers an autobiographical account of her entrance into the sex industry to describe the "whore" stigma associated with sex work. Paired with interviews she conducted with Ottawa-area, street-based sex workers who were part of a community-based research project, Bruckert provides ethnographic insights that foreground her theorization of stereotypes contributing to the stigmatization of sexual labour,[63] This in turn contributes to the

"recognition of the historical process of moral regulation"[64] by illuminating the way that municipal regulation, like criminal law, historically and contemporarily engage in discriminatory licensing practices of adult entertainment clubs and parlours that normalize invasive forms of surveillance against sex workers. Moreover, unlike other forms of work, because sex work bares the mark of stigma, those who work in the industry are unable to take advantage of occupational health and safety mechanisms and are denied their statutory labour rights. For Bruckert, the stigmatization of sexual labour takes place when regulatory mechanisms start from the premise of "common knowledge" of sex work as exploitation. In which case, "occupation stigma is constructed as a personal attribute so that the implications extend beyond the sphere of work and the label becomes a master status that has permanence across social space."[65] Bruckert's ethnographic insights open up a discussion about the ways sex workers organize their labour practices in an effort to minimize the likelihood of engendering the additional permanent mark of a criminal record, and in the process "increase their vulnerability to violence."[66] In so doing, she interrogates stigma's impact on sex workers' ability to "realize their human, social, and labour rights,"[67] and how this impacts their ability to negotiate "their interpersonal and social identities while managing and resisting the stigmatic assumptions of gender and specific others."[68] *Stigma Revisited* is important, therefore, because it foregrounds some of the foundational theories of moral regulation approaches to sex workers and the law, which centres sex worker experiential knowledge to address the structural realities of stigma and "hegemonic representations of marginalized populations."[69] It centres Bruckert's larger theoretical framework, which structures her theories of sex work studies, by theorizing sex work as being "on the margins" because of the moral stigma ascribed to the occupation—a stigma that is conceived of as the personal attributes of the individual that extend across space and time. Moral stigma then persists in the form of myths—for instance, that "sex

workers are vectors of disease"[70]—or as "radical feminist discourse that positions them as victims without agency."[71] For Bruckert, the implications of moral stigma are real. Sex workers, she notes, are often "denied jobs when potential employers [find] out about their current or former labour in the sex industry … [they are] refused apartments, [have] their bank load applications declined" and so.[72] Her experience in the industry, paired with interviews she conducted, speaks to the ways in which structural and interpersonal stigma intersect with law and social norms to reproduce harmful stereotypical assumptions about sex workers.

Building from this, Emily van der Meulen, Elya M. Durisin, and Victoria Love renew the intervention laid out in *Stigma Revisited* in their own edited volume, *Selling Sex*. Describing their text as a collection that "represents a unique dialogue between and among academics, sex workers, and advocates, emphasizing the importance of personal perspectives and experiences as the basis for new and more nuanced conceptualizations of sex work,"[73] the authors make an important contribution to anthropological research with the insights of sex workers on Canada's sex trade industries.[74] This text elicits personal accounts of sex workers' experiences to present readers with critical reflections on the everyday realties of sex workers based on their experiential knowledge.

Here, I discuss two important contributions made to the edited collection. I begin with Sarah Hunt's (Kwakwaka'waka) "Decolonizing Sex Work."[75] Importantly, this piece traces a legal genealogy of anti-Indigenous laws in Canada that inform Indigenous women's entrance into the sex trade. It further discusses how such laws are complicit in a moral system that produces racist stereotypes about Indigenous women as sexually promiscuous "easy squaws." Such representations, Hunt explains, pervade contemporary ideologies about Indigenous sexuality and continue to have devastating impacts in how Indigenous experiences in the sex trade are understood. In thinking through sex work as integral to the colonial project, Hunt notes that

"Indigenous people have responded to the racist and sexist stereotypes and the realities of violence in our communities through writing, art, advocacy, and other acts of resistance. A number of Indigenous women writers have spoken back to the stereotypes of squaw, Indian princess, and sexually available brown woman, as well as the violence justified by these images of us."[76] Such ideas are based on characterizations of the immorality of Indigenous women in comparison to the moral virtue of white women. When speaking about Indigenous experiences in the sex trade, the moralization of Indigenous sex trade workers results in them being "invoked as nameless, voiceless, placeless victims, in memory of past injustices."[77] For Hunt, media discourse further fuels this to the extent that Indigenous sex trade workers are rendered outside the realm of law and rights. For instance, stereotypical representations of Indigenous women in the sex trade normalize the idea of their natural susceptibility to violence. Such stigmatic representations of Indigenous women and Canada's sex trade instead blame "women themselves for the violence they encounter,"[78] as was the experience in the case of Robert Pickton and the missing women of Vancouver's Downtown East side. Moreover, Hunt responds to prohibition activism for obscuring the diversity of Indigenous voices in the sex trade, in particular, those who do not lend their identities to the idea that all Indigenous sex workers are victims of colonial violence. This silences rights-based approaches that are "beginning the important work of centralizing the voices of Indigenous people in talking about issues of sexuality, sex work, and decolonizing our bodies."[79] For Hunt, "we must act as allies by working with and alongside them, listening to their voices and responding to their needs."[80] This is what Hunt means when she refers to decolonizing sex work. She further notes that "reducing stigma and humanizing sex workers must start within Indigenous communities."[81] When located within a broader theorization of stigma and sexual labour, "the

rights of Indigenous sex workers will become visible only if we decolonize dominant conceptualizations of sex work and Indigenous women's position within its various sectors."[82]

Hunt's concerns about sex work and colonization are similarly echoed in an essay that stages a dialogue between JJ and Ivo (Saulteaux), both of whom have experience working in the sex trade and with youth in the sex trade.[83] This exchange considers how there are deep interconnections between an ongoing process of colonization and altruistic approaches to "rescuing" Indigenous youth who are involved in the sex trade. As they underscore, endeavours that seek to save Indigenous people are based on their perceived powerlessness and victimization and almost always involve punitive measures like policing, detention, and criminalization. Like missionary projects of the past that were concerned with "salvation," JJ and Ivo note that such endeavours take the form of "imposing one's ideals and lifestyle on others."[84] For Ivo, salvation discourse permeates contemporary anti-sex work ideology, which is the overarching framework deployed when engaging with Indigenous youth in the sex trade. Based on moralizing notions of Indigenous degeneracy, these approaches are harmful to Indigenous sex trade workers, in particular youth sex trade workers, who are rarely seen as possessing agency. The result is that they are excluded from rights-based approaches to the industry. For JJ and Ivo, this demonstrates the interconnectedness of colonialism with racist stereotypes that always see Indigenous peoples as needing rescue. The rescuing, however, most often takes place by means of criminalization and detainment through forms of social service, thus extending the colonial project of removing Indigenous youth from their communities and families. Embedded within these practices, they note, are salvationist modes of engagement, which they understand as analogous to the way missionaries historically tried to "tell us how we are living is wrong and that there's a better way."[85] Ivo explains, "for us as Indigenous peoples, we've faced those people through colonialism, and

we don't want to deal with them again … people who do work from the saviour mode are perpetuating a form of colonization."[86] Racialization and stigmatization of the sex trade are further compounded by "preventing us from accessing so many things … stigma and discrimination against both youth and people in the sex industry."[87] Ivo further notes, "society has given us few other options, but it's also important to recognize that some people might be ok with where they are at and there may be some of us who don't want to change."[88] Such interventions merely compound discrimination and further colonization.[89] JJ and Ivo's dialogue thus extends the ethnographic project by illuminating how the structure of colonialism and racism intersect with moral assumptions about sexual exploitation, and how social service agencies and criminal justice discourses are deployed to "save" Indigenous sex trade workers.

Finally, this collection also sees Victoria Love similarly offer her reflections on sex worker subjectivity from her own time working in the sex industry.[90] For Love, anti-prostitution ideology had a profoundly negative impact on her consciousness and shifted how she came to understand herself and others working in the industry. She notes, for instance, that the moralization of sex work, expressed as negative social values ascribed to the industry, affected "my thoughts and feelings about my occupation."[91] The ascription of such values caused "deep and crushing shame"[92] that altered how she viewed herself and others in the industry, and which marked her "transition into a bourgeois feminist subject position that seeks to save Others and to be understood as an ethical subject."[93] Retrospectively, Love understands that this negative consciousness was the product of "the general stigma society places upon all sex workers" that "caused me to loath parts of my own history and experience" and which "produced a painful and significant rupture in my self identity."[94] This echoes Chris Bruckert, who has explained that "embedded in the conceptualization of sex work as stigmatized labour is the recognition of moral regulation …

workers are discursively constructed based on stereotypes."[95] In giving us direct access to the experiences of those in the sex industry, the ethnographies of Hunt, JJ, and Love provide important adaptions to moralized sentiments of anti-sex feminist theorizations, highlighting the violence (psychological and colonial) involved in anti-sex work ideology, which is in contrast to naming the sex industry as violent as a whole.

Further drawing on these critical insights, which "demonstrate the connection between the two books,"[96] Durisin, van der Meulen, and Bruckert's 2018 volume, *Red Light Labour*, presents a community-based ethics approach to sex work research. *Red Light Labour* was also produced in direct response to *Canada v. Bedford*, in that "many chapters engage directly with this new context, which includes both the Supreme Court's *Bedford* decision and PCEPA."[97] What is crucial about this edited collection is that many of the contributors are either current or former sex workers; they include scholars, student researchers, community activists, and many who "occupy more than one of these positionalities, illustrating a fluidity between advocate, researcher, and researched."[98] *Red Light Labour* thus provides an important focus on the personal narratives of sex that explicate some of the complex relationships between systems of power, privilege, and violence that help construct how meanings are attributed to experiences related to sex work.[99] What this contribution brings to the fore is an understanding of the diversity of sex work in Canada that belabours why the interactions between structure and agency are key to feminist studies of sexual commerce.[100] As Durisin, van der Meulen, and Bruckert maintain, sex worker's knowledge is a "definitive source of expertise,"[101] and their contributions to the field of study play an important role in mobilizing action that responds to policy and practice detrimental to struggles over sexual justice in Canada. For instance, the edited volume includes Sterling's study of the PECPA that was presented in *Anwar*, which, as we recall, played a fundamental role in mobilizing legal power.[102] The

contributions in this volume likewise tend to be framed within the sex-work-is-work paradigm, which understands sex work as stigmatized labour and thus seeks to contribute empirically grounded data to social justice activism related sex worker human rights.[103] The authors flag this approach as distinct from the "abolition" approach, which they describe as anti-prostitution, and radical feminist groupings that liken sex work to forms of slavery. They note that such approaches advocate for policy changes that "rely on carceral systems, policing efforts, and criminal justice intervention to criminalize sex workers' labour relationships and clients,"[104] which "have neglected nuanced analyses and disregarded sex worker agency and self-determination."[105] This obfuscates the harm that results from criminalizing sex workers and their clients.

Red Light Labour thus prioritizes pro-sex approaches to feminist studies of sex work and extends theorizations of morality, sex, and the law with further analysis of the stigmatization of sexual labour from the perspective of sex workers. Throughout the volume, sex workers act as key experts to give voice as insiders to the sex trade, and the volume supports the goals and interests of the sex worker rights movement. It accomplishes this by linking sex workers' self-understandings and their daily interactions with social and legal moralization to the goals of feminist sexual social justice in Canada. Within the collection are several studies that provide important anthropological insights.[106] Here I discuss three.

The first is Naomi Sayers's (Anishnaabe-Kwe) ethnographic discussion of the problem of omitting Indigenous sex trade workers' voices from feminist approaches and policy proscriptions that deal with regulating the sex trade.[107] As a former sex worker and current lawyer, Sayers's chapter illuminates the fear of stigmatization that sex workers experience should they publicly disclose that they are current or former sex workers. Through her recollections of her own participation in giving testimony about the overrepresentation of Indigenous women in street-

based sex work to the House of Commons, Sayers calls on feminists to engage in the "necessary discussions [that] must take place that centre Indigenous women as active agents and community members" who can speak to their own experiences.[108] For Sayers, the current platforms where discussions about regulation, prostitution, and Indigenous women take place evacuate the experiential knowledge of Indigenous sex trade workers and "[create] an environment that marginalizes and excludes street-based prostitution from communities, which dehumanizes this same class of individuals."[109]

Moreover, Sayers discusses the silencing experienced by sex workers who "out" themselves "in choosing to participate in discussions about the regulation of the industry or about prostitution in general."[110] For instance, even when discussions are designed to humanize people in the sex trade, the stigma associated with the industry prevents input from those directly involved as many fear "increased police surveillance and police harassment."[111] What is more, for Sayers, the stigma of the sex industry runs so deep that it is infused within feminist advocacy on the issue. She notes that after sex worker testimonies where presented to the House of Commons Standing Committee on Justice and Human Rights in 2014, those who identify as anti-violence advocates or "abolitionists" seeking to abolish the sex trade engaged in intimidation tactics against sex worker rights advocates, like Sayers herself, including sending "harassing tweets, emails, and letters."[112] This intimidation manifests as a form of silencing and insinuates itself into legislative and investigative processes, as she and others felt reluctant to participate moving forward. Likewise, while giving testimony at the pre-inquiry consultations into missing and murdered Indigenous women and girls, Sayers recalls prominent Indigenous leaders who hold the prohibition view reducing alternative contributions to "politicking." Sayers explains, "I had assumed that the facilitator meant zero discussion of policies on prostitution and no calls for the inclusion of the

experiences of Indigenous women who sell or trade sexual services. As potentially the only person in the room who identified as someone with such experience and who supported the human rights of people in the sex trade, including the right to live free from violence, I feared an increase in harassment similar to what I had experienced during and after testifying before the House of Commons committee."[113] Critically for Sayers, this underscores the way in which anti-sex work ideology "engaged in a process that effectively silenced Indigenous women who have sex trade experience and who do not support the criminal regulation of prostitution."[114]

Elizabeth James (Ojibwe) echoes some of Sayers's sentiments about the impact of anti-sex morality on Indigenous sex workers.[115] For her, sexual morality's stigmatization discourse of Canada's sex trade "others" Indigenous women through one-dimensional stereotypes. As a generational sex worker, James speaks to how these stereotypes are also embedded within the structural and historical legacies of colonialism that shaped her entrance into the sex industry. Although she recognizes that as a white-passing Indigenous women, her experiences of sex work may differ from those of other Indigenous women, in particular because she does not locate herself within the street-level sex trade as many women do, James maintains that this does not take away from the fact that "the stigma that results in the 'othering' of sex works relies on a symbolic order of violence."[116] Moreover, such structural and ideological intersections with this symbolic order are directly linked to her internalization of a "whore stigma," which she continues to work at reconciling around "shame about sex, my job, and society's judgment."[117] James hopes that one day society will understand that, as a sex worker, she, just like any other worker, is simply trying to make a living. She explains, "Speaking as an Indigenous women and generational sex worker, I am not interested in focusing on the relationship between a sex worker and being abused. Correlation is not causation!"[118] Moreover, she hopes that people will come to understand that the

prevalence of such ideas consolidates sex work–specific regulations that "are unnecessary and even harmful."[119]

In addition, *Red Light Labour* contributes Stacey Hannem's study of the conditions of sex work in rural and small communities.[120] This study includes field research and semi-structured and in-depth interviews with people involved in different areas of the sex industry in Brantford, Ontario, and its surrounding rural comminutes. Some study participants were street-based sex workers, others erotic dancers, in-call and out-call sex workers, massage parlour attendants, or managers. The majority were white, with only four participants identifying as Black or Indigenous. The purpose of the study was to bridge a gap in the under-documentation of experiences of rural sex workers versus urban sex workers, whose experiences, Hannem notes, have been researched at length. One area the study focused on in particular was travel and anti-prostitution stigma. One participant named Nancy noted that sex workers often encounter negative reactions, particularly when working in the street-based trade. People "would start calling us whores and sluts and pigs and all sorts of different names ... There was comments always coming out of vehicles or from other people."[121] For reasons such as this, another participant named Maggie discussed how she did most of her work outside of the city to maintain some anonymity in her home community. As participant Jane explained, "the very social networks that are assumed to make small communities safer pose significant risks of stigma and hostility to sex workers when everybody knows everybody."[122] As a result, participants discussed the lengths they will go to be discreet about their occupation, including commuting outside of the town to manage the stigma associated with sex work in small towns. The study found that while the choice to commute for the purpose of work gave participants access to additional markets and allowed them to avoid experiencing stigma, many had to rely on a third party to facilitate travel and manage costs. The problem, however, is

that heightened attention to stereotypes about third-party exploitation and human trafficking created barriers for sex workers: There appears to be a collapsing of categories between "transient work" and "travel-for-work," which reframes commuting as an element of coercion. As the study maintains, the moralization of the sex industry creates complex conditions wherein sex workers are forced to commute outside of their communities to avoid being labelled by stereotypes that contribute to their marginalization, while simultaneously putting them into a precarious position that increases their risks of being targeted for human trafficking.

For Valerie Scott, the importance of the contributions of sex workers to *Red Light Labour* is that it reflects how sex workers in Canada are organizing like never before.[123] Scott, who is a sex worker and one of the three plaintiffs in *Canada v. Bedford*, emphasizes how *Red Light Labour* exemplifies the ways that sex workers are "speaking out and writing about our work and lives."[124] For Scott, writing from the subject position of having experiential knowledge of the industry is part of a growing global movement of sex workers who "oppose the criminalization and legal oppression of sex work."[125] The accounts provided by sex workers are aimed at debunking stigma and stereotypes about sex work that shape and inform prohibition discourse by documenting "the harms that shame-based laws can cause as well as sex workers' efforts to resist and challenge the anti-prostitution regime that has developed in Canada."[126] In this way, sex workers, as expert informants, challenge dominant discourses on sex work by providing powerful counternarratives that contest long-standing discursive frameworks that are shaped and informed by moral ideologies.

Taken together, these feminist studies highlight a growing body of literature that is being produced in partnership with sex worker communities to address the daily realties of sex workers and their entanglements in social structures, legal discourses, and cultural contexts.[127] Such

empirical, evidence-based, standpoint feminist studies are making important advancements in intellectual and activist circles because they address emerging challenges in attaining justice for sex workers by adopting what Shaver previously identified as principles of ethical research with research subjects. Sex worker–centred approaches seek to readdress challenges in both past and present efforts to mobilize the knowledge of marginalized populations, particularly sex workers, to "engage in collaborative forms of resistance, and call on politically aware academics and researchers to act as the catalyst in moving toward social and collaborative action."[128]

Can Sex Workers Speak?

In the previous section, I reflected on three key texts that centralize sex worker experiential knowledge through ethnographic and anthropological studies of sex work in Canada. As discussed, these contributions are designed to present counternarratives to those dominant ones that tend to write over or silence pro-sex, rights-based approaches to the sex industry. All three edited volumes start from the premise of understanding anti–sex work frameworks as an extension of stigmatization discourse based on moral ideologies of sex. With *Anwar* as the backdrop, these reflections served to index empirical understandings of the impacts of stigmatization on the experiences those in Canada's sex trade. They further draw our attention to the critical role of sex worker informants in the production of ethically collected data. The texts position sex trade workers as experts in their own lives to outline factors they identify as contributing to the devaluation of their personhood and labour. The production of knowledge therefore reflects written attempts to resist and challenge silencing caused by discursive and epistemic regimes that work against the interests of sex worker rights.

For Mary J. Bunch, however, it is not enough to understand the absence of sex worker speech and knowledge as problematic; rather, it must also be understood as a very specific form of epistemic violence.[129] The purpose of Bunch's reflections on epistemic violence is to theorize discursive justice for sex workers. Discursive justice "links justice to possibilities of hegemonic change" as it relates to the functions of participatory democracy and speaks to the ways public opinion is linked to political action.[130] This "demands not only the inclusion of different voices in debates, but also that differences remain visible, and the relations of power between these diverse speakers be addressed."[131] What is proposed, then, is a concept of discursive justice "as a principle to help establish conditions in which stigmatized groups such as sex works might be heard in the public sphere, where political participation is enacted through debate and dialogue."[132] In the context of sex worker activism, it is the transition from effacement to recognition that marks the possibility of discursive justice."[133] Therefore, epistemic justice attributes "an ethical responsibility to listen, and when necessary, to change the rules of their own language games,"[134] so that "socially marginalized participants are enabled to move out of spaces of subalternity even when—especially when—their views challenge hegemonic ideologies."[135]

Importantly, Bunch's insights are inspired by the work of Gayatri Chakravorty Spivak's work, "Can the Subaltern Speak?" wherein Spivak theorizes subalternity as the production of difference that takes place through two interrelated problems, that is, by way of a politics of identity and an ethics of alterity.[136] To elaborate, Spivak notes that "the clearest available example of such epistemic violence is the remotely orchestrated, far-flung, and heterogeneous project to constitute the colonial subject as Other. This project is also the asymmetrical obliteration of the trace of that Other in its precarious Subjectivity."[137] Spivak continues, "This is not to describe 'the way things really were' or to privilege the narrative of history as imperialism as the best version

of history. It is, rather, to offer an account of how an explanation and narrative of reality was established as the normative one."[138] Here, epistemic violence is embedded within the international divisions of labour that necessarily demand the constitution of the Other of Europe—that is, the process of the formation of the colonial subject, a figure of subalternity that is written into hegemony through colonial discourses of linguistic signification. Therefore, the problem of subalternity and alterity is the subaltern's definitive location in relation to the global political economy of power, which renders the subaltern both "a space outside of and autonomous from hegemony, but simultaneously inside its conditions of possibility."[139] In this way, Spivak interrogates the subaltern subject's production as subject-as-agent and the concomitant operations of its representation in feminist history. She does so to open the question of subject formation as inevitably about the (re)construction of the European self.

As scholars of deconstruction have elsewhere discussed, "Can the Subaltern Speak?" addresses the problem of "self-knowledge" and the predicament of self-reflexivity.[140] The dilemma lies within the contention that there is no standpoint from which an authoritative perspective of the historical world is not embedded in a global political economy of imperialism and colonialism, through which the social history of an object is given in language. The questions of speech act theory and language, then, are not merely theoretical but, rather, have a colonial materiality to them that shape behaviour; because of this, deconstruction raises important debates over whether language is a neutral tool to "use in presenting an objectively given world," or whether "all structuring devices are tacitly hierarchal and may encode authoritarian relationships."[141] It is thus understood that language operates as a signifying practice that has the ability to "fix" or "fast-freeze" behaviours, and deconstruction sets out to denaturalize the implicit ideology of dominance inherent to any totalizing theory of history and society. This is because

"language does not always by its nature explicitly define the relationship it embodies, the need is to deconstruct the fixed, linguistic relation between an object and its social history."[142]

It is within this context, Spivak explains, that the researched subaltern embodies the position of the native informant.[143] Borrowing the term from ethnography, Spivak explains that a *native informant* "is a blank, though generative of a text of cultural identity that only the West (or Western-model discipline) could inscribe,"[144] who "can only provide data, to be interpreted by the knowing subject of reading."[145] For researchers, she continues, the native informant is "neatly accessible as an object of investigation to … the disciplinary pieties of the anthropologists … and the European scholars."[146] This is not to suggest, however, that Spivak is entirely against ethnography, but rather to index that what is at issue is its relationship to the discipline of anthropology. The problem is that the native informant, at its epistemic base, is invested in "the production of the scientific or disciplinary European knowledge of the culture of others: from field-work through ethnography into anthropology."[147] For Spivak, the native informant is "quite literally the person who feeds anthropology,"[148] which in turn "establishes the truth of discovery."[149]

Fundamentally, then, Spivak is exploring an ethics of alterity assumed through the linguistic formation of the Other of Europe, which involves the construction of the European self's subjectivity in simultaneity with the colonial subject's self as Other. Here, alterity is investigated through speech act theory and the intellectual division of labour through the question of subaltern speech. This is evidenced by Spivak's very clear charge against Foucault and Deleuze's attempt to "know and disclose the discourse of society's Other,"[150] whereby she identifies that "the unrecognized contradiction within a position that valorizes the concrete experience of the oppressed, while being so uncritical about the historical role of the intellectual, is maintained by a

verbal slippage."[151] This is because the writing of feminist theory is also predicated on market forces and bourgeois attitudes of intellectualism based on imperial economic privilege that are also the methodological problems of the traditional historical narrative. Language, then, cannot be separated from questions of, for instance, labor, value, and markets within the global political economy that divide up the world(s). Spivak explains, "In the face of the possibility that the intellectual is complicit in the persistent constitution of the Other as the self's shadow, a possibility of political practice for the intellectual would be to put the economic under erasure; to see the economic factor as irreducibly as it reinscribes the social text, even as it is erased, however imperfectly, when it claims to be the final determinant, or the transcendental signified."[152] Likewise, "objective" history is contaminated with the pre-given political and economic world of imperial and colonial orders, and the "result can be structures of violence at the level of language and meaning."[153] Here, Spivak is extremely clear that the hegemonic position is an economic relation of global imperialism that necessarily pertains to one's positionality within the ruling class, and not merely the adoption of its ideological stance. This is to say that ideology and imperial economic materiality are inseparable when discussing questions of speech acts and subalternity.

Spivak, therefore, is attending to the limit of linguistic representation by underscoring how we are positioned within a world that is already enmeshed in uneven political, economic, and social orders. As such, any attempt to represent the subaltern as a subject-agent of one's own history, even in an altruistic attempt to rewrite history from the perspective of those deemed subaltern, will expose a ventriloquism inherent to the representation of the empirical question of the native informant based on the chasm of philosophy and globalism. As Spivak notes, the elite intellectual "cannot serve when we try to learn—outside of the closed circuit of the production of academic knowledge—the impossible response to the gendered subaltern. In her own separate enclosure, the

subaltern still cannot speak as the subject of a speech act. Dishing out our personal pain in academic bestsellers serves women on the make or catharizing voyeurs."[154] Thus, "for the 'figure' of woman, the relationship between woman and silence can be plotted by women themselves; race and class differences are subsumed under that charge."[155] This is similarly echoed by Ritu Birla who, alongside Spivak, suggests that "the empirical question of subaltern women, of the domains and possibilities of their ethical-political agency, is yet another deferral into alterity."[156]

It is from this perspective that we can read "Can the Subaltern Speak?" as cautioning against the way in which the subaltern is called upon to consolidate themselves as the Other of Europe and, in so doing, to reconstruct the European self as the agent of Western feminism through critical practices of writing, which seek to push the limits of giving and taking voice. We must, then, "confront how we are shaping others through those representations so as to reinforce the imaginaries and fantasies of the colonial, as well as the not-yet-decolonized imaginary."[157] Therefore, as feminists we are warned against an ethics of action that erases the representor and its role in constituting the defining characteristics of direct action, being reminded that "disciplines in humanities and social sciences remain dominated by studies of North America and Europe which, however attending to the specificities of their contexts, open up into putatively universal questions about the nation-state, capital, modernity, democracy, and justice."[158] In this sense, the subaltern's construction of subjecthood is also produced discursively by a structure of global power via imperial political, economic, financial, and legal institutions.

Drawing on Spivak, Mary J. Bunch thus contributes to our studies of sex work informancy with an important analysis of *Canada v. Bedford*. Specifically, Bunch outlines a theory of epistemic violence as it relates to the persistent contestation of sex workers' credibility and status as "knowers" in public and legal debates concerned with legislating sexual commerce in Canada.

For Bunch, the illegitimacy of sex workers as knowers is reinforced by moral judgements that posit sex workers as hapless victims who are prone to exploitation, and who are a polluting presence that harms communities.[159] These ideas can be read throughout the legal decisions that facilitated an important public debate about the criminalization of prostitution that was also staged by a number of different sex worker–led organizations.[160] In her reading of these interventions,[161] Bunch notes that while sex workers constitute a central focus of conversation in sexual justice legal challenges in Canada, sex work activists remain a group whose credibility with respect to their ability to represent themselves via experiential knowledge was consistently questioned by the state and the public, as well as by competing sex worker-led organizations.[162] Such a disposition reflects, for Bunch, the "paternalistic, moralistic, and stigmatizing undercurrents" of the legal process that "subtly, and at times, overtly, deny that sex workers can critically apprehend their own circumstances, and ultimately make meaningful contributions to public discourse."[163] This, she explains, is the effect of the stigmatization and dehumanization of sex workers' identities that erases their self-representation. The dilemma is that the absence and delegitimizing of sex worker knowledge indexes how "the erasure of sex worker speech, whether in the courts or on the streets, is a form of epistemic violence."[164]

Because of these practices, Bunch theorizes sex workers as embodying the status of subalternity. In this context, subalternity is a product of discursive practices that erase sex worker voices from participatory democracy.[165] In Bunch's reading of Spivak, subalternity is a relation of subordination that is rooted in epistemic violence predicated on the subjugation of knowledge. Epistemic violence, then, is grounded in speech act theory, where a group is rendered subaltern "when their speech falls outside of institutional lines of power,"[166] and is a means "by which Western hegemony erases non-Western, non-dominant ways of knowing."[167] As Bunch explains,

reading Spivak in this way highlights the asymmetries of power between hegemonic and subaltern women and exposes how seeking to represent the subaltern reverts to erasing their presence. Sex workers, as "disenfranchised speakers,"[168] therefore embody non-dominant ways of knowing. This renders them subaltern because subalternity, for Bunch, is a designated category of speech act ascribed to non-dominant voices that are systemically excluded from powerful and hegemonic language processes. This approach exposes sex worker subalternity because epistemic violence "is also a concern in studies of testimony."[169] By characterizing subalternity as an inequitable relation in speech act theory, Bunch evokes "the situated experience of being silenced" as a defining characteristic.[170] In this sense, epistemic violence is connected to the stigmatized judgements levied against sex workers that function to deny them legibility and legitimacy in the legal and intellectual process. As Bunch notes, "with respect to prostitution law, it is difficult to imagine any group more subaltern than sex workers, whose very communication is criminalized."[171]

In drawing this conclusion, Bunch reflects on the many approaches to prostitution that were taken up by the plurality of sex worker activists who lobbied in *Bedford*. This serves to underscore the heterogeneous nature of the sex worker population.[172] This is important because it underlines that such lively public debates among sex worker–led organizations were not entirely unproblematic. While I will not recite Bunch's discussion of the various debates again here, I will note that despite her discussion of the complexity of approaches and the diversity of intervening in sex worker advocacy parties, Bunch retains the dominant dyadic framework that has traditionally been used to frame feminist debates around sexual commerce in Canada. This point serves to illustrate the larger argument that I will come to shortly. For now, note that sex worker activists who lobbied in *Bedford* are grouped into two broad camps: abolitionists, which included the Christian Women's Association, the Native Women's Association of Canada, the Asian

Women's Coalition, and the Ministries of Justice, among others;[173] and proponents of sex worker rights, which included the applicants, Aboriginal Legal Services Toronto, HIV/AID activists, and constitutional rights organizations, among others.[174] Bunch reflects on how the two sides understood sexual labour in relation to structural issues like law, morality, theology, state power, and patriarchy, which highlights for the reader tensions between the two sex worker–led coalitions. This focus supports Bunch's theorization of sex worker subalternity as it relates to the asymmetries of power between these two camps, and how sex workers and activists within each camp represent their experiential and ideological positions concerning state intervention via *Bedford*.

One can identify two primary logics of epistemological violence and subalternity at play in Bunch's framing. On the one hand, despite Bunch's desire "not to suggest that sex workers (or any other group) are categorically subaltern,"[175] sex workers are, nevertheless, constructed as subaltern insofar as Bunch herself categorizes them as an identifiable population that are disenfranchised because their presence and voice is consistently erased. This is a defining characteristic of her theory of subalternity. The speech of sex workers is quite literally criminalized. She demonstrates this with her contention that, in *Bedford*, where the voices of sex worker activists are undermined, "their subalternity takes place in constant contestation."[176] The way in which the experiential knowledge of sex workers is deemed irrelevant or illegitimate to the legal process of decriminalizing activities related to prostitution means that sex workers "cannot presume that their knowledge will grant them the same credibility in discursive processes as people coming from more socially sanctioned speaking positions."[177] Bunch is right to point this out. As previously touched upon by Ivo and JJ, such refutations construct sex workers as a deviant population incapable of rational thought and in need of public interventionism. For Bunch, it also institutes asymmetries of power that position sex workers as subaltern because subalternity "is,

after all, not an identity category, but rather a relation in speech act theory."[178] This requires situating speech act theory within a Marxist theory of hegemony, which, for Bunch, refers to the ideology of the ruling class. As Bunch explains, "it is the widespread belief in hegemonic ideology—including by those that do not benefit from the ideology—that allows the status quo to maintain itself. It is impossible for those maintaining a hegemonic position to be subaltern—except to the extent that they possess knowledge that is being silenced by the very ideology they appear to subscribe to. The dominant ideology is always legible even to those that hold an alternative view."[179] Because Canada's approach to prostitution retains eradication ideology, for Bunch, anti-prostitution approaches are part of the hegemonic ideology that reflect society's status quo. She expands on this by noting that "adopting a hegemonic position does not require that one be a member of the ruling class, only that one share their ideological position. Sex worker rights, although potentially backed by the constitutional force of the Charter, challenge these hegemonic views."[180]

On the other hand, as Bunch keenly points out, hierarchies exist within the sex worker activist community. Epistemic violence, here, is marked by a dominant discursive construction of sex worker victimization embedded within the "totalizing structure of prostitution eradication ideologies"[181] Within these hierarchies, eradication ideology has rendered rights-based sex worker activists subaltern by participating in the supressing contestations of such a totalizing approach. As such, this ideology retains a hegemonic advantage in terms of how it dominates social and legal approaches to the sex trade in Canada. For Bunch, this is exemplified by the fact that "any suggestion that prostitution might involve something other than violence and degradation is rendered incoherent."[182] By way of example, Bunch points to a "testimonial quieting" that occurs when sex workers present self-knowledge in public discourse. In this process, they are met with a

refusal to be identified as agents who can embody the role of speaker as knower. Testimonial quieting is "also evident in dismissals of anecdotal evidence presented by sex workers who testified."[183] Their speech is erased rather than taken as legitimate, and there is a refusal to accept "the self-knowledge of sex workers that expresses a different reality."[184] For Bunch, this practice impacts upon rights-based sex worker activism in disproportionate ways as the dominance of the eradication ideology privileges the testimonies, narratives, and experiences of street-based sex workers who are "largely comprised of racialized, Aboriginal, transsexual, disabled, homeless, or those struggling with addiction."[185] Privileging the insights of this position, she argues, constitutes a form of epistemic violence because "these demeaning characterization of sex workers, especially when deployed as a rationale to deny their constitutionally guaranteed right to freedom of expression, their right to protect themselves by evaluating situations and negotiating terms of serves with clients, and to undermine their testimonial credibility, is an example of the complex interconnected ways epistemic violence took place during the *Bedford* hearings."[186] Furthermore, it "reproduces spaces of subalternity, perpetuating a wrong, for it absorbs and nullifies all protest to the contrary."[187] Such silencing, she explains, fades out rights-based subaltern speech, as "the language games simply do not allow space of dissenting perspectives and knowledge of sex workers to be heard."[188] Therefore, for Bunch, there are two "language games": one based on the disavowal of sex workers as an indefinable marginalized population, and the other based on an ideology of prostitution eradication and its impacts upon sex worker rights-based approaches.[189] Both, however, render sex workers subaltern through inequitable speech act theory.

Sex Work's Native Informant

I find Bunch's insights quite provocative. Her theory of epistemic violence parallels the sex worker–centred approaches of moral regulation scholarship in that, together, their studies on sex, morality, and the law underscore how sex workers constitute a particularly disenfranchised population explicitly based on the prohibition of their knowledge and speech in intellectual, legal, and public discourse. Bunch's studies of sex work experiences provide keen insights into how the speech acts of sex workers fall outside the lines of institutional power and legibility, rendering them under erasure. Moreover, both Bunch's insights and moral regulation scholarship provide compelling arguments for the importance of feminist research that legitimizes and humanizes outside participants/informants through participatory research collaboration. These endeavours excavate epistemic violence for the sex worker to reappear in feminist discourse as a subject of free will and choice.

However, although Bunch claims fidelity to Spivak's intellectual enterprises, I am puzzled that Bunch's theorization is not grounded in a theory of imperial and colonial power, as Spivak centralized in her own writing on the subject. In the following pages, then, I will build on Bunch's work by reflecting further on Spivak's theorization of subalternity with an extended examination of her contemplations on subaltern subject construction in *A Critique of Postcolonial Reason* (hereafter *Critique*). *Critique* is important to our analysis of sex worker subalternity because it revisits Spivak's initial theorizations of subalternity and epistemic violence as presented in "Can the Subaltern Speak?" where, as we are reminded in Bunch's work, Spivak takes up the idea of subalternity as it relates to identity-in-difference to chart the problem of othering inherent to the politics of identity. However, as I will contend, what is crucial to remember is that Spivak calls on us to reflect on the practice of linguistic signification with respect to colonial subject-object

formation, which cannot be emphasized enough. Moreover, Spivak makes explicit that adopting a hegemonic position within a colonial condition demands that one be understood as a member of the economic ruling class, and not only as one who adopts the dominant ideological position, as suggested by Bunch. Contrary to Bunch, Spivak maintains the centrality of class to hegemony. This is because all intellectual endeavours that allow for the possibility of speaking, listening, and knowing are presupposed by broader relations of labour and production. It is material relations of production that are embedded within texts, such as Bunch's, that provide the platform upon which discussions over speech and representation take place. Bunch's evasion of the imperial-economic context that occupied many of Spivak's reflections thus conceals that the very attempt to create knowledge is predicated on the undertaking of the labour to know, and that the labour to know through scholarly praxis is predetermined by a set of formal rules (conditions of speech and language), meaning that sets of knowledge are already in place that determine who can speak and how. Through this, knowledge about the subaltern is accumulated and produced, and through this, academics theorize subjectification.

Importantly, then, what Bunch's piece misses—in addition to Spivak's primary aims of interrogating subalternity as a relation of economic imperialism and the global intellectual division of labour—is Spivak's larger project of which "Can the Subaltern Speak?" remains foundational, yet, incomplete. In *Critique*, Spivak builds from "Can the Subaltern Speak?" and foregrounds her larger theory of the problem of researching subalternity and the processes through which the native informant undertakes the role of colonial authority. It is here that Spivak critiques the instrumentality of colonial women as sites of representation and, thus, expands her theory of the subaltern to provide a detailed caution against the celebration of the native informant that is so often valorized by the academy and anthropologists within the field. To be clear, for Spivak, the

native informant is an imagined perspective that is geographically marked as the colonial Other, and not merely those subjects who experience the eraser of their knowledge and speech. In not acknowledging this, Bunch risks collapsing sex and settler colonialism, and hence politicizing the idea that white sex workers could be conceived as Canada's colonial Other.

For example, Bunch herself admits that "indeed, sex worker rights are structured by an ideology of choice that prioritizes bodily integrity and sexual autonomy, which can be traced back to the history of liberal sexual reform and reproductive choice."[190] Here, Bunch locates the sex worker rights movement within the broader white Canadian feminist movement, which has largely been critiqued by Indigenous feminists for writing over the history of colonialism in its engagements with gender and sexual freedom.[191] We see this in how Bunch draws on submissions made by Aboriginal Legal Services Toronto (ALST) to give legitimacy to her theory of sex worker subalternity. She notes that ALST's advocacy for Indigenous sex trade workers denotes the struggles of subaltern sex workers against hegemony. She describes how ALST's urged "the court to instead address the state's responsibility in perpetuating the inequitable and oppressive circumstances that produce such restrictions in marginalized peoples' autonomy," maintaining that "criminalizing prostitution as a cure for colonial violence is highly problematic."[192] And, while ALST may support decriminalizing laws that make Indigenous women unsafe, Bunch sidesteps the reality that Indigenous women have long argued that they retain concepts of sex, autonomy, self-determination, and agency with respect to sex work and prostitution that should not be mapped over onto Euro-Canadian white liberal ones.[193] In this way, ALST's Indigenous subject becomes the accessible object of investigation drawn on the reconstruct a blank, though generative, text onto which Bunch projects her theory of sex worker subalternity. The Indigenous native informant is produced as distinct, and hence, difference is called upon to establish the truth of reflexivity and

self-determination of sex worker agency in the ascription of rights through speaking. However, Indigenous sex worker difference is simultaneously disavowed in its translation of difference into something familiar (i.e., liberal rights discourse).

The problem, then, is Bunch reproduces the foreclosure that Spivak warns us against through feminist essentialism that takes place through the projection of colonial imaginaries. The possibility of the native informant here is inscribed only as evidence of the production of feminist sex worker rights knowledge, expressed as a foreclosure by which the excluded non-European (Indigenous sex worker) subaltern Other is invented and produced, and then called upon to demonstrate the progress and reason of Bunch's sex worker subject. ALST's native informant therefore serves only to punctuate the universality of pro-sex ideology, as a prevailing of the truth of imperialist feminist ideologies. Therefore, in not being clear about the structuring of colonial and imperial-economic histories, and by theorizing sex workers as a universal category, Bunch reproduces essentialism through an ahistorical and political interpretation of sexual agency, gender, and bodily autonomy that imagines non-Indigenous sex workers as Europe's colonial subaltern Other. Thus, Bunch risks reproducing the very epistemic violence that Spivak cautions against, in that she ignores the intellectual division of labour and the Indigenous sex worker's definitive location within it.

Spivak, moreover, contends that the possibility of the production of the native informant is plagued by the fact that the "ab-original para-subject cannot be theorized as functionally completely frozen in a world where teleology is schematized into geography."[194] This is to say, that the native informant remains unrecognizable because of its limited access to being human, in that the native informant is defined and displaced within the hegemonic that is predicated on colonial materiality. As Spivak explains, the aim is "to track the native informant through various

practices,"[195] because "the native informant as a name for that mark of expulsion from the name of Man—a mark crossing out the impossibility of the ethical relation."[196] On the question of effacement, native informers also demand a selective memory that ultimately justifies imperial designs by depending upon notions of the authenticity of the voice of the Other, which selectively draws on personal accounts of experiential knowledge that are positioned as authoritative.[197] The native informant is mobilized as the figure that is continuously called upon to be inscribed but is similarly foreclosed upon that inscription. It is through this system of representation that an authentic perspective is read and the Other becomes knowable. In this sense, there is an intimate connection between the imagined Other, who the colonial subject is read to represent, and Western interventionism, which foregrounds this imagined Other as its object of study: "the colonizer constructs himself as he constructs the colony. The relationship is intimate, an open secret that cannot be part of official knowledge."[198] We see this again in Bunch's promotion of liberal rights discourse and speech act theory as the universal mediums of a successful sex worker social justice project. As Bunch explains, "speech act theory shifts the solution from the liberal diversity politics typical of the Canadian public sphere, where difference might be erased, appropriated or tokenized, to a social justice approach" because it demands "not only inclusion of different voices in debates, but also that difference remain visible, and the relations of power between these diverse speakers be addressed."[199] Thus, by including voices like ALST into a collective arena for the purpose of political speaking, Bunch expropriates the non-presence of the Indigenous Other to articulate a sex worker rights project, which in turn mirrors the performance of imperial ideological structures by establishing the "native" as the self-consolidating Other (Spivak's epistemic violence).

The celebration of the Otherness of the native informant therefore inevitably produces the normative identity of the self-same Western image of being with all its hegemonic statuses. Such

valorization can only really provide ideas of social redress through notions of rights that point "at Eurocentric strategies of narrativizing history, so that Europe can congratulate itself for progress, even by default."[200] As Spivak explains, "this is the theatre where today's 'native informants' collectively attempt to make their own history as they act (in the most robust sense of agency) a part they have not chosen, in a script that has as its task to keep them silent and invisible."[201] This is because, for Spivak, "establishing the 'native' as self-consolidating other"[202] is itself a fundamental form of epistemic violence. The role of Bunch's native informant, then, is to give authority to expertise and to legitimate her investigation into Euro-centred sex worker marginality.

All of this is to say that while Bunch's piece provides important insights into speech act theory, her analysis of the relationship between speech act theory, sexual labour reproduction, and social subject production remains both the strength and weakness of her study. For instance, she interprets subalternity to mean marginality in a narrow sense, which overlooks a key problem that could have been avoided had she rooted her theory of epistemic violence in an analysis of imperial and colonial economic orders—such as in which Spivak's theory of subalternity is explicitly foregrounded. Instead, Bunch twice collapses Spivak's colonial subject into a homogenous category of sex worker as native informant, whose voice Bunch attempts to recuperate. The first occurs in her inability to "imagine any group more subaltern than sex workers, whose very communication is criminalized."[203] The second is apparent within the general dyad of abolitionist versus rights-based sex worker activism, where the subalternity of rights-based sex worker activists "is compounded by their stigmatized social status, and their location outside of the hegemonic and totalizing structure of prostitution eradication ideologies."[204] This is despite the fact that Bunch herself acknowledges that the rights-based approach is backed by hegemonic colonial state apparatuses and global imperialism's economic markets. We are presented, then,

with an interpretation of sex worker marginality that places the experiences of people who Spivak theorized as subaltern—migrant or Indigenous women for instance, who are positioned as colonial subjects within the global economic system of imperialism—completely under erasure. It must be noted that Spivak has warned us against "subaltern essentialism," which "denies the depredations of history."[205] She contends that "varieties of feminist theory and practice must reckon with the possibility that, like any other discursive practice, they are marked and constituted by, even as they constitute, the field of their production."[206] Her discussion of history is critical of this, in that it reflects "efforts to present Europe as an Other," which for her involves "political impatience with the matter of Europe."[207] For instance, in her reflection on Kant, Spivak further reflects on these kinds of disavowals and the structural necessity of lack to question if it is in "this rift that the seeds of the civilizing mission of today's universalist feminist were sown?"[208] Aubrey Neil also points to this as "structures of violence at the level of language and meaning."[209]

At the same time, Bunch calls upon the native informant to make possible the native informant's impossible perspective that is written within the double-bind, and which merely seeks to resketch the normative identity of the Western self. In the previous chapter, I identified this normative identity in my analysis of *Canada v. Bedford*, which reconstructs a disembodied neo-liberal secular humanist sex worker subjectivity (see chapter 1). As in *Bedford*, Bunch's subaltern sex worker subject understands itself as an "economic agent"[210] under the universal rubric of neo-liberal coloniality, where sex is conceived of as a secularized conduct in which exchange of money for sex is a means of merely "entering consensual economic relationships."[211] Bunch is unambiguous about being "unclear why providing a sexual service is different in this respect than any other form of work."[212] The problem, then, is that by omitting Spivak's analysis of colonial and imperial-economic relationships, "the Other will always be constituted by way of

consolidating self."[213] This is the trajectory of the idea of researcher responsibility by a group of feminists who intend to "right" a series of wrongs that are assumed through informant agency as choice. Feminist theorists of the subaltern who do not examine the native informant's positionality within global imperial and/or social movements thus fail to realize that "the historically established discontinuity between themselves and the subaltern counsel self-help with great supervisory benevolence."[214] There is an assumption that "giving voice" and "listening" somehow overcome the relations of power that authorize the need to undertake documentation of the lives of the Other. I read this in Bunch's collapsing of colonialism and sex. This repositions a universalist experience of sex worker subalternity within the imperial and colonial economic designs and writes a feminist theory where the colonial Other is rendered invisible within intellectual and political processes. This is preconditioned by Bunch's assumption that colonial knowledge formations and legal praxis can liberate Europe's colonial Other, while denying the specificity of the asymmetries of power between colonized and colonizing population. Moreover, it defaults to the colonial assumption of the Western European conceptual grammars being the true medium through which progress and freedom can be translated and made real. This is important, as Spivak reminds us, because it speaks to how Euro-Canadian feminism implicitly suggests that the subaltern's obvious inability to do so, that is to speak, without sustained supervision is proof that the subaltern needs continued Western intervention.

Time and the Native Informant

What Spivak has illuminated is that the problem with sex worker–centred native informancy is that it uncritically embraces the idea of an authentic self-reflexive subject whose

memoirs are assumed to be isolated from the linguistic structures of economic imperialism and colonial knowledge; thus, in presuming it can minimize the role of the investigator, it makes effacement anthropology's task. We can read this in Bunch's account of discursive justice, which envisions "a plural, democratized public sphere and the equitable participation of subaltern counter-publics within it."[215] As Glenn Coulthard (Dene) points out, these remedies for injustice aid in the maintenance of subversive and oppressive configurations of colonial structures of power, which leave intact the assumption that colonial recognition politics constitute the appropriate framework within which colonized peoples "might more justly be included, or from which they could be further extended."[216] He explains further that "the negative effects of this power-laden process of discursive translation" has served as a "reorientation of the meaning of self-determination for many Indigenous peoples in the North."[217] Empowerment from critical self-affirmation and ethics of subjectification, as far as Coulthard is concerned, must cautiously be directed away from the assimilative lure of liberal recognition politics.

Critically, Simpson also speaks to an ethics of refusal with respect to anthropological recognition and the institutionalization of ethnographic knowledge. For Simpson, anthropology is wedded to the imperatives of settler colonial desire and fetishization of authenticity that sets the ethnographic research agenda. As such, anthropology links power to the production of texts and tell us much about the registers and circuits of knowledge production that accompanies settler colonialism because as a disciplinary iteration ethnography reproduces itself as the imagined voice of the Indigenous people. Specifically, for Simpson, anthropology's ethnographic subject problematically depends on a model of a "good Indian" who serves as a baseline for knowledge and identity construction.[218] The "good Indian," however, is not threating to settler colonial projects, but as a conduit of the "Native perspective" is knowledgeable about his/her culture and

history and is forthcoming about knowledge that services the interests of whiteness and colonialism. For Simpson, "knowing and representing peoples within those spaces and places" requires more that military might; it also requires methods and modalities of knowledge "in particular, categorization, ethnological comparison, linguistic translation, and ethnography."[219] The process of elimination for the appropriation of land that marks the settler colonial project therefore requires the power relations shaped by ethnographic dialogues that service the obtaining of defining place and obtaining space, as well as access to resources within them. This is because the political project of settler colonial dispossession and containment requires the fetishization, entrapment, and distilling of Indigenous discourse to further naturalize settlement. As an archive, then, ethnography's data easily authorizes the nexus of settler colonial domination because it is structured through experiences of exclusion that are tethered to historical processes and current material formations. For example, by collapsing the unique realities of settler colonial domination with other theories of violence and relations of subjugation, as I have argued Bunch has done in her collapsing of sex and settler colonialism and Indigeneity with subalternity, her ethnographic accounts that seek "reform proper governance" conceptually and necessarily, Simpson points out, essentialize power "relationships that enable and mark colonial situations in Empire: warfare, commerce, sex, trade, and missionization."[220] Obscuring the specificity of settler colonialism does attend to Indigenous concerns about how relations of sex work domination are inherently the product of settler colonialism primary preoccupation of territory. Thus, feminist ethnography finds itself entangled within the epistemic systems that authorize the ongoing structure of settler colonization.

In response, Simpson utilizes the concept of "ethnographic refusal" to address the idea that Indigenous researchers/anthropologists do not open up their communities to the totalizing view of

anthropologists, for knowledge as power. This bridges disciplinary power with Indigenous sovereignty "as a methodological issue in and of itself, because it speaks from the jurisdictional authority: the right to speak, and in this case, not to speak."[221] Here, Simpson reframes Coulthard's "turning away" into "the ambit of refusal—of simply refusing the gaze, of disengagement—and to the possibilities that this structures: subject formation, but also politics and resurgent histories."[222] Moreover, Simpson's ethnographic refusal turns on its head the feminist suggestion that the subaltern and the Indigenous informant, should and must, indeed, speak. The refusal, in turn, subverts the instrumentalization of fetishizing Indigenous woman for the intellectual aspirations of white Euro-Canadian feminists who draw on them to legitimize their intellectual endeavours of producing bodies of colonial feminist texts.

The ethnographic dilemma, as Wanda Nanabush (Anishinaabe) also argues, is similarly bound by temporal power and thus has different meaning and political implications for non-Indigenous interlocutors.[223] Focusing on Indigenous agency, she notes, albeit necessary and progressive, does not obviate from the temporal danger of reinvesting in the colonial desire the authentic Indigenous person who must also be traditionalist. More so, texts that participates in the removal of signs of contact also means the removal of any signs of colonial violence, thereby convert possible guilt into nostalgia. The "nostalgia for the lost origins of man is a symptom of the displaced guilt over the destruction of 'primitive' cultures and, by association, the destruction wrought by colonialism, industrialization and urbanization."[224] Texts that retain such removals, like Bunch's, are an act of colonial preservation that at once attempt to speak back to the dominant narratives of colonialism's "vanishing Indian" and at the same time reconjure this narrative as salvaged objects that "are ruptured from their social contexts, dehistoricized, objectified, and reworked within Western imaginaries."[225]

V.Y. Mudimbe expands our thinking on this point by highlighting how such writing practices are networked with colonial epistemic power.[226] He, like Spivak, Simpson, and Nanabush is critical of anthropological discourse's consolidation of the Other[227] and cautions against the epistemological ethnocentrism that sustains anthropology as a system of knowledge.[228] For Mudimbe, anthropology discusses the European process of domesticating the native who must be identified by European intellectual signs and symbols. Anthropology seeks to build bridges between the subject and its object, producing clear "representations of their own creative experience"[229] that the anthropologists archives. Like this, anthropological texts constitute genres of speeches that contribute to the invention of the native based on philosophical interpretations about searches for primitiveness and the hierarchies of civilizations. Anthropological science is predicated on an epistemological order that, "silently but imperatively, indicates the process of integrating and differentiating figures within the normative sameness."[230] What is more, the anthropological search is also part of an essential order that similarly unites the disciplines of anthropology and history. The methodological distinctions may be clear—a historian's techniques are based on documents and data whereas the anthropologist constructs an understanding based on observation— but in both cases, scientists face systems of representation that differ from each member of the group and together differ from the representation of the investigator. Mudimbe explains:

> First, both disciplines are concerned with remoteness and otherness: while history deals with remoteness in time, anthropology deals with remoteness in space. Second, there is the same, namely, a better understanding of temporally or spatially different societies, and, thus, a reconstruction, "a rewriting" of what "has happened," or of what "is happening" in those societies.[231]

Both, undertake 'systematic studies' of its object of study, locating and describing its courses and evaluating its credibility which reduces "people to the status of mere objects." In so doing, they seek to reveal physical and cultural geographies that are by-and-large interested in explaining "intellectual procedures for reducing non-Western otherness to Western sameness; or, from a diachronic point of view, one of establishing their order of appearance."[232]

With this in mind, consider, for instance, the positioning of Sarah Hunt's contribution in *Selling Sex*. In responding to the use of colonial law to decolonize sex work, Hunt notes that "looking to Indigenous teachings, we must work within our own communities to determine the best ways to support people in the sex trade."[233] She continues, "Debates around decriminalization and prohibition are focused on a legal system that is inherently oppressive to Indigenous people, as the dismissal of Indigenous sovereignty and Indigenous law depends upon the perpetuation of the myth of inferiority of Indigenous peoples and their failure to count as legitimate subjects."[234] In *Selling Sex,* Hunt is positioned as native informer whose reflections are situated as ethnographic sites of learning about pro-sex ideology from the viewpoint of Indigenous women and their experiences of racial and gender inferiority. The implications of this are important. While there is no doubt that providing empirical accounts of Indigenous experiences is important to making sense of sex trade realties, the problem is that the origins of the investigation's epistemic power are concealed. Here, I am suggesting that the ethnographic encounter requires the construction of spatial difference based on the anthropological need to discover and know. For instance, the basic methodological premise of the ethnographic encounter is the necessity of constructing difference and operating within it; a native informant must affirm their difference as the precondition of determining whether they can serve as an object of inquiry. The ethnographic encounter therefore demands that Hunt be constructed as an object of knowledge of colonial difference at a spatial

distance from the authors who seek to gain knowledge of other sex worker communities. At the same time, it assumes that readers can be given access to authentic knowledge about Indigenous women, which simultaneously exposes the pre-existence of a colonial spatial distinction between Indigenous women and the reader that ethnography recuperates and affirms.

The encounter between Hunt and the authors of the edited volume thus involves spatial boundaries because the methodological construction of Hunt as informant marks her as an outsider, but one whose knowledge can be translated into something familiar. The exchange, then, from one culture to another, attempts to translate the outsider from one system of meaning (Other) to another (Same), though, what is learnt from Hunt remains narrated through the spatial language of anthropological differentiation. In other words, "ethnographic translation produces knowledge of the foreign through a radical *de-terming* of the foreign."[235] There is an assertion and disavowal of Indigenous differences, and hence, what Spivak describes as the impossibility of the figure of the speaking native informant through effacement. Meaning, Hunt must at the same time remain within the encounter—spatially zoned and constructed an Other—while also rejecting such status through her inclusion as collaborator and informant. The problem, however, is that the proximity of ethnographer to the Other leads to the affirmation of difference.

By ascribing to Hunt the status of "knower," "author," and "speaker," her position as native informant gives the appearance that she has authorized our knowledge on Indigenous sex work, and thus appears to transgress power paradigms that traditionally subvert subjugated knowledges. Sarah Ahmed describes this as the process through which the violence of translation and ethnography is maintained "as an exploratory and accumulative discourse: we get close to the object in order to gain more knowledge."[236] Informers, like ethnographers, similarly reconstitute the space of the "Same" and the "familiar" by defining themselves in relation or proximity to that

of the reader, who they are tasked with guiding through the process of coming to know. It is for this reason too that ethnographic knowledge is constructed through spatial distribution. The epistemic power of ethnographic methodology rearticulates spatio-epistemic boundaries, wherein the Other is necessarily constructed as existing in a state of ontological lack recuperated by the ethnographer, who seeks to transform this "lack" when translated through the familiar structure of ethnographic debate. Simpson similarly points outs out the spatial relations of native informancy within a settler colonial context. She notes for instance that power is attached to texts by the factors of distance and difference. The ethnographer gains greater legitimacy the close they appear to be to their Indigenous informant. Understanding "the space that the researcher placed between himself/herself and the culture and the people that s/he studied" is critical.[237] Spatial dimensions of ethnographic knowledge its informant to legitimize colonial documentation, which inaugurates the authenticity of the research about Indianness. There must, however, be an acknowledgement of "the asymmetrical power relations that inform the research and the writing about native lives and politics, and it does not presume that they are on equal footing within anyone. This presumption of equal footing is false."[238] It is the evasion of unequal footing that undercuts feminist elevation of a liberatory project.

The problem, therefore, is that Hunt remains a contributor in an unequal sense through her objectification as an object of ethnographic inquiry and through the confirmation of her difference that precedes her inclusion as native informant capable of speaking and knowing. Spivak, if we recall, locates this problematic within the material conditions and colonial divisions of labour that are the products of global economic imperialism. In other words, the inclusion of "informants does not mean an overcoming of the power relations that allows the ethnographer to transform others into strangers, in order to mark out a field (of knowledge)."[239] The redefinition of informant as

collaborator and equal partner cannot conceal the power relations of ethnographic knowledge. Moreover, Ahmed notes that it implicates the authors of the text in the fantasy—"that it is the 'I' of the ethnographer who can undo the power relations that allowed the 'I' to appear. Such a fantasy allows the ethnographer to be praised for her or his ability to listen well. So, it remains the ethnographer who is praised: praised for the giving up of her or his authority."[240] Perhaps this is why Hunt revisited "Decolonizing Sex Work" in the article "Representing Colonial Violence," which she published two years later.[241] Here, drawing on Spivak, Hunt provides a forceful response to feminist intellectualism and epistemic violence. For instance, Hunt calls attention to how feminist social science and judicial interpretation embodies the more general principles of a normative and colonial order that reconstitutes the foundational violence of colonial sovereignty and its legal hegemony. Hunt celebrates Spivak's writings on epistemic violence, which she describes as concerned with "an ethics of responsibility" that "cultivate[es] the capacity to respond to the 'other' without demanding resemblances as the basis of recognition."[242] Hunt commends Spivak for making clear that "the imposition of colonial knowledge has served to erase Indigenous systems of knowing and being and has delegitimized Indigenous socio-legal norms and identities. Knowledge production within dominant institutions involves epistemic violence."[243] This also means "taking seriously the ways in which the subjectivities of non-Indigenous sex workers are constructed in relation to those whose subjectivities are denied."[244] For Hunt, then, knowledge production within dominant institutions necessarily involves epistemic violence. In this way, I read Hunt as responding to the mobilization of her work for the purposes of non-Indigenous feminist agendas that pushes back on fetishism of native informancy to instead highlight the coercive nature of the double-bind of representation in which Indigenous women and scholars find themselves. It honours the linkages between Indigenous anti-carceral agendas to those of the pro-sex feminist

movement, while also belabouring the danger of collapsing and homogenizing the distinct epistemic approaches to sexual freedom.

On the other hand, Naomi Sayers and Elizabeth James find themselves in a similar predicament with their contributions to *Red Light Labour*, but in a way that draws our attention to the temporal orientations of ethnographic methodology. Here, I will suggest that ethnographic encounters of Sayers and James require the production of their difference to demonstrate a teleology of sexual progress. To begin, Sayers recalls her encounter with "an Indigenous woman who is a prominent community leader and who aligns with prohibitionist views on sex work"[245] that left her in fear of harassment to such an extent that it silenced her. Here, Sayers as native informant self-identifies as potentially the only person with experience in the sex trade who supports a rights-based approach including "the right to live free of violence."[246] In a similar way, James is positioned as a generational Indigenous sex worker informant who speaks to her understanding of the relationship between sex work and colonization, as well as her mother's "experiences of systemic racism."[247] James's contribution supports pro-sex feminist affirmations of "the salience of intersecting identities" in the sex industry and ways "that poverty, abuse, colonization, and privilege resonate with my experiences and those of my sex-working family"[248] as Indigenous peoples.

As objects of ethnographic curiosity, these experiences represent ethnography's embeddedness in temporal distance. For instance, the knowledge is presented as "something that inevitably is 'past' in relation to the acts of recording interpreting, and writing."[249] Native informancy, then, is a reflexivity that "asks that we look back."[250] Textualized memory in this way functions as a temporal modality that is translated and transcribed into ethnographic terms. As an epistemic issue, it fundamentally rests on the negation of the time of the Other by which

ethnographic memory preserves its colonial object of inquiry in the past; it demands a selective memory "of the past" that temporalizes interpretive categories, reclassified within an act of acquiring anthropological feminist knowledge. As Mudimbe reminds us, these classifications are interpreted according to a methodological grid of analysis and generalization that can only really speculate about the meaning and authority of the contributions because when ethnographers "return from the primitive context, [they] refer to the same context"—that is, epistemic systems of the West.[251] For Mudimbe, anthropological intellectual construction, in this sense, is very much a questionable exercise in intervention.

It is the same for Fabian, who argues that the ethnographic practice of distancing necessarily involves a politics of comparison that denies the shared time of its object of inquiry. As a spatial and temporal classificatory schema, ethnography is far from innocent; it is, in fact, inherently hierarchal. It places its Other at a distance in such a way that it excludes its informants from participating in the dialogue of the scholars, except in terms of their role and function as a methodological site of comparison. This is one of the ways that ethnographic discourse is preoccupied with the study of the distance of the Same from its colonial Other, as "the practice of giving accounts of other cultures and societies in the present sense."[252] This is because, for Fabian, ethnographers are only really concerned with engaging the native informant for the purpose of addressing their readers to convince them of their findings[253]—in our case, the emancipatory potential of pro-sex feminist ideology. Thus, Fabian maintains that ethnography evacuates its objects of study (Indigenous peoples) from the dialogue between author and audience, reducing the native informant to referents of anthropological discourse. As referent, the native informant signifies temporal presence (author/reader) and absence (informant/object), which denies coevalness (i.e., denial of the condition of shared time).[254] This process is presupposed by the

objectification of the object of study that must be reduced to a tool for the purpose of scientific study and comparison that ethnographers institutionalize through the production of feminist knowledge. The positioning of Hunt, Sayers, James, and "Others" in feminist texts like *Selling Sex* and *Red Light Labour* thus operates as time-distancing mechanisms that suppress the capacity of simultaneity by placing the feminist author and reader in a privileged frame of time and space, from which they cast a Eurocentric gaze upon Indigenous subjects. The institutionalization of their feminist pronouncements is inconceivable without the denial of their participants' coevalness, and in not questioning the telos of their interpretive temporalizing, these feminist ethnographies evade the possibility of reciprocal dynamics of intellectual exchange.

Additionally, the editors of *Red Light Labour* characterize the volume as serving "to highlight the paradox that many ostensibly progressive social justice groups (e.g., organized labour and feminists) fail to align with, or actively work against, the efforts of sex workers to realize their human, labour, and social rights."[255] We are also reminded that those who do not adopt the rights-based strategies as they are define by the editors are abolitionist/prohibition feminist who are working against these ostensibly progressive social justice movements. Both Bunch and certain contributors to *Red Light Labour* cite, for instance, the Native Women's Association of Canada as one such illustration.[256] Likewise, in *Anwar* and *Bedford*, the polarization between these two ideological approaches is also situated within the more recent production of feminist knowledge over a twenty-year period that speaks to the changing contours of public understandings of the sex industry. These texts, then, are already working within a specific mode of historical time-consciousness embodied by linear progressionist intellectualism. It is within this context that both Sayers and James attest to the violence of anti-sex work ideology. Their reflections reactivate the grammars of "progressive rights-based" approaches as polarized against prohibition so that their

informancy can highlight the violence of anti-sex work prohibition ideology and the need to progress beyond it. Fabian refers to this form of designation as typological time.[257] Categorizations of polarity are often used to characterize when certain styles of thought are seen to be "primitive" as opposed to "modern," and activate anthropology's allochronism that denotes a linear conception of historical time.[258] For Fabian, this is also a means of denying objects of study coevalness. For example, we can read a denial of coevalness as taking place when rights-based approaches to sex workers are imagined as progressive and modern and prohibition or abolitionist approaches are conceived of as oppressive and backwards. These conceptualizations designate temporal distances between prohibitionist and rights-based sex trade politics. In this way, I read *Red Light Labour*'s native informants as serving to reconstruct a temporal distance between rights-based subjects and anti-sex worker feminists, wherein native informant experience seeks to confirm the backwardness of the anti-sex work approach. As such, the framing connotes a teleology of sexual politics that is propelled by the ethnographic encounter that acts as a temporal barometer of progressive sexual politics in how it narrates a Western feminist social movement regarding sex worker rights. It depends on the production of a temporal difference where Sayers and James as Indigenous Others negotiate the progressive movement between opposing ends of ideological spectrums. It confirms the possibility of progressive movement between junctures, expressing the sequential order of gender and sexual progress between opposing ends. Thus, as an indication of the relationship between the subject and the object of the ethnographic encounter, native informancy expresses a temporal sequencing.

All of this is to say, native informancy and ethnographic encounters are a question of space and time. Thus, the methodology of sex worker–centred approaches operates through the reconstruction of spatial and temporal difference so that even when native informants speak, the

speech is always mediated by historical relations of spatiotemporal differences and, hence, violence. What is at issue, then, is not so much who is speaking or who can be spoken for, but rather the relations of power and production around the text, which necessarily demand unequal relations of speech, knowledge, and documentation based on the spatiotemporal distance between native informants and the ethnographers, and between the native informant and sex working populations. This is what Neil similarly refers to when she discusses how "social violence gets build into the narrative language of the way historians recreate the world of the past."[259] That is, research is infected with the internationalities of the pre-given political and economic world wherein violence recreates itself through linguistic deferrals and signification. Because of this, Neil explains, subjective certainty is analogous to "the political equivalent of objective certainty in the physical sciences."[260] As such, the native informant archives a selective memory of imperial hegemony to produce a collection of "real effects" by offering a totally de-contextualized account of being "included."[261]

These insights should not be easily discounted; as Fabian contends, the idea that knowledge is power "applies to anthropology as much as any other field of knowledge."[262] For Fabian, anthropological praxis is linked to colonialism and imperialism because what it required as a discipline was a process of universalization that served to recuperate the teleology of progress to now "discern in the sequence of things."[263] This is embodied as the secularization of time, which expresses the temporalizing ethos of anthropology through discourses of objectification and investigation. Anthropology, then, must be understood "as temporal relations. Dispersal in space reflects directly, which is not to say simply or in obvious ways, sequence in time."[264] One "cannot insist too much that these links were epistemological, not just moral, and ethical. Anthropology contributed above all to the intellectual justification of the colonial enterprise."[265] It promotes a

schema in terms of which not only past cultures, but all living societies were irrevocably located within a temporal scale that employs discourses of Otherness to temporalize difference. In this sense, native informants' authority as knowledge producers and knowers is a relational power based on their proximity to Bruckert el al., whose project is the affirmation of a "modern" articulation of sex worker politics.

Apart from that, we are reminded by Zahir Kolia that it would also be unwise to ignore the socio-historical aspects of modularity, or to ignore "questions concerning the translation of secular and non-secular modes of difference."[266] Here, Kolia pushes us to think about the scandal of feminist translation. Scholars, Indigenous and otherwise, who write about Indigeneity and coloniality have also punctuated this, pointing out concerns about the problem of secularity, language, and translation. For instance, Jesse Taken Alive, a former Standing Rock Sioux Tribe chairman and Lakota language and culture protector, explains that Lakota language "comes from the Creator" and is therefore embedded with the sacred meanings of Lakota transcendent epistemologies. [267] Ivo and Hunt have made similar observations. Ivo, for instance, in discussing Indigenous youth sex work, explained the following: "In my home territory of Cowessess First Nation, we had over 120 different words for sexuality and over 40 for gender alone; we viewed sex very differently."[268] This is also perhaps why Linda Tuhiwai Smith (Ngati Awa and Ngati Porou) maintains that "Western disciplines are as much implicated in each other, as they are in imperialism."[269] Representational writing may play an important role in lending an aura of truth to its topic, but it also has its dangers. Reinforcing oppressive colonial styles of discourse that can never be "innocent" is one of them.[270] The operation of the discipline of anthropology is that knowledge of the Other, like its culture and raw materials, is "discovered, extracted, appropriated, and distributed."[271] Smith, alongside Spivak, emphasizes that the anthropological archive conveys

the process through which Europe draws "upon a vast history of itself and on multiple traditions of knowledge"[272] to construct stories of power that attest to the truth of the superiority of Western European knowledge systems and the project of modernity.[273] Anthropology, these scholars rightly point out, comments upon spatiotemporally in such a way as to achieve two ideologically fundamental tenets: It simultaneously maintains a savagery/civilization schism and positions "the savages" in the temporal realm of pre-history (via conjectural theories of the "state of nature," taxonomies of race, theories of social diachrony that exclusively admits "written" history, technological "backwardness," and so on), with civilization being its normative destiny through social evolutionism. It relies on the conceptual systems and categories that were produced through colonial knowledge systems, sharped by the reification of the Western conceptual gaze. Unable to imagine outside its own epistemologies or understand forms of life that are aberrations within its frame of reference, anthropology remains a site of struggle for those who remain "under the gaze of Western imperialism and Western Science."[274] The representation of sex work that remains dependant on this finds itself in tension with anti-colonial struggles of those constructed as a "wretched" category.

What these scholars are rightly pointing out, then, is that feminist anthropological principles are founded and legitimized by secular colonial sciences that demand acceptance of the thesis of the Western philosophical model from which all conceptual lessons and meaning can be derived, and which indexes the epistemic frontiers of the Western power-knowledge system. Echoing Zubairu Wai, sex work–centred approaches remain "colonized within the epistemic structures of a system of knowledge that is both a product of and reflection of the power of Western discourses."[275] The archive of its discipline not only comments upon but recreates a colonial world and preserves the material politics it requires to sustain asymmetries of power that privilege the

location of the Western anthropological feminist subject and the legitimacy of epistemic colonial hegemony. Anthropology classifies things through racialized colonial discourse. Morally, it retains the same colonial project. Through the classification of forms of labour, legal systems, and institutions of education, as well as the codification of everything from language to religion, anthropology's colonialist discourse seeks to transform those who are subjected "through constructs emanating from and structuring the worldviews of the colonizers."[276] All colonial structures, including anthropology, have as their task "constructing a new world and thus extending their own; as such they inevitably impose their own world with its attending social practices and systems of belief on those they colonize."[277] It is through the process of archiving that there retains a promise that the Other can be admitted into the world that colonialism is making.

Final Thoughts

This chapter does not claim to step outside of the very critique that it has levied here. Instead, my aim and purpose are to contribute to feminist debates on sex work in Canada an understanding that there is a significant gap in analyses of how feminist communication takes place and an understanding of the epistemological asymmetries that precondition those communications. Specifically, I have sought to explore epistemic violence as it relates to sex worker anthropology and the native informant. While insights from within the scholarship of moral regulation cannot be easily discounted, there remain important theoretical limitations in anthropology's instrumentalization of the native informant. I encourage sex worker–centred studies in Canada to contend with them. The institutionalization of anthropology is based on the organizing principles and order of Eurocentric foundations of knowledge that underwrite the feminist intellectual

division of labour and that account for non-European alterity through claims to power. It operates, as Fabian has pointed out, as a device to construct colonial objects, which Spivak, Mudimbe, Simpson, and others have indexed as a process reflecting a colonial archive of the European and white Canadian feminist self and hence the intellectual justification of imperial domination within Canada's settler colonial context. The discourses that anthropology produces speak to the same signs and symbols that Europe has always used to dehumanize and conquer, while presenting itself as outside of them. In the next chapter, I continue with this line of inquiry by further examining moral regulation feminist methodologies. Building from chapter two, chapter three will interrogate *Bedford* through the lens of moral regulation feminist materialism, and I will examine the implications of the production of a secular-humanist sex worker subjectivity. The aim is to think about how moral regulation theories of sexual labour have imbricated the sexual matrices of colonial materialism in the production of feminist knowledge and subjectivity.

Notes

[1] See, for example, Sonia Lawrence, "Expert-Tease: Advocacy, Ideology, and Experience in *Bedford* and Bill C-36," *Canadian Journal of Law and Society* 30, no. 1 (April 2015): 5–7, https://doi.org/10.1017/cls.2015.3; Emily van der Meulen, Elya M. Durisin, and Victoria Love, eds., *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013); Megan Lowthers et al., "A Sex Work Research Symposium: Examining Positionality in Documenting Sex Work and Sex Workers' Rights," *Social Sciences* 6, no. 2 (April 2017): 39, https://doi.org/10.3390/socsci6020039.

[2] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed. (London, Zed Books, 2012), 1

[3] Ibid.

[4] Ibid., 70.

[5] Audra Simpson, Mohawk Interruptus: *Political Life Across the Borders of Settler States* (Durham: Duke University Press, 2014), 2.

[6] Ibid., 101.

[7] Zubairu Wai, *Epistemologies of African Conflicts: Violence, Evolutionism, and the War in Sierra Leone* (New York: Palgrave Macmillan, 2012), 49.

[8] Ibid., 41.

[9] Bill C–36: An Act to Amend the Criminal Code in Response to the Supreme Court of Canada Decision in *Attorney General of Canada v. Bedford* and to Make Consequential Amendments to Other Acts, 41st Parliament, 2nd Session, 2014, https://www.parl.ca/LegisInfo/en/bill/41-2/C-36.

[10] Ibid., para. 9.

[11] Chris Bruckert, "*Protection of Communities and Exploited Persons Act*: Misogynistic Law Making in Action," *Canadian Journal of Law and Society* 30, no. 1 (April 2015): 1, https://doi.org/10.1017/cls.2015.2.

[12] Andrea Sterling and Emily van der Meulen, "'We Are Not Criminals': Sex Work Clients in Canada and the Constitution of Risk Knowledge," *Canadian Journal of Law and Society* 33, no. 3 (December 2018): 291–308.

[13] Ibid., 292.

[14] Colin Perkel, "Judge Rules Parts of Canada's Prostitution Laws Unconstitutional in London, Ont. Case," *Global News*, February 21, 2020, https://globalnews.ca/news/6580684/ontario-judge-rules-bill-c-36-unconstitutional.

[15] *R. v. Anwar*, [2020] ONCJ 103. https://www.canlii.org/en/on/oncj/doc/2020/2020oncj103/2020oncj103.html?autocompleteStr=Anwar&autocompletePos=2

[16] *Anwar*, para. 26.

[17] Ibid.

[18] Ibid., para. 4.

[19] Ibid., para. 161–79.

[20] Ibid., para. 28.

[21] David Asper Centre for Constitutional Rights, "*Bedford* Factum of Interveners," 2012, SCC 34788, https://www.scc-csc.ca/WebDocuments-DocumentsWeb/34788/FM097_Intervener_Asper.pdf.

[22] *Anwar*, para. 84.

[23] Ibid., para. 39–49.

[24] Emily van der Meulen, "When Sex Is Work: Organizing for Labour Rights and Protections," *Labour* 69, no. 69 (Spring 2012): 147–67, https://id.erudit.org/iderudit/1011332ar.

[25] Andrea Sterling, "New Risk-Spaces, New Spaces for Harm: The Effects of the Advertising Offence on Independent Escort," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 94–103.

[26] *Anwar*, para. 46.

[27] Ibid.

[28] Ibid., para. 89.

[29] Ibid, para. 48.

[30] Ibid., para. 83.

[31] See Zach Leggett, "The Unconstitutional Nature of the Criminalisation of the Purchase of Sex in Canada: *R v. Anwar & Harvey* 2020 ONCJ 103," *The Journal of Criminal Law* 83, no. 3 (May 2020): 266–70, https://doi.org/10.1177/0022018320925010.

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[33] See Laurie Bell, *Good Girls/Bad Girls: Feminists and Sex Trade Workers Face to Face* (Seattle: Seal Press, 1987); Suzanne Bouclin, "Bad Girls Like Good Contracts: Ontario Erotic Dancers' Collective Resistance," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Press, 2016), 331–45; Chris Bruckert and Colette Parent, "The Incall Sex Industry: Gender, Class, and Racialized Labour in the Margins," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Press, 2016), 303–30; Frédérique Delacosta and

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[34] See Melissa Farley, "'Bad for the Body, Bad for the Heart': Prostitution Harms Women Even if Legalized or Decriminalized," *Violence Against Women* 10, no. 10 (October 2004): 1087–125, https://doi.org/10.1177/1077801204268607; Gillian Abel and Lisa Fitzgerald, "Risk and Risk Management in Sex Work Post-*Prostitution Reform Act*: A Public Health Perspective," in *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalisation*, ed. Gillian Abel et al. (Bristol: Policy Press, 2010), 217–38.

[35] Patty Kelly, *Lydia's Open Door: Inside Mexico's Most Modern Brothel* (Berkeley: University of California Press, 2008); Gayle Rubin, "The Traffic in Women: Notes on the 'Political Economy' of Sex," in *Deviations* (Durham, NC: Duke University Press, 2011), 33–65.

[36] Susan Dewey and Tiantian Zheng, *Ethical Research with Sex Workers: Anthropological Approaches* (New York: Springer, 2013), 4.

[37] Ibid.

[38] Ibid., 8.

[39] Teela Sanders et al., *Internet Sex Work: Beyond the Gaze* (Cham, Switzerland: Palgrave Macmillan, 2018), 5.

[40] Ibid., 6.

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[43] Ibid.

[44] Ibid.

[45] Ibid.

[46] Lorraine Bayard de Volo and Edward Schatz, "From the Inside Out: Ethnographic Methods in Political Research," *PS: Political Science & Politics* 37, no. 2 (April 2004): 267–71, http://www.doi.org/10.1017/S1049096504004214.

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[48] Dewey and Zheng, *Ethical Research*, 23.

[49] Mary J. Bunch, "Communicating for the Purposes of Human Rights: Sex Work and Discursive Justice in Canada," *Canadian Journal of Human Rights* 3, no. 1 (2014): 42.

[50] Treena Orchard et al., "Sex Work in the Forest City: Experiences of Sex Work Beginnings, Types and Clientele among Women in London, Ontario," *Sexuality Research and Social Policy* 9, no. 4 (October 2012): 350–62, https://doi.org/10.1007/s13178-012-0097-y.

[51] Ibid., 361.

[52] Melissa Farley et al., "Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder," *Feminism & Psychology* 8, no. 4 (November 1998): 405–26, https://doi.org/10.1177/0959353598084002.

[53] Ibid., 406.

[54] Ibid., 421.

[55] Bruckert, "*Protection of Communities*."

[56] Chris Bruckert and Stacey Hannem, "Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work," *Canadian Journal of Law and Society* 28, no. 1 (April 2013): 43–63, https://doi.org/10.1017/cls.2012.2.

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[58] Cecilia Benoit et al., "Lack of Confidence in Police Creates a 'Blue Ceiling' for Sex Workers' Safety," *Canadian Public Policy* 42, no. 4 (December 2016): 466, https://doi.org/10.3138/cpp.2016-006.

[59] Sonia Lawrence, "2013: Constitutional Cases in Review," *The Supreme Court Law Review* 67 (2014): 3–40, https://digitalcommons.osgoode.yorku.ca/sclr/vol67/iss1/1.

[60] Stacey Hannem and Chris Bruckert, "Introduction," in *Stigma Revisited: Implications of the Mark*, ed. Stacey Hannem and Chris Bruckert (Ottawa: University of Ottawa Press, 2012), 2.

[61] Ibid.

[62] Vajmeh Tabibi and Stacey Hannem, "The Mark of Racialization: Afghan-Canadian Men Negotiate Stigma Post-9/11," in *Stigma Revisited: Implications of the Mark*, ed. Stacey Hannem and Chris Bruckert (Ottawa: University of Ottawa Press, 2012), 27.

[63] Chris Bruckert, "The Mark of 'Disreputable' Labour: Workin' It: Sex Workers Negotiate Stigma," in *Stigma Revisited: Implications of the Mark*, ed. Stacey Hannem and Chris Bruckert (Ottawa: University of Ottawa Press, 2012), 57.

[64] Ibid., 66.

[65] Ibid., 58.

[66] Ibid.

[67] Ibid.

[68] Ibid.

[69] Hannem and Bruckert, "Introduction," 5.

[70] Bruckert, "The Mark," 58.

[71] Ibid.

[72] Ibid., 60.

[73] Emily van der Meulen, Elya M. Durisin, and Victoria Love, "Introduction," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 1.

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[75] Sarah Hunt, "Decolonizing Sex Work: Developing an Intersectional Indigenous Approach," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 82–100.

[76] Hunt, "Decolonizing Sex Work," 87.

[77] Ibid.

[78] Ibid., 88.

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[80] Ibid.

[81] Ibid., 93.

[82] Ibid., 92.

[83] JJ, "We Speak for Ourselves: Anti-Colonial and Self-Determined Responses to Young People Involved in the Sex Trade," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 74–81.

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[85] Ibid.

[86] Ibid., 76–77.

[87] Ibid., 75.

[88] Ibid., 77.

[89] Ibid., 79.

[90] Victoria Love, "Champagne, Strawberries, and Truck-Stop Motels: On Subjectivity and Sex Work," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 58–64.

[91] Ibid., 60.

[92] Ibid.

[93] Ibid.

[94] Ibid., 61.

[95] Bruckert, "The Mark," 66.

[96] Elya M. Durisin, Emily van der Meulen, and Chris Bruckert, "Contextualizing Sex Work: Challenging Discourses and Confronting Narratives," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 14.

[97] Ibid., 15.

[98] Ibid., 4

[99] Ibid., 16.

[100] Ibid.

[101] Ibid., 13.

[102] Sterling, "New Risk-Spaces," 94–103.

[103] Durisin, van der Meulen, and Bruckert, "Contextualizing Sex Work," 5.

[104] Ibid., 7.

[105] Ibid., 8.

[106] Also see, for instance, Andrea Krüsi, Brenda Belak, and Sex Workers United against Violence, "'Harassing the Clients Is Exactly the Same as Harassing the Workers': Street-Based Sex Workers in Vancouver," in *Red Light Labour: Sex Worker Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 213–23; Kara Gillies and Chris Bruckert, "Pimps, Partners, and Procurers: Criminalizing Street-Based Sex Workers' Relationships with Partners and Third Parties," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. by Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 82–93; Menaka Raguparan, "'The Paradox?!': Racialized and Indigenous Sex Workers Encounters within a Capitalist Market," in *Red Light Labour: Sex Worker Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 189–202.

[107] Naomi Sayers, "Municipal Regulation in Street-Based Prostitution and the Impacts on Indigenous Women: A Necessary Discussion," in *Red Light Labour: Sex Worker Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 57–66.

[108] Ibid., 62.

[109] Naomi Sayers, "Municipal Regulation of Street-Based Prostitution and the Impacts on Indigenous Women: A Necessary Discussion," *in Red Light Labour* ed, Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 57–66.

[110] Ibid., 61.

[111] Ibid.

[112] Ibid.

[113] Ibid., 62.

[114] Ibid.

[115] Elizabeth James, "Indigenous, Indoors, and Incognito: Thoughts and Experiences of an Irish and Ojibwe Female Sex Worker," in *Red Light Labour: Sex Worker Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 159–66.

[116] Ibid., 165.

[117] Ibid., 164.

[118] Ibid., 166.

[119] Ibid.

[120] Stacey Hannem, "Everybody Knows Everybody: Sex Work in Rural and Small Communities," in *Red Light Labour: Sex Worker Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 224–33.

[121] Ibid., 229.

[122] Ibid., 230.

[123] Valerie Scott, "Foreword," in *Red Light Labour: Sex Work Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), xi–xiv.

[124] Ibid., xii.

[125] Ibid.

[126] Ibid., xiii.

[127] See also Shaver, "Sex Work Research," 300.

[128] Chris Bruckert, *Taking It Off, Putting It On: Women in the Strip Trade* (Toronto: Women's Press, 2002), 176.

[129] Bunch, "Communicating."

[130] Ibid., 43.

[131] Ibid., 44.

[132] Ibid., 41.

[133] Ibid., 47.

[134] Ibid.

[135] Ibid., 74.

[136] Gayatri Chakravorty Spivak, "Can the Subaltern Speak?" in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Bassingstoke: Macmillan Education, 1998), 267–310.

[137] Ibid., 281.

[138] Ibid.

[139] Ritu Birla, "Postcolonial Studies: Now That's History," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (New York: Columbia University Press, 2010), 92.

[140] See, for example, Aubrey Neil, "The Promise and Practice of Deconstruction," *The Canadian Journal of History* 30, no. 1 (April 1995): 49-76.

[141] Ibid., 67.

[142] Ibid., 57.

[143] Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Towards a History of the Vanishing Present* (Cambridge, MA: Harvard University Press, 1999), 5.

[144] Ibid., 6.

[145] Ibid., 49.

[146] Ibid., 60.

[147] Ibid., 67.

[148] Ibid., 142.

[149] Ibid., 147.

[150] Spivak, "Can the Subaltern Speak?" 272.

[151] Ibid.

[152] Ibid., 280.

[153] Neil, "Promise and Practice," 71.

[154] Gayatri Chakravorty Spivak, "Echo," in *The Spivak Reader*, ed. Donna Landry and Gerald McLean (New York: Routledge, 1996), 188.

[155] Spivak, "Can the Subaltern Speak?" 287.

[156] Birla, "Postcolonial Studies," 94.

[157] Drucilla Cornell, "The Ethical Affirmation of Human Rights: Gayatri Spivak's Intervention," in *Can the Subaltern Speak? Reflections on the History of an Idea*, ed. Rosalind C. Morris (New York: Columbia University Press, 2010), 101.

[158] Birla, "Postcolonial Studies," 96.

[159] Bunch, "Communicating," 51.

[160] Intervening parties included the following: Attorney General of Quebec; Pivot Legal Society; Downtown East side Sex Workers United against Violence Society, PACE Society; Secretariat of the Joint United Nations Programme on HIV/AIDS; British Columbia Civil Liberties Association; Evangelical Fellowship of Canada; Canadian HIV/AIDS Legal Network; British Columbia Centre for Excellence in HIV/AIDS; HIV & AIDS Legal Clinic Ontario; Canadian Association of Sexual Assault Centres; Native Women's Association of Canada; Canadian Association of Elizabeth Fry Societies; Action ontarienne contre la violence faite aux femmes; Concertation des luttes contre l'exploitation sexuelle; Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel; Vancouver Rape Relief Society; Christian Legal Fellowship; Catholic Civil Rights League; REAL Women of Canada; David Asper Centre for Constitutional Rights; Simone de Beauvoir Institute; Asian Women for Equality Society, operating as Asian Women Coalition Ending Prostitution; and Aboriginal Legal Services Toronto.

[161] See *Canada v. Bedford*, 2013, 1101–2.

[162] Bunch, "Communicating," 41.

[163] Ibid.

[164] Ibid.

[165] Ibid., 44.

[166] Ibid., 45.

[167] Ibid.

[168] Ibid., 46.

[169] Ibid., 44.

[170] Ibid., 72.

[171] Ibid., 64.

[172] Ibid., 54–57.

[173] Ibid.

[174] Ibid., 58–60.

[175] Ibid., 64.

[176] Ibid..

[177] Ibid., 41.

[178] Ibid., 64.

[179] Ibid.

[180] Ibid.

[181] Ibid.

[182] Ibid., 64.

[183] Ibid., 68.

[184] Ibid., 66.

[185] Ibid., 67.

[186] Ibid.

[187] Ibid.

[188] Ibid., 69.

[189] Ibid., 72.

[190] Ibid., 59.

[191] See Joyce A. Green, *Making Space for Indigenous Feminism* (Black Point, NS: Fernwood Publishing, 2007); Lee Maracle, *I Am Woman: A Native Perspective on Sociology and Feminist* (Vancouver: Press Gang, 1996); Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).

[192] Bunch, "Communicating," 60.

[193] See, for instance, Lana Ray, "Pipelines, Prostitution, and Indigenous Women: A Critical Analysis of Contemporary Discourse," *Canadian Woman Studies* 3, no. (2018–19): 107–16; Sarah Hunt, "Decolonizing Sex Work."

[194] Spivak, *Critique of Postcolonial Reason*, 30.

[195] Ibid., ix.

[196] Ibid., 6.

[197] See also Sharareh Frouzesh, "The Politics of Appropriation: Writing, Responsibility, and the Specter of the Native Informant," *The Yearbook of Comparative Literature* 57 (2011): 252–68, muse.jhu.edu/article/520347.

[198] Spivak, *Critique of Postcolonial Reason*, 203.

[199] Bunch, "Communicating," 44.

[200] Spivak, *Critique of Postcolonial Reason*, 91.

[201] Ibid., 85.

[202] Ibid., 205.

[203] Ibid., 64.

[204] Ibid., 62.

[205] Gayatri Chakravorty Spivak, "Righting Wrongs," *South Atlantic Quarterly* 103, no. 2–3 (Spring/Summer 2004): 542, https://doi.org/10.1215/00382876-103-2-3-523.

[206] Gayatri Chakravorty Spivak, "Imperialism and Sexual Difference," *Oxford Literary Review* 8, no. 1 (1986): 225, https://doi.org/10.3366/olr.1986.028.

[207] Spivak, *Critique of Postcolonial Reason*, 199.

[208] Ibid., 13.

[209] Neil, "Promise and Practice," 71.

[210] Bunch, "Communicating," 62.

[211] Ibid., 72.

[212] Ibid., 63.

[213] Ibid.

[214] Spivak, "Righting Wrongs," 535.

[215] Bunch, "Communicating," 43.

[216] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 78.

[217] Ibid., 78.

[218] Simpson, *Mohawk Interruptus*, 81.

[219] Ibid., 95.

[220] Ibid., 96.

[221] Ibid., 104.

[222] Ibid., 106.

[223] Wanda Nanabush, "Out of Time: Salvage Ethnography, Self-Representation, and Performing 'Culture," in *Time, Temporality, and Violence in International Relations: (De) fatalizing the Present, Forging Radical Alternatives*, ed. Anna M. Agathangelou and Kyle Killian (London: Routledge, 2016), 104.

[224] Ibid., 107.

[225] Ibid., 109.

[226] V.Y. Mudimbe, *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (Bloomington: Indiana University Press, 1988).

[227] Ibid., 69.

[228] Ibid., 15. In short, Mudimbe explains that epistemological ethnocentrism refers primarily to the logic that, scientifically, there is nothing that can be learned from "them" unless it has already come from "us."

[229] Ibid., 67.

[230] Ibid., 9.

[231] Ibid., 28. See also Claude Lévi-Strauss, *Structural Anthropology* (Garden City, NY: Doubleday, 1967).

[232] Mudimbe, *Invention of Africa*, 72.

[233] Hunt, "Decolonizing Sex Work," 94.

[234] Ibid., 96–97.

[235] Sarah Ahmed, *Strange Encounters: Embodied Others in Post-Coloniality* (London: Routledge, 2000), 58.

[236] Ibid., 59.

[237] Simpson, *Mohawk Interruptus*, 87.

[238] Ibid., 105.

[239] Ibid., 64.

[240] Ibid.

[241] Sarah Hunt, "Representing Colonial Violence: Trafficking, Sex Work, and the Violence of the Law," *Atlantis* 37, no. 2 (2015–16): 25–39.

[242] Ibid., 36.

[243] Ibid., 27.

[244] Ibid., 36.

[245] Sayers, "Municipal Regulation," 62.

[246] Ibid., 64.

[247] James, "Indigenous, Indoors, and Incognito," 160.

[248] Ibid., 159.

[249] Johannes Fabian, *Time and the Other: How Anthropology Makes Its Object* (New York: Columbia University Press, 1983), 73.

[250] Ibid., 91.

[251] Mudimbe, *Invention of Africa*, 66.

[252] Fabian, *Time and the Other*, 80.

[253] Ibid., 85.

[254] Ibid., 31.

[255] Durisin, van der Meulen, and Bruckert, "Contextualizing Sex Work," 17.

[256] Bunch, "Communicating," 48; for example, Sayers, "Municipal Regulation," 51.

[257] Fabian, *Time and the Other*, 30.

[258] Ibid., 32.

[259] Neil, "Promise and Practice," 71.

[260] Ibid.

[261] For more on this notion of "the archive," see Kyle D. Killian and Anna M. Agathangelou, "The Wake of War: Relationships among Gender, Trauma, Resources, and Traumatic Stress in Refugee Families," *Journal of Feminist Family Therapy* 30, no. 3 (2018): 129–54, https://doi.org/10.1080/08952833.2017.1404347; Anna M. Agathangelou, "Neoliberal Geopolitical Order and Value: Queerness as a Speculative Economy and Anti-Blackness as Terror," *International Feminist Journal of Politics* 15, no. 4 (2013): 453–76, https://doi.org/10.1080/14616742.2013.841560; Anna M. Agathangelou and L.H.M. Ling, "The House of IR: From Family Power Politics to the Poesies of Worldism," *International Studies Review* 4, no. 6 (2004): 21–50.

[262] Fabian, *Time and the Other*, 1.

[263] Ibid., 4.

[264] Ibid., 12.

[265] Ibid., 17.

[266] Zahir Kolia, "The Aporia of Indigeneity: (Dis)Enchanting Identity and the Modular Nation Form," *Interventions: International Journal of Postcolonial Studies* 18, no. 4 (January 2016): 607, https://doi.org/10.1080/1369801X.2015.1131181.

[267] "As Pandemic Rips through Indian Country, Indigenous Communities Work to Save Elders & Languages," *Democracy Now!* January 22, 2021, video, 53:01, https://www.democracynow.org/2021/1/22/native_elders_indigenous_language_preservation_covid.

[268] JJ, "We Speak for Ourselves," 79.

[269] Smith, *Decolonizing Methodologies*, 11.

[270] Ibid., 37.

[271] Ibid., 61.

[272] Ibid.

[273] Ibid., 35.

[274] Ibid., 41.

[275] Wai, *Epistemologies*, 52.

[276] Cornell, "Ethical Affirmation," 106.

[277] Ibid.

Chapter 3
Feminist Materialism and Sex Worker Humanism

> In no way does Western thinking address any system of cognition except its own.
>
> —Eduardo Duran and Bonnie Duran, *Native American Postcolonial Psychology*

Introduction

When the Supreme Court of Canada's decision *Canada v. Bedford* was released in December 2013, there was much celebratory optimism about how the findings moved the law in the direction of recognizing the inherent importance of safeguarding sex worker rights. In an interview with *Global News*, applicant Terri-Jean Bedford hailed it as a "great day for Canada, for Canadian women from coast to coast."[1] Her comments were echoed by applicant Valerie Scott who contended that "our fate should not be decided by the Church. We are a secular nation."[2] Elsewhere Scott explains that, following *Bedford*, "I thought sex workers were getting close to realizing our human and labour rights when the Supreme Court unanimously ruled in our favour on December 20, 2013. The court effectively declared sex workers to be persons deserving of the same rights and protections as all other Canadians."[3] Similar to the arguments made by the applicants in *Bedford*, wherein the legitimization of sex as work was centralized as a primary legal concern,[4] others celebrated it for how it addressed legal moralism and the resulting conditions of criminalizing sexual labour.[5] Graham Hudson and Emily van der Meulen also praised *Bedford* for providing counter narratives to the long-standing position that characterized all sex work as oppression, providing instead alternative historical and contemporary accounts of the sex trade from those who understand sex work as a legitimate form of work.[6] Attorneys General, for instance, had previously argued that sex work falls outside of s. 7 because there is no constitutional

protections for "economic interests," and thus, the impugned provisions interfere with sex workers' choice to pursue a particular line of work.[7] However, as the Canadian HIV/AIDS Legal Network has argued, while these insights make important strides in framing sex work as a legitimate occupation, contrary to what the Attorneys General argue, sex work cannot simply be reduced to an economic activity or a choice of livelihood. The government's view is problematic by suggesting that sex workers should not be invoking Charter protections because they can simply choose another occupation. The problem is that "this perspective ignores the non-economic interests engaged by sex work. The fact that economic interests may be at stake does not mean that the personal autonomy interests also engaged by sex work can be disregarded."[8] In this way, *Bedford* has been celebrated for resituating sex work within a theory of labour as opposed to within a criminological approach and thus shifted the view that sex workers were just like any other worker.[9] Moreover, for some *Bedford* took an important step in providing sex workers with their Charter and international rights to security of the person through human rights arguments about the right to work and the right to enjoy favourable conditions of that work.[10]

At the time of its release, I was a master's student in the Department of Law and Society at York University. Curious, I raised questions about the nature of *Bedford*'s emancipatory potential with feminist colleagues. In these dialogues I was met with similar celebratory optimism about *Bedford*'s attention to sex as a legitimate form of labour and how, in acknowledging this, sex workers' experiences were being recognized within a human rights framework. However, contrary to uncritically embracing the labour structure approach as the pathway towards sex worker freedom, I began raising questions about feminist attachments to such frameworks for adequately addressing sexual un/freedom and emphasized investments into Eurocentric typologies that I understood as inherent to the labour/decriminalization debate. Thus, by articulating my

discomfort with what I identified as the violent epistemological foundations of Canada's gender and feminist movement and its impact on production of knowledge about the sex trade, I questioned how such an approach could provide anti-colonial emancipation for Indigenous sex workers. To my disappointment, since my questions centred on interrogations of sex work and colonial violence, my queries were characterized as anti-woman, anti-sex, and anti-sex worker.

It is these initial feminist tensions that inspire my thinking in this chapter. In this chapter, I revisit these feminist dialogues by excavating the epistemological meanings and assumptions of material feminist theories of sexualized/stigmatized labour. In so doing, I refocus my attention on a material feminism as a dominant Canadian feminist framework for producing knowledge about sex work in Canada, which locates its pronouncements about sex trade realties within the labour structure of analysis and discursive theories of moral power.[11] I will suggest that feminist sex-as-work typologies oscillate between Marxist and liberal categories, and as such, sex workers' human rights become synonymous with economic stimulus and sexual development. This approach, then, uses a feminist historical materialist method to analyze and critique sex industries as they are constituted by hegemonic and discursive power. My concern here is a methodological one. I aim to not only raise questions about material feminist genealogies and the production of theories of power but also to consider to what degree such methods propose a sex worker humanism. Specifically, I am interested in understanding how this feminist position, through its epistemic attachments to colonial materialism, seeks to provincialize secular-liberal humanist sex worker subjectivity that safeguards neo-liberal coloniality's futurity under the universal rubric of stigmatized labour and sexual agency. Importantly, the Final Report into missing and murdered Indigenous women in Canada has discussed a tension that exists between universal human rights and Indigenous conceptions of rights.[12] The Report argued that the universal human rights

approach ignores "the important collective nature of Indigenous rights, and the ways in which the rights, opportunities, and security of Indigenous peoples were historically, and in many respects still are, tied to land" and that such appeals "have also been used to dismiss Indigenous women's human rights."[13] I contribute to these debates an extended reading of Indigenous genealogies of sexual terrains of neo-colonial economies to further complicate material feminism's theory of power. I do so by situating theories of sexual labour power within global political and epistemic structures of neo-liberal coloniality, which, I argue, informs the social reproduction of sexual subjectivities within global divisions of labour that are raced and sexualized.

Feminist Materialism: Sex and Morality

In Canada, moral regulation scholarship has been adopted as the dominant position through which to make sense of prostitution relations.[14] Broadly speaking, this position discusses the intersection of morality and sex to underscore how such intersections produce contemporary sex worker oppression. As such, it provides important insights into how historically sexuality has been constructed as "essential to the development of moral subjects,"[15] which links the production of sexual subjectivities to moral ideology where regulation is "an activity that occurs beyond the boundaries of the state" but also as the existence of dominant normativities and "the regulation of moral categories and conduct."[16] This has encouraged a feminist class of scholars to take critical approaches to the operations of law, morality, and power, embodying a more secular turn of analysis to the organization of society that is ordered around sex and gender relations. From this, studies of sex and moral regulation undertake analyses of "the contingent, historical, and political processes whereby the categories of 'normal' and 'deviant' are constituted, contested, resisted,

changed, and reconstituted in Canadian society."[17] With this, there is a recognition of a relationship between morality and public order so that morality and politics are not separated.

For some feminist scholars, understanding the conditions of sexual labour also take the form of examining sexuality through a materialist lens.[18] The materialist problematic is grounded in the understanding that society is defined by its productivity and examines women's definitive location within society in terms of the relation of production and reproduction throughout history.[19] This makes the sexual division of labour a primary concern of this approach because it seeks to complicate how power relations between sexes are dispersed. At the same time, it understands that these sets of relations as specific to social reproduction (meaning the relations between classes) must also be centralized in analysis. For instance, Catharine MacKinnon has argued that "as the organized expropriation of work of some for the benefit of others define class—workers—the organized expropriation of the sexuality of some for the use of others defines sex."[20] Here, MacKinnon is highlighting how expressions of sexuality organize society and how sexual divisions underly the totality of sexual relations in a society. From this position, the sexual oppression of sex workers can be understood as being produced through structures of capitalist accumulation and the existence of unequal class structures that underscore networks of labour exploitation linked to asymmetries of patriarchal power. Carole Pateman has argued that "the most dramatic example of the public aspect of patriarchal right is that men demand that women's bodies are for sale as commodities in the capitalist market; prostitution is a major capitalist industry."[21] For Pateman, prostitution is a unique relation of exploitation because the sexual self is contracted out necessarily, linking it to a modern sexual contract on which the structure of society and patriarchy are founded. The sexual contract shows "how sexual differences define what it is to be a 'man' or 'woman,' and the construction of sexual difference as political difference; is central to

civil society."[22] Because the social contract for Pateman is about men's freedom and women's subjugation, the sexual contract fulfills the latter. The "original pact is a sexual as well as a social contract: it is sexual in the sense of patriarchal—that is the contract establishes men's political right over women—and also sexual in the sense of establishing orderly access by men to women's bodies."[23]

However, some feminists have critiqued MacKinnon's and Pateman's understanding of sex and class oppression as it relates to sex work and prostitution. Elizabeth Bernstein has noted that Mackinnon's and Pateman's framework reduces all sex work to oppression that strips women of their agency by theorizing the experiences of women in prostitution as "social exploitation, not merely morally condemned,"[24] as "an equal exchange of sexual need for economic need,"[25] and prostitution as "the exercise of the law of male sex-right, one way in which men ensure access to women's bodies."[26] On the other hand, Bernstein explains, "pro-sex feminists maintain that there is a hypocrisy underlying feminist critiques of the sex trade and male sexual control, which may indicate that the reinstatement of traditional morality (in the form of heterosexual monogamy) is what has really been at stake all along."[27] In contrast to MacKinnon's and Pateman's ideas about prostitution as violence, Bernstein describes "pro-sex" feminism as that which sees the social construction of sexuality as key to women's oppression, but she underscores that it is, in fact, the restrictions placed on women's sexual activity and desires that is most detrimental to their status within society.[28] Rejecting the idea that patriarchy is a totalizing structure under which there can be no female sexual agency, this position responds to feminist ideas such as MacKinnon's and Pateman's who understand prostitution as sexual mastery within an exploitive capitalist society, in order to rethink sex work as being economically and sexually liberating for some.

In "Bad Girls Like Good Contracts," Suzanne Bouchlin, for instance, highlights how the designation of sex workers as independent contractors denies them safeguards and benefits afforded to employees through protective legislation. At issue, for Bouchlin, is less the asymmetries of power between men and women or sex worker and client (i.e., contracts) and more the way in which service sector legislation stigmatizes women working in the sex sector as "deviant" workers. For example, the anti-lap dancing discourse that "argued that it was inherently harmful to the moral order and disrupted the nuclear family … harmful to the health and wellbeing of women"[29] stigmatizes sexual labour because it is based on heteronormative morality linked to women's "proper" gender roles. This is echoed by Chris Bruckert and Colette Parent who note that, like erotic dancers, in-call sex workers who are designated independent contractors working in commercial establishments experience exploitation in a Marxian sense of having "free" labour extracted and receiving less remuneration than the value that their labour adds to the product/service. As "disguised employees, in-call sex workers are denied the security and access to statutory protection and legal recourse traditionally associated with employment."[30] The issue, then, is that sex workers are vulnerable based on the illicit status of their labour, which precludes them from gaining access to rights as workers, and thus, what is really at issue is how the labour-market interacts with stigma, criminalization, and sexual marginality. These feminists are therefore responding to the scholarship that, like MacKinnon's and Pateman's, sees sex work as inherently violent.[31] They are ambivalent about a framework that conceives of prostitution as an institution of violence and as the reconstruction of masculine forms of dominance because it extends a universality of patriarchal oppression and a monolithic explanation of gender and sex experience and desire. [32] It suggests that in an inherently unequal society any contract is illegitimate because of unequal status of sex workers and clients. Thus, women are locked into a totalizing straitjacket

of structuralist accounts of power, negating the ways in which populations negotiate power in their everyday lives. These critiques of these ideas are pursued to debunk whether danger, violence, injury, and exploitation are unique to sex work or whether workplace hazards, sexual harassment, sex and gender segregation, and exploitation are features found in all forms of labour. For these feminists, the problems inherent in sexual commerce are about the types of paid labour and conditions under capitalism that make exploitive experiences possible and how they intersect with moralizing discourse, rather than violence being unique to the sex industry.

In this chapter, I locate what I will henceforth call the sex-as-work position within the contributions made by the pro-sex feminist approach. What the sex-as-work approach does differently, is that it does not start from the premise of understanding all sex work as an ostensible expression of patriarchal relations of sex and gender domination, but instead, examines the influences of materialism on morality as it pertains to sexualized labour.[33] This position brings materialist feminist ideas together with post-structural theories of moral discourse to account for the social and economic reproduction of sexual subjectivity within society. As such, it does not entirely reject economic determinism and coercive capacity of the state but unearths how a discourse of power intersects with materialist conditions that affect sex workers' positions within society. Moreover, it unpacks the ways in which prohibition of sexual conduct is at the root of sex workers' sexual oppression. Therefore, this position seeks to provide insight into the linkages between morality, sex, and the law that includes an understanding of sexuality as an economic issue, and as one that reflects the status of women's sexuality under capitalism while at the same time highlighting how the material production of discourses that structure economies of sex work organizes social and political life through a taxonomy of prejudicial moral discourse that obfuscate sex workers roles in society as political citizens and productive neo-liberal subjects.[34] Therefore,

it is critical of restrictions placed on women's sexual activities, and thus, criminal sanctions are one important site of analysis of this feminist approach, locating such practices in social purity ideologies and morality regimes,[35] which function to stigmatize women's sexual labour.[36] Here, the specific effects of the criminalization is examined to shed light on social relations that institute hegemonic sexist orders that regulate and criminalize "sexually deviant" women's labour. In this sense, it also retains materialist critiques of the relationship between law and society.

It is for this reason that a common starting point for some sex-as-work feminists is Marx's analogy between prostitution and labour. For instance, for Emily van der Meulen, Karl Marx's analogy of prostitution to labour, which held that "prostitution is only a specific expression of the general prostitution of the labourer,"[37] complicates an analysis of the emotional and productive labour performed by sex workers. Leaving aside Marx's stigmatization of prostitution as only one example of the degrading nature of labour in general, van der Meulen maintains that Marx helps develop more complicated understandings of emotional labour performed in all work, not just sex work.[38] This requires "theorizing sex work as a form of work which may require affective, emotional, and/or intimate labour" which is "imperative for the advancement of sex workers' rights and for improving labour standards within the sex industry."[39] Reframing prostitution in this way, for van der Meulen, recontextualizes the social relations of sexual commerce by exposing its reproductive functions. For van der Meulen, then, the sex worker "connotes a demand for social and economic justice for some of the worlds most marginalized and stigmatized workers."[40] Explains van der Meulen:

> As unprotected and unorganized labourers, sex workers are highly vulnerable to police harassment and arrest for engaging in their common work-related activities. If, as Marx once professed, all labour is inherently problematic, unions and sex workers should be

> natural allies in the fight for labour protections and decriminalization. In Canada, this has not been the case.[41]

This is echoed by Kamala Kempadoo who notes that the "idea of the sex worker is inextricably related to struggles for recognition of women's work, for basic human rights and for decent working conditions."[42] This contrasts with Pateman, for instance, who is ambivalent about the liberatory nature of the contract and about feminist reductions of sexual oppression being about workers simply not being paid for their wages under harsh working conditions. Furthermore, as Mariana Valverde suggests, the shift towards recognizing how morality is legislated in Canada has been characterized as a progression towards modernization that "involves the application of human rights and equality rights and principles by the criminal courts to the area of sexual morality."[43]

Likewise, for moral regulation scholar Amanda Glasbeek, a sex-as-work approach provides indispensable insight into the role of the capitalist state and the role its laws play in the regulation of sexuality. Glasbeek highlights how material forces create and regulate categories of identity through control and modalities of repression and coercion.[44] Economic discourses concerned with sex have a regulatory effect that function to construct an environment and the conduct of those within it. In this way, sexual discourse related to prostitution becomes part-and-parcel of Canadian nation-building projects that are necessarily tied to market forces. Glasbeek, for example, points to the ways in which the policing of sexual commerce takes place through economies of morality that are explicitly productive, constitutive, and exercised by Judeo-Christian religious and conservative-maternalistic morality regimes that organize public order by encouraging some sexual subjectivities at the expense of suppressing others. For instance, as Glasbeek explains in *Feminized Justice*, the function of morality discourse is to impose on women a rigid and bourgeois standard of femininity through the regulation of sexual conduct.[45] The outcome is that this standard

maintains an economically privileged sexual ruling class. Here, Glasbeek is making important connections between the morality and materiality insofar as morality regimes have been used to structure material inequalities of those constructed as sexual deviants in Canada. For example, the "prostitution problem" for Glasbeek also adheres to a model of moral citizenship that is organized through normative-emphasized femininity. This model polices sexuality and constructs a moralistic national self-conception at the expense of women's sexual health and freedom.[46] Here, regimes of moral legalism shape the lives of women imposing dominant sexual norms in society. For instance, statutes within Canada's Criminal Code that provide a taxonomy of prohibitions about sex and sexuality are one illustration of how morality shapes normative sexual practices because they "define what can and cannot be done sexually by whom and with whom."[47] Provisions against prostitution are similarly structured by state and discursive power that determines appropriate and inappropriate conduct, and the legal standards of social citizenship that shape class relations by determining and prohibiting forms of sexual conduct (i.e., anti-prostitution legislation). The prohibition of sexual practices through criminalization, for Glasbeek, indexes the prevalence of normative expectations around sexual conduct. As she explains, prohibition laws throughout history have positioned prostitution as "the central metaphor for the equal moral standard. Within the politics of the moral standard, prostitution was not simply an occupation that involved some women: it functioned as a powerful symbol of all women's victimization to male prerogatives and as an analogy for the harms inflicted on women by male sexual licence."[48] Penalties for transgressing these practices reflect the ways in which "the boundaries of normative femininity are made intelligible and governable."[49] The dilemma is that through this "sexuality is regarded as largely a negative disruptive force that needs to be repressed and regulated lest people fall into moral danger."[50] Glasbeek thus interrogates bourgeoisie gender and sexual hegemony.[51]

She questions "why sexuality—an ostensibly private concern—has become important enough to warrant public intervention and action."[52]

Alongside Glasbeek, Joanne Sangster explains that the reproduction of ideology and social power in law should not be discounted for how it is operationalized in the domains of gender and sex, as economic determination, state power, and ideology remain important sites of feminist analysis.[53] For Sangster, like Glasbeek, women's "sexual criminality" can be examined through the interrelation of material and social conditions of women's lives that includes discourses of sexual morality. This framework draws insights on power, subjectivity, and discourse that allows for a measure of structural determinism: "historical materialism makes intelligible how material life shapes the possibilities of discourse and social practice, how the materiality of discourse mediates social practices."[54] This is important to studies of sex because it allows one to make sense of the overincarceration realties of "poor, working-class, and Native girls."[55] This is because discursive constructs of morality regimes are also conditioned by social relations based on class, race, and sex. Embedded in both material and symbolic legal processes is the expression of regulation, enforcement, and coercion. This is particularly true for critical race scholars,[56] notes Sangster, because in the context of colonial and racial relations law and ideology remain central to the persistence of racism and sexism that are produced by coercion and by ideological consent which is in part due to material oppression.[57] Sangster writes:

> As a process producing values, beliefs, and symbols and encompassing lived practices, the law worked as ideology, and its claim to truth and fairness offered it immense ideological power, often the invisible, naturalizing hegemony identified by Gramsci. Crime could thus be construed as immorality, in the process transforming other structures of being—poverty, violence, alienation—into narrowly legal issues and obscuring their social nature.[58]

As Sangster indicates, the state and ideological discourse collude to produce hegemony through the social construction of sexual norms. Hegemonic power, then, is grounded in the material and social foundations of the state and is encoded in the law. The moralization of sex works in tandem with the law, determines appropriate sexual conduct within society. Moral ideologies thus normalize prescribed sexual conduct wherein the sex work becomes viewed as a practice of transcending normative social codes. Public adoption and internalization of anti-sex work ideology thus operates to socially organize sex and class relations.

Importantly, these questions are also located within a larger historical analysis of what Michel Foucault calls genealogy.[59] Scholars like Glasbeek who are concerned with the relationship between materialism, sex work, and morality have tended to situate their ideas within a particular genealogy of an anti-prostitution ideology as traced by Mariana Valverde.[60] Valverde examined morality's impact upon state regulations of prostitution in Canada.[61] The key to understanding how "social purity intertwined with socio-economic reform"[62] is to examine the discourse formations of moral politics that took place during the emergence of the Canadian state. Valverde demonstrates that philanthropic organizations and state sanctions worked together as regulatory agents that socially organize society based on sexual morality. Valverde thus traces prohibition ideology as a moral category of indecency that emerged through the development of laws targeting prostitution. She highlights how selling sex was conceived by fears of society's contamination and corruption. Notes Valverde, "Prostitution in all its forms was the one 'social problem' guaranteed to unify the diverse constituencies—feminists, right-wing evangelicals, doctors, social reformers—of the social purity coalition; and 'sex hygiene,' or purity education, was one of the main positive remedies promoted."[63] She links this to social purity movements that campaigned

against the "vices" of prostitution wherein prostitution became considered an indication of women's marginal status in society through notions of immorality and sexual slavery.

Valverde's genealogy is located in Foucault's genealogy of the emergence of the modern nation state in *A History of Sexuality*. Notes Foucault, "The eighteenth century was the emergence of 'population' as an economic and political problem … with its specific phenomena and its peculiar variables: birth and death rates, life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and sanitation."[64] Moreover, this philosophical epoch was undoubtably linked "to the process of growth and establishment of bourgeois hegemony … sexuality is originally, historically bourgeois, and that, in its successive shifts and transpositions, it induces class effects."[65] With Foucault, Valverde thus traces how conceptions of sex shifted through new discourses. Foucault refers to this as the repressive hypothesis, wherein Enlightenment demystification of religious and theological predominance of accounts of what it meant to be human sought to account for a genesis of man within humanist accounts. No longer was sex apprehended through strictly religion-legal taboos[66] that were based on a legacy of religious moral ideology about sexual behaviour that was sinful by nature through the politicization of discourses about sex that redefined it as a scientific category with the formation of the pre-eminence of European bourgeoisie sexuality and their human sexual endeavours,[67] thus, breaking with the strictly theological conceptual grammars of policing sexual ethics. Instead, it came to include expressions of biological sciences and sexual dynamics of social evolutionism not separated from the goals of the modern body politic and its economic aspirations related to freedom.[68]

In tracing sexual politics within the eighteenth-century through to twentieth-century development of Canada as a nation, which coincides with Foucault's repressive hypothesis, Valverde links social purity to the moral regulation of sex, framing the history of sex workers'

economic struggles within Enlightenment ideas that theorized a political community which consisted of an "abstract collection of equal citizens that was propounded as a criticism of the religious inequality characterizing the absolutist state."[69] In the coalescing of these moments, that is the consolidation of Enlightenment philosophies of being and the emergence of the Canadian body politic, Valverde traces how sex workers came to be discursively constructed as a deviant population who were thought of as threatening the bourgeoise class structure, civil identity politics about femininity, and the governing of Canadian civilization. It designates how capitalism through its networking with law and systems of morality constructed notions of citizenship that stigmatized women's sexual labour power and criminalized it. This is important, as Sangster notes citing Valverde notes, because Foucauldian influences articulated important histories "through the concept of moral regulation, that is, the discursive and political practices whereby some behaviours, ideals, and values were marginalized and proscribed while others were legitimized and naturalized."[70]

These sentiments are similarly held by sex work scholar Chris Bruckert. In an interview at the 2011 Women's World Conference, Bruckert noted that "we are talking about *sex work* because we are talking about a labour issue. So, the idea of prostitution brings us back to a moral code that is more about a moral status, and what we are talking about is work. It's sexualized labour."[71] Highlighting the contemporary existence of specific anti-prostitution laws that raise "community-concerns" over "public nuisance," Bruckert and Stacey Hannem, citing Valverde's genealogy, also point to the laws that remain embedded within historical legacies of moral panic over social purity. For Bruckert and Hannem, these laws are contemporary illustrations of the link between morality discourse and law that reproduces moral legalism by prioritizing socially constructed

moral conduct of "appropriate sex" based on anti-sex work ideology rather than on the health and safety of sex workers.[72]

Importantly, Katrine Roots expands our understanding of the relationship between discourse and hegemony in her discussion of anti-trafficking. Roots suggests that one of the primary distinctions between "pro-sex" feminist theories of sexual commerce and "anti-sex" theories of prostitution is the conflation of all sex work with human trafficking. For example, she explains that "not every prostitute or migrant sex worker is forced or coerced into this situation … assumptions regarding their lack of consent removes sex workers' agency and violates their human rights …the historical and continuing connection between human trafficking and sex work is long-standing and highly problematic."[73] Consent and coercion, for Roots here, have been problematized narrowly. They are based on legislative definitions that leave significant discretionary powers to be administered by the Canadian state for organizing the lives of sexual minorities, a process that does not attend to their social and political realities in local and global contexts. The overbreadth of the definition of what constitutes coercion, she adds, allows all forms of sex work to be defined as exploitive in one way or another which simultaneously criminalizes sex workers and third parties who are not forced into sexual commerce as victims of trafficking but rather exercise agency by entering the industries on their own accord. Hence, for Roots, Canada and the sex-as-violence feminist movement collude with a hegemonic power in conflating sex work with human trafficking under a universal rubric of sexual exploitation that "demonstrates the moralistic undertone in procurement laws."[74]

Kamala Kempadoo, Nicole McFayden, Philip Pilon, Andrea Sterling, and Alex Mackenzie also speak to this.[75] They note that the word trafficking is "rooted in the inaccurate and harmful conflation of sex work with human trafficking."[76] For them, this "prevents anti-trafficking efforts

from supporting both the human rights of persons in situations of exploitation and strategies for meaningful change."[77] Elsewhere Kempadoo also notes that "criminalization and stigmatization of sex workers ensured poor working conditions and sustained notions of prostitutes as disposable people."[78] By evading meaningful discussion sex work, labour rights, and working conditions these discourses ignore the harms of criminalization that makes migrant workers, migrant sex workers, and sex workers more broadly increasingly vulnerable to exploitation.[79] For instance, understanding the complex interrelation between material conditions, sex, labour, and globalization provides more nuanced approaches to how to attend to the needs of sex workers. This is because, as Kempadoo explains, the "reduction of prostitution to masculine violence" is wholly inadequate for making sense of the forces of the sexual division of labour.[80] She expands by noting that "due to notions of a universality of patriarchy and masculinist ideologies and structures, or through the privileging of gender as the primary factor in shaping social relations," this approach often dismisses "the great variety of historical and socio-economic conditions, as well as cultural histories, that produce sexual relations and desire."[81] For many non-white and colonized women the sexual labour question has to be understood in the context of the international divisions of labour, the demands of globalized capitalism and recolonizations, and "the epistemic privilege of a social group that has a racialized power to define the world and to create new meanings about social realities."[82] Moreover, that "a large number of the women upon whose bodies and labor such constructions of masculinity depend are of nations, 'races,' and ethnicities other than those of the men is a contemporary reality that cannot be neglected or ignored."[83] It demonstrates how the materiality of sexual labour is also linked to militarized geopolitics, imperialism, and colonial racialization. Such an approach "includes a rethinking of practical strategies and programs to address the specific situations for women of color in the global sex

trade."[84] According to Sarah Hunt (Kwakwaka'wakw), while Indigenous people have complicated relationships to international human rights discourse, including some communities that have their own notions of rights, they nevertheless "provide broad standards that are used for advocating for a baseline set of conditions to which each individual is entitled."[85]

Therefore, for these feminists, situating sex within the labour structure and its gendered and racialized divisions draws attention to the larger social and material dimensions of sexual work because labour theory not only reflects the subject position of workers in the sex trade industry, but it also shifts the analysis beyond the traditional criminological framework of deviance.[86] This shift immediately places the industry and its workers within a broader social and economic context that opens up further recognition of the reproductive functions of sexual labour, its plurality, and the long-standing impacts of sex workers being caught up in an illegal/illicit status of labour. It thus seeks to attend to the ways in which "social and legal discourses influence the organization of labour" while also highlighting how "the labour processes increase the danger and stress negotiated by workers and shape the relations of workers to their social and personal worlds."[87] In many ways, this approach draws out how women in the sex industry are made vulnerable to the politics of labour exploitation because of the (quasi) legal status of their occupation; instead, it suggests that the real problem lies in the fact that capitalism necessitates the purchase of the sexual labour power of those who do not own or otherwise have access to the means of production (economic exploitation), which conditions their social and economic precarity. This is due to morality ideologies that pervade law and society, excluding sex workers from the labour structure and its mechanisms of protection.

As Stacey Hannem and Chris Bruckert explain, this exclusion takes place even though the economic exploitation of workers in Canada is limited by regulatory law, although as is noted, no

other sector other than the sex industry assumes that the employees are so vulnerable that they are unable to negotiate the terms of their work agreement or the conditions of their employment. Therefore, sex workers, "are not able to take advantage of the provisions of the Employment Insurance Act or the various Human Rights Codes when their rights are infringed upon" nor are they "protected by legislation such as the Occupational Health and Safety Act in Ontario," which denies them "income security, access to statutory protection, and legal recourse generally associated with employment."[88] The effect is that sex workers are excluded "on the basis of their presumed vulnerability and incompetence as rational neo-liberal subjects from the labour rights, security, and options afforded to other Canadian workers," which "renders visible the moral subtext and deeply embedded paternalism" and facilitates the criminalization of women's sexual labour power.[89] Presently, basic labour rights and protections that are often taken for granted in other fields of employment, like employment contracts that give employees access to worker compensation and protection against discriminatory labour practices, are denied to sex workers in Canada.[90] Such a contract would help establish access to the Workplace Rights and Insurance Board, indexing for instance, "the importance of organizing labour protections to prohibit such discriminatory practices from occurring" and the struggles around labour organizing in a criminal context.[91]

From this perspective, then, sex workers like other workers, as Bruckert and Parent previously explained, "are exploited in a Marxian sense of having 'free' labour extracted and receiving less remuneration than the value that their labour adds to the product/service."[92] This reframing seeks to provide women and their dependants with admittance to social and political citizenship by demanding access to the benefits of liberal capitalist orders that will mediate some of the precariousness sex workers experience, in that, it would provide them protection under the

law and provide access to health care, social security, and other civil rights that sex workers are currently denied. This would mean treating sex work like any other transaction or private contract. It is for these reasons that there is an emphasis on the practical and material importance of improving labour and employment protections of sex workers noting that it is one way of safeguarding their fundamental human rights.[93] Indeed, there is a long-standing relationship between sex workers and labour unions.[94]

Jean Clament and Kara Gillies have argued that labour unions are uniquely equipped to push for social and economic justice for sex workers as an equity seeking group, because "beyond identifying occurrences of exploitation in the sex trade as labour exploitation, unions have a central role to play in mitigating such exploitation and advancing sex workers labour rights, health, and safety."[95] Likewise, on an international level, the importance of labour protections for sex workers is embodied by human rights discourse exemplified by the United Nations, which contends that the "right to establish or join a trade union is protected by the Universal Declaration of Human Rights and the International Covenant for Economic, Social and Civil Rights. The Universal Declaration of Human Rights says quite simply that 'Everyone has the right to form and to join trade unions for the protection of his [or her] interests.'"[96] However, as these scholars have rightly pointed out, there remains various systemic, moral, and legal barriers to the unionization of sex workers, despite the fact that a human rights framework would ensure that sex workers would gain access to the complaint processes that facilitates admittance to social citizenship.[97] Union and international legal protections, which are designed to improve working conditions of employment industries including the sex industry, would ideally assist in providing sex workers full access to the unionization process that would function to create employment standards and a mechanism for enforcing them.[98] However, stigmatization and the ongoing prohibition has resulted in the denial

of the fundamental human rights of sex workers, which coerces them into marginal living and work conditions and which underscores the relationship between political citizenship and the economic conditions through which social rights are allocated.[99] In *Stigma Revisited*, Bruckert explains that "for many sex workers, it is not the job itself—the sex, the intimacy, or the physical demands—but the stigmatized nature of the labour that is the most disagreeable element."[100]

Thus, with the sex-as-work position there is an emphasis on how social life is produced and reproduced through morality discourse with particular attention given to how labour relations contribute to the construction of social differences related to sexuality and the naturalization of asymmetrical class relations of power. The intersection of moral regulation with a labour paradigm, then, seeks to differentiate between sex work and trafficking, while underscoring the importance of redefining sexual labour as legitimate work. For this approach, the normalization of moral-based claims on sexual practices function as extra-legal forms of social organization that intersect with the dominant legal categories of "belonging or deviances" rooted in socio-economic hierarchies. The production of gendered and sexualized oppression through moral discourses that shape class inequality, for these feminists, underscores the practical importance of supporting sex workers in the right to form or join an already existing union, which acts as a professional organization or association of employees designed to address labour concerns and which, as an intermediary, regulates the relations between employer and sex workers through collective bargaining power. This is belaboured by both Bruckert and van der Meulen who have suggested that "the response to danger at work should be, and usually is, to implement safety and security mechanisms."[101] However, the current status of sex work precludes this, but, "if sex work were theorized and recognized as a form of work, sex workers would be better equipped to make demands that all of the labour they perform should be adequately compensated."[102] Law's

redefinition of sex work as a legitimate form of labour can therefore challenge class disempowerment, stigmatic assumptions of sexual deviance, and pathology while working to open up new avenues of inquiry to advance sex worker rights within studies of labour relations.

Importantly, then, these studies assess what these feminists see as an antagonism between sexual minorities (sex workers) who are fighting to sell their labour power to survive capitalism and the barriers imposed by a sexist and moralizing economic ruling class in doing so. For them, critical engagement with sex work requires an emphasis on social life that understands that the materiality of meaning, identity, the state, the body, and the nation are inseparable from the requisite division of labour that structures the pursuit of profits in a capitalist system.[103] In this context, there is an identification of a continuous historical connection between sex worker oppression, ideology, and capitalism, which they link to a Gramscian theory of hegemony.[104] That is, that the capitalist sexual bourgeoisie maintain control through political and economic coercion, and ideology.[105] The dominant ideologies thus propagate a hegemonic sexual culture by politicizing moral norms and values, which form the basis of consent in the social order that is accessed and delineated through a matrix of ideas, social relations, and legal and economic institutions. Hegemonic theories of power illustrate how dominant ideologies safeguard consent to the liberal capitalist order that assumes that to give consent sexual minorities (like sex workers) must be convinced that they we will receive rewards, in this case, political citizenship and human rights embodied by labour protections. Thus, sex workers viewed as bearers of neither national nor human rights encourage these sex work scholars to identify what they see as a social crisis due to hegemonic normative sexuality and condemn the social injustice it presupposes by turning to provincial, federal, and international forms of law for recourse.

Critically, in this neo-liberal moment as capitalism is intensifying austerity measures and the increased privatization of goods and wealth, these scholars provide important contributions to social and political studies of capitalism, morality, and sexual commerce in Canada by examining the status of sex workers under capitalism. The scholarship highlights how "Canadian criminal laws and social values" have been "greatly influenced by moral and social purity movements"[106] that have insinuated themselves in labour markets and economies. Indeed, their genealogy of morality and sex with respect to criminal law and its reliance on moral legalism illustrates how the state's criminalization of sexual labour has been geared towards effective practices of nation-building and the emergence of a Canadian sexual bourgeoisie.[107] The importance of this approach is that it contributes to a feminist historical materialism that problematizes the impacts that class relations and moral ideologies have on sexual minorities in Canada.

Indigenous Critiques of Feminist Materialism: The Fact of Settler-Colonialism

Dene scholar Glenn Coulthard provides insight into the dilemmas of feminist materialism for understanding the condition of Indigenous peoples in Canada. In particular, he unpacks how materialism often fails to adequately address the settler-colonial land question, thus critiquing the Marx's inclination towards a return to the commons that negates that the commons are an occupied territory that belong to Canada's First Peoples.[108] For Coulthard, though, Marxist theory remains important to understanding settler-colonialism as a structural form of domination. However, what is required is a conceptual shift from Marx's primary concern of capital relations to colonial relations. This is because when thinking about the settler-colonial state there are theoretical ambiguities of Marx's primitive accumulation thesis for understanding the Canadian.

By way of example, in Coulthard's reading of Marx, primitive accumulation links the totalizing power of capital with colonialism in how Marx excavates the colonial-like state practices that violently stripped "non-capitalist producers" and societies from their means of production and subsidence. This acknowledgement places violent dispossession as fundamental to the emergences of capitalist relations and production. It established the opening of territories and resource privatization, and a "class" of workers (proletariat) who are available for exploitation within the labour market. Thus, it is formative acts of dispossession that are the precondition to capitalist accumulation and the reproduction of capitalist relations of production by "tearing Indigenous, peasants, and other small-sale self-sufficient agricultural producers from their livelihood—*the land*."[109] This compels "workers" to enter the exploitive realm of the labour market to survive (proletarianization). Critically, this also means that the historical process of primitive accumulation requires the transformation of non-capitalist forms of life into capitalist ones.

The problem, then, Coulthard explains, is that Marx's attention to colonialism is somewhat superficial, serving only to punctuate the truth about the nature of capitalism. Despite the centrality of colonial dispossession to Marx's thesis, Marx remains primarily concerned with the exploitation of the worker. Notes Coulthard, "colonial dispossession appears to constitute an appropriate object of criticism and analysis insofar as it unlocks the key to understanding the nature of capitalism: that capital is not a "thing," but rather, a "social relation" dependent on perpetual separation of workers from the means of production."[110] By contrast, the shift to colonial-relations centralizes as its analytical frame the "subject position of the colonized vis-à-vis the effects of colonial dispossession," rather than the primary position of, quoting Silvia Federici, "the waged male proletariat [in] the process of commodity production."[111] From this, key insights are illuminated.

First, from the position of capitalist-relations the concern is primarily about the problem of structural and ideological impacts that emerge from exploited labour, meaning, that the people are exploitable and not the land. However, Coulthard highlights that Canadian capitalist state-formation and capital-colonial development first and foremost require Indigenous land, and only secondarily surplus value afforded by cheap labour. Here, Coulthard identifies a foundational tension of materialism for thinking about settler-colonialism in Canada that relates metaphysical understandings of the land and settler-colonial practices of dispossession. That is, that capitalism requires that settler-colonial project of breaking or eliminating Indigenous conceptions and relationships to land through "enfranchisement" and assimilation via social and legal discourses of private property and liberal possessive individualism. This legitimizes capitalism's objectification and monetization of land for the purpose of opening up territories for resources extraction and labour exploitation. Evading the unique orientations of settler-colonial historical materialism in Canada, Coulthard asserts, risks reproducing "the racist assumption that [this] assimilation will some-how magically redeem itself by bringing the fruits of capitalist modernity into the supposedly 'backwards' world of the colonized."[112] With respect to primitive accumulation and class exploitation, then, it is apparent that the history and experience of dispossession is Canada not merely proletarianization, but very much settler-colonial and anti-Indigenous. This is further indexed by neoliberalism's contemporary ascent to hegemony that is expressed by the state's persistent privatization of Indigenous lands, resources, and extracted wealth, which "continues to play in the reproduction of colonial and capitalist social relations."[113]

For Coulthard, instead, a materialist critique must take historical consideration for the fact that the precondition of the proper functioning of Canada's economy was and still is land resources, which highlights why Indigenous communities are coveted by resources exploitation industries.

Thus, in the Canadian context "disciplining Indigenous life to the cold rationality of market principles"[114] remains the primary objective of state and industries. This is because for Indigenous peoples the question of labour and land is rooted in the experience of dispossession, and thus, Indigenous anti-capitalism is best understood as a struggle primarily emerging from and orientated around the land question "not only in the material sense," Coulthard notes, but also in a metaphysical sense as Indigenous anti-capitalism is deeply informed by what the land as a system of reciprocal relations and obligations, or what Coulthard calls "grounded normativity."[115] Coulthard continues, "When stated this way, it should be clear that shifting our position to highlight the ongoing effects of colonial dispossession in no way displaces questions of distributive or class struggle; rather it simply situates these questions more firmly alongside and in relation to other sites and relations or power that inform out settler-colonial present."[116] It is this reality that preconditions Indigenous peoples social, political, and economic exploitation, including their displacement from their lands that structures Indigenous migrations into urban city centers in search for other modes of subsidence, a process that further facilitates the incorporation of Indigenous peoples into labor market exploitation.

Coulthard's critique of materialism parallels nicely with Cree scholar Robyn Bourgeois' insights on Indigenous dispossession and Canada's sex trade. Bourgeois, on the other hand, offers another way of thinking about morality, materialism, and sex.[117] Bourgeois' analysis of the colonial materiality in Canada contributes to this chapter's previously discussed feminist reflections on sex work and morality by discussing the ways material feminist reflections secularize sexual relations for Indigenous women, thus showing how social and economic hegemony also operates through colonial registers of race-based spatialized hierarchies which

organize Indigenous peoples onto lands and spaces that are zoned specifically for colonized subjects.[118]

For Bourgeois, part of the dilemma facing Indigenous women's engagement with dominant feminist approaches to sexual commerce is that when addressing the question of prostitution in Canada, Indigenous women tend to narrowly and problematically be placed within one of two dominant positions on the subject: those who view it as a legitimate form of work and those who view it as a form of violence. She notes that while both camps understand that the violence experienced by Indigenous women and girls in the sex trade is the result of settler colonial domination and its "systems of white supremacy and hetero-patriarchy,"[119] which acknowledges how struggles in prostitution relate to sovereignty and self-determination,[120] these positions diverge "in their understanding of the connection between colonialism and prostitution."[121] A spatial analysis, instead, reveals how, "as a colonial entity dependent on occupying stolen indigenous lands for its very existence, Canada logically organized its regulation of prostitution and involved indigenous females in spatial terms."[122] In this sense, prostitution politics are inseparable from settler colonial land/spatial appropriation and (re)distributions.

In specifically addressing the feminist sex-as-work position, Bourgeois begins by contending that this approach cannot escape the moral predicament it critiques because the approach depends on a "middle-class respectability politics"[123] that retains a bourgeois moral subjectivity. For instance, she highlights how subversion for women from the sex-as-work position "can take the form of rejecting the role of moral guardian and inhabiting instead the space of the autonomous man—that is, the man who is able to participate in the public sphere and to pursue his own desires."[124] In this way, sex work is reconceived as a struggle over women's agency with women in the sex trade transgressing their normative roles as guardians of morality.[125] This

articulation, then, observes sex work through a capitalist understanding of the "encounter/relationship/action."[126] For Bourgeois, it suggests that transgression is possible by market transactions, that is, the exchange of money for sex, an activity that the dominant values in society have deemed private and unpaid. This assumes that what conditions the violence in the sex trade is the state's regulation of sexual morality evidenced by the criminalization of activities related to prostitution. It therefore operates on two important assumptions. One is that selling one's body to be used for sex by another person is the same thing as selling one's labour. The other is that this is an expression of the consumer's bodily need and the pursuit of sexual pleasure. For Bourgeois, the problem is that both assumptions reduce violence to discourse derived from law and morality. Violence, however, exists not only discursively in the moral and legal construction of material inequalities related to "deviant sexualities," but also as colonial materiality. Colonialism predetermines and demarcates the boundaries of geopolitics and subject formation. It carries with it a relational politics of bodies to spaces that express relations of domination that are mapped as degrees of belonging to the colonial state, and that belonging is presupposed by neo-colonial systems of cultural values about consumption and profit. The spatial ordering of colonial society also dictates the degree to which we care about which bodies operate in which spaces. Likewise, it promotes the liberal idea of the existence of a social contract and the ability of Indigenous sex trade workers to access the benefits thereunder. Part of the dilemma is that settler colonialism necessitates the exclusion of Indigenous peoples from the benefits of the social contract who are governed instead by colonial legislation like the *Indian Act*. These "legal provisions provided for the extension of settler colonial laws (regulation and control) over Indian bodies and spaces, thus undermining indigenous sovereignty and self-determination."[127]

At the same time, the *Indian Act* contributed to securing white settler social dominance and virtually unfettered access to Indigenous lands through the juxtaposition of Indigenous conceptions of nationhood and being with Western ones. Indigenous conceptions were constructed as being antithetical to civilization and to the progress of Canada, and Indigenous women as objects for the unfettered violent access of white men. The social contract on which Canada's adjudication of rights privileges exists, and on which feminist debates about sex and labour take place, is a "colonial entity dependent on occupying stolen indigenous lands for its very existence"[128] upon which Canada cogently organized its regulation of sex and labour in spatialized colonial terms. In this way, the contract founded colonial freedom over Indigenous subjugation and established orderly access to Indigenous women's lands, labour, and bodies. When starting from this position, the legal idea of contract abandons the history and context that made contractual theories possible. Instead, the liberal idea of the sex industry as populated by equally positioned autonomous individuals who contract each other to access benefits guaranteed within a fundamentally "freed" and "democratic" society is put forwarded with little recognition that it is presupposed by violent Indigenous exclusion.[129] At issue, then, is Indigenous sex workers' Indigeneity and subsequent zoning within a colonial condition as to what determines their illegibility as citizens who are entitled to rights guaranteed under the law. What is thus concealed is the naturalization of the norms of liberal civility that place Indigenous sex trade workers outside of history and that acclimatizes violence inherent to the establishing of the original (colonial) contract on which sex workers' claims to economic rights depend.

Therefore, for Bourgeois, despite the sex-as-work feminist celebration of the contract's emancipatory potential, the contract fundamentally obscures what the exchange makes possible beyond the domain of labour relations. The contract is read as confirming consent without

adequately problematizing the unequal positionality of subjects in a colonial environment. Anna M. Agathangelou echoes this by noting that the attempt to privatize sex through the contract does not take away from the fact that "these private relations [are] crucially linked to capitalist production."[130] Thus colonial relations are part and parcel of sexual labour, particularly "in a world context within which economies' major logic is exploitation through colonization of people's surplus-value and violence against their personhood."[131] Coulthard has similarly observed how liberal-recognition politics like Eurocentric contractual theories do not destabilize networks of colonial sovereign power and its capitalist-driven pursuits of profit, land, and resource acquisition that condition present-day Canada. Rather, colonial power demands a form of non-reciprocal recognition that requires Indigenous subjects who make claims to freedom identify with colonial modes of thought rooted in the juridical registers of the colonial state. He explains that, "like capital, colonialism, as a structure of domination predicated on dispossession, is not a 'thing,' but rather the sum effect of the diversity of interlocking oppressive relations that constitute it."[132] The contract understood in this way reveals how colonialism in Canada "remains structurally oriented around achieving the same power effect," that is, the dispossession of Indigenous peoples that seeks to "entice Indigenous peoples to identify, either implicitly or explicitly, with the profoundly asymmetrical and nonreciprocal forms of recognition either imposed on them or granted to them by the settler state and society."[133]

Therefore, the spatial segregation of the colonial world retains dominant relations between subjects and those deemed degenerates (sexual deviants), which the contract does not eliminate; rather, the contract retains colonialism's asymmetrical forces between colonized populations. Like Coulthard, then, Bourgeois similarly explains that the problem with sex-as-work feminist approaches to the sex trade is that it does not ground its critique in a meaningful historical analysis

of colonial materialism, which precondition their capacity to theories sex and morality as ruling feminist subjects. Rather, it problematically conceptualizes sex work as "an *effect* of sexual power relations,"[134] which suggests that in a colonial context like Canada such experiences are only exacerbated by racism rather than being the root cause. Therefore, a feminist refusal of hegemonic normative discourses that shape sex workers' lives differently as the basis of feminist politics does not, for Bourgeois, disrupt the production of bourgeois subjectivity that is the product of colonial-relations and capitalist ones too. Despite attempts to disrupt dominant sexual norms, as a monocausal explanation, this position continues to rely on universal categories of womanhood, agency, and a universal desire to monetize and capitalize on sexual power.[135] This was initially made possible by the conflation of Indigenous femininity with prostitution, which was deployed as the unit of measurement "against which the ideals of Western white femininity could [be] confirmed as superior."[136] In this regard, the state's management of prostitution and its subsequent prostitution-related oppression does not emerge alone through moral legalism as the juxtaposition of those European women who were constituted as sexually deviant against moral guardianship, but rather, is set off through the proximity of civilization to savagery and the co-production of colonial geographies concerned with the appropriation of land for capital by way of racialized spatiality.

Importantly, what a sex-as-work feminist genealogy also misses is that Indigenous women's involvement in sexual economies have not only been organized around religious and moral enterprises that were exploitative and dehumanizing.[137] But also, what became Canada—and Canada's ability to establish its position within the global community—was enabled through Indigenous women's roles in the development of strong economic and trade relationships between the sixteenth and nineteenth centuries through the fur trade.[138] Indigenous women not only worked

as traders themselves, but, as trade became engrained into the economy, another of the ways in which Native women became involved was through intermarriage. Within the context "of both trade and religion, and because the first explorers and settlers were predominantly crews of men, marriages of fur traders to First Nations women were seen as a viable method of diplomacy."[139] The diplomacy that these relationships offered identifies how Indigenous women's sexual labour power played a fundamental role in the construction and organization of local and global economic systems of power, through which Canada continues to assert itself as a leading global power. As Sylvia Van Kirk explains, "Indian women's role also extended beyond maintaining their domestic roles as they assisted in specific fur trade operations,"[140] as it was Indigenous women's unique possession of knowledge, skills, and wilderness know-how that traders relied on to navigate the economic and ecological landscapes. Indigenous women's sexual labour power was thus foundational to the construction of Canada's economy, which as a site of social reproduction of colonial identity also produced "mixed-blood" Indigenous communities. Hence, Indigenous sexual economies, the power of which created reciprocal social ties, served to consolidate Canada's economy and economic relations. Indigenous women's sexual labour power, then, preconditions the social and economic context of sex-as-work feminism's genealogy of sexual morality. Following the fur trade, however, the subversion of Indigenous women's sexual economies was compounded by the arrival of European women against whom they came to be compared. It is then that Indigenous woman became more closely regulated and organized under the auspices of the Church and the state, including the *Indian Act*.

These analyses, then, expand the moral regulation insights to further consider how morality historically has been used to juxtapose white respectability politics in relation to its immediate proximity to the Indigenous Other. Bourgeois points out that some of the first laws in Canada ever

enacted, for instance the *Indian Act*, demanded "compliance with preserving the purity of white spaces."[141] Through the *Indian Act* and later the emergence of Canada's first 1892 Criminal Code, prostitution relations of violence are manifest as the polices directed at regulating and controlling aspects of Indigenous women's lives. For instance, the 1892 Criminal Code enacted its first anti-prostitution laws which established that Indigenous women's engagement in prostitution was "an offence against morality."[142] This sought to demarcate and police racial boundaries of colonial legal hierarchies where Indigenous women who were found off the reserves were always assumed to be participating in prostitution.[143] These policies were based on colonialist perceptions of Indigenous women as being both hypersexualized and sexually available, and hence they were "morally ambiguous and dangerous to the respectability and moral superiority of dominant white settler societies."[144] This "morality-based strategy"[145] was intended to safeguard colonial orders in spatialized terms. It likewise set a precedent to punish Indigenous women more severely than their non-Indigenous female counterparts for being "sexually deviant." White women found engaging in the exchange of money for sex, on the contrary, were only punished under the rubric of "common nuisances," which carried a significantly lesser weight.[146] The moral undertones of such practices embody a symbolic and material space of alterity where Indigenous women and the spaces they occupy are always imaged as being spaces of prostitution and threatening to the purity and respectability of the colonial civil spaces, denoting the institutionalization of hierarchies amongst women. Hence, the provisions in the *Indian Act* and the 1892 Criminal Code were explicitly designed to control the movement of Indigenous women's bodies on and off reserves and were articulated as civilization discourse of colonial morality, which continues to pervade contemporary society. The problem, then, is that unlike their white Western European

counterparts, the struggle for Indigenous women was "for the right to be seen as having moral virtue and for the right to have a private sphere."[147]

Importantly, the insights from these two histories are not entirely incompatible. These positions agree that morality regimes have been used as a means to control sexuality in ways that are central to Indigenous and non-Indigenous sex worker oppression, mobility rights, and citizenship status.[148] However, Bourgeois' work distinctively contributes to this discussion an expanded historical reading of function of Indigenous sexual economies. In so doing, she complicates sex-as-work feminist accounts of the liberatory potential of the contract, the relationship between morality and coloniality, underscoring the central role of colonial space in critiques of morality-based prostitution prohibition. Spatial configurations, she explains, were used to establish and police the boundaries of whiteness through spatial segregation, which established the moral supremacy of white settler society. It is for this reason that in a colonial condition, prostitution as a relation of violence permits buyers of sex to transgress from spaces of white respectability into spaces of prostitution where they can experience themselves as a ruling colonial class in the exchange of money for sex in colonial socio-economic hierarchies. The problem, then, is that the temporary abandonment of dominant socio-sexual norms does not weaken the logics of white respectability, but rather, it reaffirms its power through one's ability to easily move between both domains relatively unscathed. It assumes that all sex-working women can be admitted to the social contract, and thus, retain its benefits. Colonialism, however, is the scaffolding upon which rests the formation of the nation's contracts, and its sexual citizens. Violence necessarily plays a role because it is the structuring logics of interlocking systems of power, privilege, and domination that precondition these movements and exchanges on occupied lands. In this context, I would also add that sex worker subjects as sexual deviants are not merely transgressing morally prescribed

gender roles with their engagement in sex trade industries, but rather, they are not performing their whiteness properly, flirting with racialization (as a spatial configuration), and violating "white notions of racial distance"[149] by transgressing the colonial boundaries of civilization discourses. Here, whiteness denotes a race and class status and position in colonial hierarchies because, as Frantz Fanon has previously explained, in a colonial condition "you are rich because you are white, you are white because you are rich."[150] Hence, Indigenous genealogies of colonial materialism extend beyond Valverde's framing, exposing that regardless of the race of the sex worker, spaces of sex work and prostitution are racialized domains so that those who enter them necessarily lose their entitlement to personhood and rights afforded to that designation through legal practices that are required in making and maintaining a colonial society.[151]

Therefore, Bourgeois shows that it is not as simple as transgressing prescribed moralities and normative roles in the desire to participate in the free market exchange of the labour structure, but what must be considered is the multiple systems that sexual commerce upholds and how these systems also produce and sustain relations of colonial domination. While disavowing socially prescribed sexual roles may disrupt moral regimes, the sex-as-work approach does not, however, transcend colonialism's structuring of social and sexual organization. Sexual commerce, Bourgeois explains, as a spatial analysis "is complicit with the goals of settler domination; it re-establishes dominant white settler subjects" and it also "provides the rationale for extending settler colonial domination through laws and policy."[152] This analysis, then, seeks to show how prostitution plays "a fundamental role in the making of dominant white settler subjects and securing the hierarchal organizing of the material and lived conditions of society."[153] Through this, then, we witness contradictions under capitalism, that is, feminist resistances to capitalism's modalities of power and its production of material inequalities can be solicited while

simultaneously protecting the power of whiteness, bourgeois bodies, the ruling class, and the nation's colonial hegemony.

Thus, while the sex-as-work approach foregrounds important critiques concerning the material inequalities experienced by sex workers by situating them within the domain of the labour structure, Bourgeois' work has also indicated that part of the problem is how this approach dismisses colonial determinism, opting instead to retain fidelity to Marxist economic determinism, while at the same time mixing their categories with liberal ones. It depends on affirming the liberal social contract, under which demands are made for "recognizing and respecting the agency of Indigenous women to choose sex work alongside the decriminalization of prostitution and its protection as a legitimate form of work will help end colonial domination and contribute to more safety for those who choose to be involved in the sex trade."[154] Sex worker liberation, in this sense, is constructed around concerns of individual agency,[155] personal autonomy,[156] and acts of resistance.[157] Importantly, while decolonization and decriminalization, here, are understood as being inextricably linked,[158] framing prostitution as a question of liberal agency—which becomes the stand-in for Indigenous self-determination—for Bourgeois, this contradicts the lived experiences of Indigenous sex workers by obscuring the nature of colonial violence. The other problem, as I will discuss below, is that sex-as-work critiques—in responding to sex worker oppression using liberal categories like choice,[159] agency, [160] and autonomy[161]—assert the universalization of secular-liberal humanism when making the arguments that appeal to sex worker human rights discourse, which subsumes Indigenous being(s) because of its sacred orientations.

Sex Worker Humanism: Neo-colonialism and Human Rights Discourse

With Indigenous critiques of feminist materialism as our conceptual backdrop, how, then, can we understand the sex-as-work approach as one that embodies secular humanist subjectivity? As outlined by Bourgeois, sex-as-work feminism retains fidelity to Valverde's genealogy of morality politics so that these studies find themselves genealogically grounded in a tracing of social history that accounts for the genesis of the sex worker's humanity within secular Enlightenment philosophies, which introduce a theory of humanism that was previously accounted for by Christian theology.[162] As Foucault reminds us, this required a shift where "sexual conduct of the population was taken both as an object of analysis and as a target of intervention…there emerged the analysis of modes of sexual conduct, their determinations and their effects, at the boundary line of biological and economic domains."[163] His words are echoed by Valverde who writes that "there was a new emphasis on children and, indirectly, on women, for with them one was making an investment in the future of the nation."[164] Meaning, during this Enlightenment epoch, there was a push for social breaks from theological influences on political life that required an acceptance of a particular metaphysical worldview that consolidated the secularized idea of the liberal human. For instance, humans that were once God's obedient subjects came to be understood as free citizens tasked with living out a plurality of their own individual desires where mastery of the self was defined proprietarily.[165] In this sense, being human meant being a sovereign self-owning agent who owned their body and the inalienable rights to enjoy it, and whose ownership of the legal concept of personhood could be enforced by the law as juridical personhood was designed to safeguard the market and its forces.[166]

Such ideas embody a "thick account of what being human is,"[167] which according to Talal Asad, is one that underpins modern articulations of human rights. On the one hand, secularization

denotes a legal transition from a monastic life (as traced by Foucault and Valverde) to a life of canons (natural rights) that, following the Reformation, "signified the transfer of ecclesiastical real property to lay persons, that is 'freeing' of property from church hands into the hands of private owners, hence into market circulation."[168] The secular as a discourse of Enlightenment modernity thus presents itself as the gradual emancipation of the secular from the theological in a march towards freedom. At the same time, Enlightenment demystification similarly separated out "superstitious mythology" associated with "primitive" conceptions of being. Indigenous conceptions of the sacred (of land, space, and heterogeneous time) became synonymous with irrationality as a way of thinking about the secular by contrast, in which calendarial time became the measure and direction of human events.[169] For Asad, it also closely resembles Locke's theory of the self through the legal concept of person. The "essence of the human comes to be circumscribed by legal discourse: the human being is sovereign, self-owning agent—essentially suspicious of others—and not merely a subject conscious of his or her own identity."[170] The secularist principle of right to freedom of belief and expression, for instance, were founded on this basis in how an emphasis on natural right translated into a politics about a limit to arbitrary government interference wherein the individual is encouraged to govern themselves. This is because this philosophical approach maintains that the human being has the inalienable right to enjoy their body, and thus, restrictions placed on that constitute an offence against the integrity of the body and an infringement on the subject's ability to undergo a full range of human (sexual) experience. This is relevant to our context because sexual conduct, now considered a valued part of being human when framed within this ideal, understands that anything which interferes with the right to sex in its many practices is in a powerful sense understood as inhuman, and therefore, "becomes a matter of human right and its violation."[171]

Moreover, Asad points out that the inalienable rights of liberal humanism depend on the *national rights* of the modern state that constitute, protect, and punish as citizens of a nation-state for its enforcement. The project of extending universal humanity as a right becomes "a mode of converting and regulating people, making them at once freer and more governable *in this world.*"[172] Secular humanism, then, is signified by "disenchantment—implying a direct access to reality, a stripping away of myth, magic, and the sacred—a salient feature of the modern epoch."[173] It deals solely with material worldly things, which problematizes secular morality, embodied by the self-owning subject[174] whom can be dealt with through mechanical laws.[175] This means, then, that the modern nation state reserves the power to legislate being human (or the human conceptualized abstractly), which can be perfected over time as a teleology of progressionist liberation. This, Asad notes, is predicated on European preoccupations with civilized standards of justice and the desire to create new human subjects.[176] It requires understanding humanism not merely through scientific theories of human nature, but also its interconnection and co-production of political and economic practices, for instance, how neo-liberal economies have "the advantage of defining 'freedom' quantitatively ('objectively') from the consuming subject in terms of behaviour."[177] For Asad, the intersection of human rights and economics is important because "while self-ownership and self-preservation are regarded as basic to natural morality, they are also justifications for realpolitik,"[178] which is endowed with legal force through appeals to a secular society to authorize a concept of "humanity" that has allowed authorities to decide who, by virtue of fitting the neo-liberal articulation of being human, can be treated humanely by the state and its citizens.[179] Rather than force or consent, it depends on statecraft that uses self-discipline and participation in law and economy as the means of political strategy. What counts as humanism, what the capabilities are of the human subject are "decided through the global market in which

property rights and cost-benefit analysis are central."[180] Moreover, "human rights become floating signifiers that can be attached to or detached from various subjects and classes constituted by market principles and designated by the most powerful nation-states."[181] Hence, understanding political and economic practices that are meant to regulate desirable (sexual) conduct are important to making sense of how conceptions of what it means to be human are consolidated.

Consider, for instance, the retention of these humanist ideas in human rights legal discourse that sex-as-work feminism lay claims to.[182] For instance, in *Bedford*, UN reports were cited to help support arguments for decriminalizing the sex trade as the reports showed that decriminalization was "successful in improving working conditions and safety in the legal practice of prostitution."[183] On the topic of criminalization, Brenda Balek and Darcie Bennett contend that "processes that prioritize a human rights approach to when and where sex work takes place is essential, because using criminal sanctions only serves to reinforce stigma."[184] This is because, many sex workers reject the characterization of prostitution as only violent and coercive because this characterization participates in "the dial of their agency."[185] They assert that treating all exchanges of sex for compensation as violence "denies sex workers their bodily autonomy, because it depicts sex workers as unable to give or, significantly, to withdraw consent."[186] Further, they argue that "sex workers and their allies call on Canada's federal government to decriminalize sex work and to demonstrate leadership by implementing evidence-based policies grounded in sex workers' human rights and lived experiences."[187] They cite international human rights conventions to support their arguments for decriminalization suggesting that "laws and narratives that fail to distinguish between sex work involving consenting adults and sexual exploitation or trafficking have been identified by the United Nations as undermining efforts to address those critical human rights issues."[188]

Elsewhere, Kempadoo et al. highlight how criminalization measures "infringe upon a person's human rights, denying them not just physical mobility, which violates Article 13 of the United Nations Universal Declaration of Human Rights," but also "economic, class, and social mobility."[189] These efforts compound the "stigmatization of sex workers"[190] because they focus instead on policing the movement of bodies, particularly racialized and Indigenous bodies, reproducing narratives of "Indigenous women and young girls as helpless victims needing to be saved,"[191] which tends to "depoliticize systemic processes of disenfranchisement."[192] It goes as far as "to control the presence of Indigenous peoples in the city and further the practice of displacing Indigenous peoples through the policy of returning Indigenous sex workers to the reserve."[193] As Kempadoo et al. point out, this runs counter to national and international goals of supporting the human rights of workers and of persons in exploitative situations.[194] These goals, they note, are outlined by Amnesty International, the World Health Organization, *Canada v. Bedford*, and other laws and organizations.[195] Graham Hudson and Emily van der Meulen similarly explain that advocates for sex works in Canada and abroad have maintained that sex work is a human rights issue that needs not be regulated through criminal as it is a form of work.[196]

Unfortunately, the above scholars note, sex work in Canada continues to be viewed through the prism of violence that understands it as exploitive and inegalitarian. Insofar as this is the case, "Canada's human rights obligations would require it to eradicate or actively reduce sex work"[197] because they are presupposed by anti-sex work ideas that maintain that the power imbalances involved in the sex trade necessarily reproduce violence against women. The question of safeguarding sex worker human rights, however, "cannot be answered by simply describing the content, form, or objectives of relevant law or by invoking moral perspectives on sex work."[198] It is for these reason that the sex-as-work position locates its human rights struggles within economic

statues of human rights protection.[199] As Hudson and van der Meulen have pointed out, locating these issues only within statues that seek to protect the human rights of women limits the capacity for transformative justice because such human rights approaches adopt an anti-sex work ideological position that continues to frame sex work under the lens of women's patriarchal domination and inherent victimization. Balek and Bennett make similar observations highlighting how the UN Special Rapporteur on Violence against Women is attempting to come to terms with this, noting "the need to ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.'"[200] Critically, these reflections denote the tensions around denying sex workers the right to determine not only the conditions of their labour, and hence security of person, but also the denial of the right of sex workers to retain ownership over their bodies and the benefits of the labour that their bodies produce. Anti-sex work values and ideologies are thus problematized for how they limit bodily autonomy, interfering with sex workers' capacity to embody the status of legal personhood through the deprivation of their economic rights and right to safe labour conditions.

Here, claims to human rights bring together the moral authority of economic norms and the secular force of law. Using the language of labour to defend the authority of sex worker human rights defaults to discourses of modern citizenry and the citizen's right to conduct their sexual practices however they desire. This operates on the assumption that sex workers are individuated sovereigns. It institutionalizes ideas around industry, individual [moral] autonomy, and economic projects that seek to redefine an abstract human through discourses of sexual normality. It is facilitated by the secular idea of progress defined by autonomous human [sexual] agency so that the language institutionalizes a universal ideal about limited state interferences, free market sex, universal sexual ontology. In this way, a project of humanizing sex workers promotes

secularized liberal values. What is at stake here, then, is how sex-as-work feminist genealogies of sexual repression are also networked with Enlightenment demystifications of the sacred which conditioned secularism as a political doctrine and constructs a feminist sexual subjectivity as an ontology of the secular. This is because, to be read within the sex worker human rights discourse the prerequisite is a de-mediation of sacred and non-secular conceptions of sex, the body, and materiality.

Lana Ray (Anishinaabe) expands our thinking on this. Ray identifies a problem with European secular-humanism for addressing conditions of Indigenous sex trade workers, in that it reproduces neo-colonial values and Eurocentric notions of sex that secularize Indigenous experiences in the sex trade while promoting economies of imperial development.[201] As she explains, feminist rights-based frameworks distort Indigenous notions of agency and self-determination that serve to "perpetuate the domination of Indigenous women and lands"[202] by essentializing Anishinaabe gender and sex ontologies with liberal conceptions of rights and capitalist desires of consumptions. For example, the sex-as-work rights-based approach mistranslate Indigenous experiences in the sex trade through liberal notions of sexual agency.[203] It conflates Indigenous cultural norms related to autonomy and openness with colonial notions of sexual liberty pertaining to possessive individualism and prosperity that "distorts Indigenous concepts of sexuality with Western patriarchal values."[204] The sex-as-work approach thus essentializes Anishinaabe sexual agency by authorizing the objectification, secularization, and commodification of Indigenous sacred sexual ontologies, instead, institutionalizing a paradigm that mandates compliance with colonialist profit seeking and resource development.[205] By Ray's standards, this approach to labour and sex conflicts with Indigenous ways of being because it is designed to reproduce common relations of power that parallel with oil and pipeline developmental

logics through overdetermination of Indigenous fates.[206] It rearticulates logics of domination over Indigenous lands and women through ideological attachments to imperialism's belief in the inherent rights to resources (*terra nullius*), the extraction of value (capitalism), and conceptions of land and sex are de-mediated from their sacred orientations. Both sex and land are understood as a source of raw material. Oil is disassociated from land as an object of extraction as sex is disassociated from Indigenous ways of being, reconceptualized as a site of potential capitalist profit. As such, neither are "eligible for ethical consideration and thus subject to violation and exploitation."[207]

The legacy of neo-colonial development discourse is thus fulfilled when it suggests that Indigenous women's sex, like its use of land, is lacking to a degree and by consequence there is an assumption regarding the underdevelopment of Indigenous people and their nations, as well as the need to promote economic productivity in the service of neo-colonial economic designs. Both industries are problematically conceived as ethical because they purport to respect individual and community rights under the guise of economic stimulus that is attributed to enriching the lives of Indigenous peoples. At the same time, Ray continues, "while at face value this discourse appears to advocate for a basic standard of living for Indigenous peoples, clandestinely the narrative reads … as an individual deficit, this 'lack' can be attributed to structural inequities and/or cultural differences that Eurocentric thinking devalues."[208] From an Anishinaabe worldview, she explains, "what I have been taught is that akin to Mother Earth, we have responsibilities as life-givers, caretakers, and teachers within our own communities and nations. With these responsibilities, Indigenous women and Mother Earth are integral to the governance and wellness of Indigenous communities."[209] Reducing sex to commodity and labour, then, for Ray, "negatively impacts cultural sovereignty-an arguable precursor and necessity for self-determination"[210] as it demands

that ethical registers of Indigenous relational and sacred ontologies be secularized when read through discourse of neo-colonial economics. She notes, this functions as structural adjustments that seek to disassociate Anishinaabe women from their roles within Indigenous communities that understand women and the land as part of a larger ethical and interconnected living system. Secular-liberal rights discourse ignores the structuring impacts of neo-colonialism and seeks to position Indigenous women as becoming complicit in the projects of colonialization. At its core, its purpose is to produce sexual subjects that service colonialism disguised as "empowerment" through invocations of "rights," "ethics," and "economic stimulus."[211] Alongside Asad, then, Ray shows that what is implied is the direct access to sex as a resource within a neo-colonial reality, stripping away Indigenous metaphysical conceptions. At the same time, through the extension of a universal secular humanist paradigm, the liberal rights discourse secularizes sex as a way of making non-Indigenous sex trade workers freer and more easily governed within this world.

With international conventions regarding labour and unionization rights being a central feature of the pro-sex material feminist approach, Antony Anghie's interrogation of international human rights legal norms expands our thinking here by further complicating some of the problems that accompany a fetishization of the extension of universal rights norms.[212] As well, Angie provides a bridge between Indigenous critiques of materialism and IR theory with a discussion about the colonizing epistemic assumptions embedded within international universal human rights discourse. For example, Angie identifies how at the centre of human rights discourse are questions regarding the humanitarian treatment of 'inferior' subjected peoples in the colonies which comes in to refine the justification for the colonial project.[213] What is at issue, he notes, is concern regarding the principle of well-being that elucidates a concept of a sacred trust of civilization that is predicated on a universal desire for development.[214] Europe's preservations of the *sacredness of*

civilization is undertaken to "promote the utmost material and moral well-being and of social progress of its inhabitants."[215] With this conceptual backdrop, international law and its institutions, thus, are designed to create economic, political, and social conditions under which a sovereign state consolidates its economic aims. International institutions are tasked with establishing global colonial legal norms that through their engagement with so-called backwards peoples and their territories are designated as sites of potential profits.[216] Anghie explains that "we might understand the monumental significance of international human rights law in these terms: it enabled international law and institutions to enter the interior, to address the unconscious, and thereby to administer 'civilizing therapy' to the body politic of the sovereign state."[217]

When put in these terms, one is compelled to ask, what is, in practice, the civilizing therapy designed to promote the sacredness of civilization and the social progress of colonial communities and, what form of morality does it adhere to? For Anghie, the answer is that international human rights are shaped by, and connected to, imperial endeavours of economic relations between colonizing and colonized, and the comprehensively developed ideas concerning cultural differences between European states and institutional formations and colonized (backwards) peoples. Human rights motivations defined as economic gain is the embodiment of a neoliberal ontology of conquest that is based on a set of Eurocentric metaphysical assumptions about the human and non-human world, which set the terms of sovereignty and the proper functioning of social, political, and economic life on a global scale. Therefore, what Anghie discusses as the infrastructure projects of economic development where the native is "no longer merely to be conquered and dispossessed" but rather to "be made more productive,"[218] speaks to an economic moralization that is inherent to the co-production of colonial realities via human rights discourse that links perceptions of the efficiency of economics to secular humanist aspirations.

Angie's discussion of international human rights discourse is also not incompatible with Coulthard's critique of prioritizing the capitalist-relation over the colonial-relation which Coulthard raises in response to Marx's contention regarding the inevitability of class revolution. In brief, Coulthard takes issue with Marx's original historical metanarrative that propelled a modernist view of history and historical progress. This developmentalist ontology retains colonizing epistemic assumptions that naturalize colonial developmentalism and civilizations discourse that depict non-Western societies as positioned as in a lower stage of social, cultural, and economic development. As a result, Coulthard notes, Marx's most influential work tends to not only portray primitive accumulation as a historical phenomenon in the sense that it constituted a prior of capitalist mode of production, but that it was also a historically inevitable process that would ultimately have a beneficial effect on those violently drawn into the capitalist circuit."[219] Coulthard cites Marx who stated that "all bourgeoisie, by rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian nations into civilization … it compels them to introduce what it calls civilization into their midst, i.e., to become bourgeoise."[220]

This is relevant to our context, because the link between sex worker humanism and Canada's sex industry is what Ray previously described as the explicit assumption of Indigenous sexual underdevelopment (backwardness) and the benevolence of the force of secular law to safeguarded Indigenous rights by way of economic stimulus (progress). This is based on a set of moral principles related to liberalism and anthropocentric humanity that preoccupies itself with labour and productivity. The feminist humanitarian assumption of the sex-as-work human rights framework problematically assumes that it is through discourses of Canadian interventionism (neo-colonial resources extraction) guaranteed by Enlightenment philosophy (secular-liberal rights

discourse) that Indigenous peoples can, through feminist sex worker human rights discourse, be saved from their subjection. Ray recalls for us that this is based on three racist and Eurocentric feminist themes: "1) The domestic nature of Indigenous women's bodies and lands makes their use ethical; 2) The use of Indigenous women's bodies and lands supports self-determination; and 3) Pipelines and prostitution enrich the lives of Indigenous women."[221] Neo-liberal and neo-colonial endeavours are thus framed as humanitarian interventions. In this sense, sex-as-work feminism's employment of human rights discourse articulates epistemic assumptions about the settler colonial need to make Indigenous women more productive through neo-colonial economies that extract profit through secularization of sex. Significantly, then, praise is given to Canada's imperial and colonial project for both its philosophical humanist pronouncements and entrepreneurial spirit. The physical and psychological well-being as well as the moral well-being and vulnerability to harm Indigenous sex trade workers fall under capitalism's and colonialism's initiative of monetizing the world, by making Indigenous sexual economies more productive.

In this context, when suggested as universally valid and applicable of achieving human rights, the sex-as-work feminism's desire to monetization of sex under neo-liberal colonialism embodies "a set of processes by which certain natives could be civilized."[222] Entering the universal realm of humanity and progress requires Indigenous sex workers to use their sexual labour to further neo-colonial economic development by submitting to global capitalist and imperial jurisprudence. The "essential conditions of general prosperity"[223] is framed not only as ensuring the well-being of Native women, but also their "physical and moral development" by "furthering economic progress."[224] Hence, colonialism shifts from exploiting and exhausting Native peoples and their assets, to instead, "developing and preserving the Native and her territories as productive assets."[225] Anghie calls this enlightened colonial administration[226] and describes it as a more

nefarious expression of colonial violence because it comes through as humanitarianism through the language of liberalism that is cloaked in the promotion of Indigenous self-determination.[227] For him, it is based entirely on utilitarian values. Native land and labour are assets to colonial governance that must be preserved, wherein, the gap between the two is "no longer located in juridical distinctions between civilized and uncivilized, but in economic distinctions between developed and developing,"[228] which is tied to colonial citizenship and the preservation of the colonial hegemony.[229]

Hegemony and Sex Worker Humanism

Part of the dilemma I see, then, resides within the sex-as-work feminist understanding of hegemonic power. If we recall, Sangster describes hegemony as the ways in which law as ideology naturalizes hegemonic power as process of institutionalizing symbols, values, and beliefs that construct, for instance, dominant (sexual) normativities.[230] For Glasbeek, this includes the regulation of sexual conduct that imposes a bourgeois femininity and morality[231] through the deployment of hegemonic notions of femininity.[232] For Roots, the institution of law and its legislative definitions reproduce hegemony because they are part of the process that constructs categories of sex workers through moral discourse that recreates dominant social formations through the ascription of meanings.[233] Hegemony, here, is understood as a relationship of (moralized) ideological power between the state and civil institutions that preserve bourgeois interests in the organization of social relations and sexual life. Likewise, human rights are conceived as counter-hegemonic because it is seen as able to counter dominant moralizations and disavowals of sex worker agency, experiences, and narratives, thus speaking back to the power of

anti-sex work ideology in law and society. Hence, as counter-hegemonic, it could potentially transform the dominant legal and cultural understanding of sexualized labour by shifting the socio-legal discourse. This includes shifting the legal framing of prostitution that continues to be employed as a mechanism of censorship and control that circumscribes the social parameters of sex discourse and what is considered permissible in the public/private spheres.

While understanding hegemony in this way is critical to unpacking the innerworkings of power, my understanding of hegemonic power differs in that I also understand it as an epistemological condition that includes the systematic effort to make unthinkable other ways of being, knowing, seeing, doing, desiring, and relating to the world.[234] For instance, in the sex-as-work framework, human identity is defined by the liberal humanist definition of Man-as-Norm and the Marxist definition of Labour-as-Norm. [235] This determines the election of the norm of the legal order and the organization of the hierarchal structures of social relations, through which sex workers become free and sovereign individuals. Secured by this strategy, secular sovereignty as a model of sex workers subjectivity takes places by a series of exclusions. In the schema of a colonial system, Indigenous ontologies easily lend themselves to playing the role of the symbolic Other to the Norm, while secular-liberal humanity plays the key role in representing the Norm in the structuring code of human rights discourse, reifying the "reality" of the orders of liberalism and Marxism as legitimating discourses, which articulate a "regime of truth." As Sylvia Wynter explains, "feminisms which function within the frames of reference of the 'objective truth' of Liberalism or of the 'scientific truth' of Marxism-Leninism, logically function to reinscribe and reinforce the very system which compels women to signify otherness, to put the code of the order into practice, into play."[236] For Wynter, this does not, however, "deconstruct and decode the underlying morphogenetic fantasy which dictates multiple modes of supremacy—including the

discursive supremacy of vanguard feminists (usually middle class, white, and western European) over their inverted excluded others, i.e., those who lack the series of norm-signifiers, and are non-middle class, and/or non-white, and/or non-western European."[237] Since labour/capital are signifiers of the human norm, it reproduces a set of social relations necessary for to the reproduction of the "Norm-status" of the property owning colonial class. In this way, I read sex-as-work feminism as fetishizing human rights as a counter-hegemonic discourse. I question, then, the role and power of the Norm in defining the parameters of liberation and freedom.

The problem, as Anna M. Agathangelou points out, is that a human rights framework reinforces speculative economies that allow a state to progress by speculating on the generation of futurity and sex as sites of redeemable value "while capturing flesh and markets for profit."[238] In this way, human rights discourse colludes with capitalist ideologies and economies of colonialism that are collapsed as sexuality into the neo-liberal imperium in which the lives of Indigenous people become the raw material to safeguard long-term growth. Human rights, then, act as the vehicle by which sex acts as a technology of power that safeguards capitalist and imperialist futurity that institutionalizes the transactional ontology of human life in efforts to reorganize the uneven distribution of rights and goods based on sex.[239] Here, alongside Agathangelou, I use speculative economies to refer to the way that Indigenous sex economies are constituted as value in order to reconfigure capital and globality by placing the sex worker within civil society (human rights) that fundamentally depends on the abstraction of value of some, at the ontological expense of others who are deemed structurally impossible (also see chapter 1).[240] From this perspective, prosperity is promised by the increasing of open markets so that this openness for securing profit marketizes sexuality by according value to sex workers through the demarcation of global boundaries of racialized sexualities and bodies. Thus, sexual economies do not escape being

entangled with capital's foundational violence, but rather, the neo-liberal imperium biopolitically constitutes and manages sexual life but ignores what the implications are for ontologies that do not fit neatly into these categories that define what it means to be a free human.[241] Meaning that the appropriation of sex as a recourse presumes the need for ontological reconstructions to bring sexual subjects in line with neo-liberal feminist economic aspirations.

This is to say that, while drawing on human rights to open space for thinking about the rights of sex workers is important, the intended universality of the human rights framework cannot escape the problem of some of its most basic terms of agreement for determining the prerequisites for who is deserving of the designation of a human with inherent rights. Here, I will briefly discuss some of these prerequisites and their implications. To begin, within the context of sex-as-work feminism, the adjudication of human rights to sex workers deploys only a material and discursive understanding of sex workers and their realties. Next, sex as a technology of power is turned into a value through a notion of the secular humanist enterprising self that speculates on the futurity of redeemable sexual value. As well, spaces of sex work, meaning, the enclosed and occupied Indigenous lands that are transformed into relations of private property for the purpose of monetizing sex under neo-liberal coloniality and generating profit (bawdy houses for instances as discussed in *Bedford*) is presumed to be an ethical economic opportunity and a space through which sex workers can convert subjection into neo-liberal sexual freedom.

The implications of this are significant. Far from disassociating the sexual self from the global crisis of capitalism and neo-imperial domination, the pro-sex/sex-as-work discourse turns human rights into a neo-liberal project of bringing subjects into the speculative markets of sexuality by asserting their rights to be understood as workers—workers as defined within the limited sense of the Enlightenment humanist terms. Thus, in requiring that Indigenous sex workers

lives be understood only materially and discursively, it renders Indigenous metaphysical understandings of sexual politics, economics, and humanism as lacking the capacity to foster a liberated life and sexual self. Through this disavowal—for instance of Indigenous genealogies of sexualized economies and colonial materialisms as merely an articulation of the so-called 'anti-sex' and 'sex-as-violence' positions—Indigenous bodies, labour, and lands can be captured for market profits as Indigenous sex economies are drawn on by a resurgent neo-liberalism to construct regimes of value. At the same time, it secularizes sex and humanism while generating structures of violence and modes of governance that limit understandings of subject construction under structural domination. Indigenous peoples are thus rendered both a commodity and technology of global power whose value lies within a neoimperial aim that sees Indigenous experiences as a site for the extension of legal progress and the extension of a universal secular humanism that it necessitates. This promotes epistemic and structural adjustments of subjectivities to fit them into the matrix of capital. Structural adjustment of Indigenous economies and sexualities refers to demanding that to be deemed "human" one must adhere to the strict definition of the sexual self as a relation of the entrepreneurial matrix of global capital at the expense of alternative articulations of sexual self-determination. Central to this analysis is the contention that speculative economies, in our case neo-colonial sexual labour markets across Indigenous nations, cannot escape feminist attempts to further entangle them with capital's foundational terror that is enunciated through an international colonialist culture of legal and human rights norms. In this way, Indigenous sex workers are constituted through feminist developmental leadership as a commodity of capitalist and colonial exploitation whose value is retained by nature of how it supports feminist sexual aims that views Indigenous sex as coinciding with neo-liberal speculative agendas. Likewise, there is an assumption that the only way for Canada as a nation within the

global community to become truly democratic is by the eradication of restrictions placed on sex workers from which Canada becomes able to join the progressive "right" side of history regarding a sexually progressive world. The politization of human rights, then, allows for the state of progress wherein the business of sex work becomes a site of social reproduction of feminist and colonial identity through which sex-as-work feminism appears to assume that there is a natural desire to privatize and monetize sex under neo-liberal coloniality.

What my understanding of hegemony makes visible, then, is that this neo-liberal desire is politically produced by material conditions, and global political and epistemic structures of coloniality are embedded within local and global institutions of power that sex-as-work feminism draws on to humanize the sex industry. Thus, contrary to the sex-as-work discourse analysis that contributes to their theory of hegemony, which I am suggesting provincializes the individualization of sex and desire as autonomous circuits that then hide exploitation by centralizing the market of "equal exchange," sex and desire "are social and historical relations"[242] based on racialized structures of sexual relations for the reproduction of subjectivities within a neo-colonial capitalist system. Sex and desire are informed by class and colonial positionalities of racialized and gendered subjects within the global divisions of labour, including intellectual labour. Meaning, the epistemological relations of secular-liberal being that organizes the sex-as-work understandings of the social, under which labour power of sex is conceived of as a commodity and capitalized on as such, is the antecedent to the recognition of sex worker humanity. In this way, hegemony is not only the delineation of power between institutions and society, but also a global political economy of sex, knowledge, and coloniality. Sex and desire, then, do not locate their origins only in a pre-social individual negotiating hegemonic normativities and their discursive circuits of power, but also through internalizing secular-libera humanist philosophical enterprises. This approach to

hegemony directs sex-as-work feminism to investigate the dialectic between the production of sex and the call to commodify it as well as the process through which this feminist ambition gets internalized and universalized through the production of knowledge of about the sex work.

Thus, affixing human rights to the commodification of sex is not accidental but a strategic move to get around dealing with how coming to that position requires the naturalization of epistemic violence and the erasure of the colonial conditions under which notions of value and desire are generated. What this also makes visible is the global political economy is also one wherein desire is the process of "whitening" Indigenous sexual economies as a strategy of expropriation and violence by capital. As a stand-in for whiteness, sex worker humanism pertains to one's ability to be a proper neo-liberal and neo-colonial subject defined by a feminist ruling class as "satiating one's sexual and other emotional pleasures anytime, anywhere."[243] This denotes the importance of understanding the way that hegemonic power is also the contingent methods that feminists draw on in constitutions of sexual subjectivities, dependant on the securing/accessing of economic aspects of whiteness. Hegemony, in this way, also means prohibiting the understanding that "other" worlds have contributed the creation of the current local and global contexts. We have seen this in Indigenous genealogies of sexual economies related, for instance, to the fur trade. Likewise, as Bourgeois and Ray have highlighted, Indigenous ontologies understand sex and epistemology as intricately linked to community well-being and survival because of sacred regenerative relationships made possible through women's ethical roles and responsibilities within their respected communities. The evasion of these histories from analysis makes articulations of Indigenous ontologies unthinkable within sex-as-work historical materialism because the genealogies that purport to explain sexual politics in Canada and promote feminist schemas of sexual liberation from sexual morality are grounded in histories that secularize the sexual as a

prerequisite for accessing sex workers' human rights. This approach to hegemony, thus, directs sex-as-work feminism to theorize feminist culpability in the internalization of secularity as a mode of epistemic hegemony and to further think through the consequences this has for anti-colonial liberation, as I have attempted to do here.

Final Thoughts

In this chapter, then, I have sought to show how sex-as-work feminism, in bringing together Marxist and liberal categories, fuses capitalist ideologies with secular humanist ones to produce exclusionary practices in the production of freedom. There is a tension between sex-as-work liberation theory and anti-colonial sex work struggles, which postcolonial IR and Indigenous scholars have helped us to unpack. Sex-as-work feminism is based on secular-liberal methodologies that respond to Christian monologues that continue to underwrite the ideological underpinnings of Canadian anti-prostitution politics that, according to Glasbeek for instance, is predicated on a conservative model of maternal feminized justice based on a triangular relationship of sexual equality, moral regulation, and criminal justice.[244] Theories of liberation for this position also demand access to liberal capitalist orders that necessarily assume the reification of "the racialized society/nature distinction in which a knowing and acting being, the national human, acts upon the irrational, passive, and unthinking non-being of nature in order to maximise efficiency through extractive transfers of resources."[245] As well, sex-as-work feminist theory of sexual freedom is preconditioned by their move to "privatize and contain intimacies and sexuality within the realm of the private" which is "at the same time another facet of a neoliberal strategy that absolves collective accountability and public intervention"[246] where sex is stripped of its affective,

erotic, and dangerous dimensions and reduced to a mere conduct.[247] What is being missed is that sex cannot always be reduced to exclusively human agency as the possessive individual's private conduct that desires ascendency through profit and accumulation. Rather, for some, it pertains to embodied practices linked to one's intimate role in creation and its political confinements in the workings of empire.[248] Hence, sex-as-work feminism is only really capable of speaking to secular-liberal sexual life.

Therefore, I am arguing that there is a need for an alternative sex worker ontology, one that requires a feminist historical materialist analysis that is grounded in coloniality. Understanding the social relations of knowledge, I argue, exposes connection between feminist praxis and colonial hierarchies. This is vital, because it makes explicit how sex worker liberation and the way we produce knowledge about it are informed by capitalist logic whose only purpose is to regenerate profit, in this case, by focusing on legal codes that evade how such codes recreate colonial regimes. This is because politicizing the desire to commodify sex for profit as a fundamental condition of sexual freedom is presented as a norm that is a liberating force. As a consequence, the colonial production of sexual labour is presented as liberating as well. Socially reproducing colonialism and its contingent subjectivities, thus, becomes the vision of a neo-liberal secular-humanist sex worker future. In this sense, sex and human rights are not private matters. They are historically produced gendered and colonial relations of knowledge's power. Such understandings allow us to theorize hegemony as epistemological problematic to determine whether certain feminist theorizations provide for freedom for all or whether our feminist knowledge systems need to be transformed to do so.

In the next chapter I will build on these insights by examining how scholars of sex work and morality draw on post-structuralism to bridge some of the gaps that they identify in feminist

materialism for addressing the complexity of sex worker struggles. I will argue that post-structural accounts of sex-as-work feminism is incapable of envisioning a sexual freedom and sex worker humanism beyond a secular-liberal progressive imaginary. I will argue that this position remains entrapped within dialectical forms of reasoning that conceptualizes sexual agency in terms of the subversion and resignification of norms. As such, the normative political subject of post-structural sex-as-work feminism remains a secular humanist one and, thus, mirrors material feminist productions of secular-liberal sex worker humanism.

Notes

[1] Terri-Jean Bedford quoted in Mike Blanchfield, "Supreme Court Strikes Down Anti-Prostitution Laws as Charter Breach," *Global News*, December 20, 2013, https://globalnews.ca/news/1042861/supreme-court-strikes-down-canadas-anti-prostitution-laws/.

[2] Valerie Scott quoted in ibid.

[3] Elya M. Durisin, Emily Van der Meulen, and Chris Bruckert, *Red Light Labour: Sex Work Regulation, Agency, and Resistance* (Vancouver: UBC Press, 2018), xi.

[4] *Bedford et al. v. Attorney General of Canada* (2010), ONSC 4264, at para. 223 (hereafter *Bedford*, 2010).

[5] Chris Bruckert, "*The Protection of Communities and Exploited Persons Act*: Misogynistic Law in the Making," *Canadian Journal of Law and Society* 30, no. 1 (2015): 1–3, https://doi.org/10.1017/cls.2015.2.

[6] Graham Hudson and Emily van der Meulen, "Sex Work, Law and Violence: *Canada v. Bedford* and the Human Rights of Sex Workers," *Windsor Yearbook of Access to Justice* 31, no. 1 (January 2013): 115–45, https://doi.org/10.22329/wyaj.v31i1.4318.

[7] *Bedford*, 2010, para. 65.

[8] Canadian HIV/AIDS Legal Network, "*Bedford v. Canada*: A Pragmatic Case towards Ensuring the Human and Health Rights of Sex Workers," *HIV/AIDS Policy & Law Review* 15 no. 3 (2011): 6.

[9] Alyssa Clutterbuck, "*Bedford v. Canada*: Labour Rights of Sex Workers," *McGill Law* (blog), *McGill Human Rights Interns*, June 24, 2013, https://blogs.mcgill.ca/humanrightsinterns/2013/06/24/bedford-v-canada-the-labour-rights-of-sex-workers/.

[10] Blanchfeild, "The Supreme Court Strikes Down Anti-Prostitution Laws as Charter Break."

[11] Emily van der Meulen, "When Sex Is Work: Organizing for Labour Rights and Protections," *Labour* 69 (Spring 2012): 147–67, https://id.erudit.org/iderudit/1011332ar.

[12] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol. 1a (Ottawa: Government of Canada, 2019), https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf.

[13] Ibid., 220.

[14] See, for instance, Bruckert, "*Protection of Communities and Exploited Persons Act*"; Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913–34* (Vancouver: UBC Press, 2009); Amanda Sterling and Emily van der Meulen, "'We Are Not Criminals': Sex Worker Clients in Canada and the Constitutional Risk of Knowledge," *Canadian Journal of Law and Society* (2018): 1–18, https://doi.org/10.1017/cls.2018.13; Katrin Roots, "Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and Its Implications," *Canadian Journal of Law and Society* 28, no. 1 (2013): 21–41, https://doi.org/10.1017/cls.2012.4; Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: University of Toronto Press, 1991).

[15] Amanda Glasbeek, ed., *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* (Toronto: Canadian Scholars' Press, 2006), 4.

[16] Ibid.

[17] Ibid.

[18] See, for instance, Glasbeek, *Moral Regulation*.

[19] Annette Kuhn and Ann Marie Wolpe, "Feminism and Materialism," in *Materialist Feminism: A Reader in Class, Difference, and Women's Lives*, ed. Rosemary Hennessy and Chris Ingraham (New York: Routledge, 1997), 83–87.

[20] Catharine MacKinnon, "Feminism, Marxism, Method and the State," *Signs* 7, no. 3 (1982): 516. https://www.jstor.org/stable/3173853.

[21] Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), 17.

[22] Ibid., 16.

[23] Ibid., 2.

[24] Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989): 17,

[25] Ibid., 112.

[26] Pateman, *Sexual Contract*, 194.

[27] Elizabeth Bernstein, "What's Wrong with Prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labour," *Hastings Women's Law Journal* 10, no. 1 (1999): 98. https://repository.uchastings.edu/hwlj/vol10/iss1/6.

[28] Ibid., 98.

[29] Suzanne Bouchlin, "Bad Girls Like Good Contracts: Ontario Erotic Dancers' Collective Resistance," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Publishing, 2016), 337.

[30] Chris Bruckert and Colette Parent, "The Incall Sex Industry: Gender, Class, and Racialized Labour in the Margins," in *Gender, Law and Justice*, ed. Emily van der Meulen (Winnipeg: Fernwood Publishing, 2016), 314.

[31] Scholars that have been cited in this camp, for instance, include Andrea Dworkin, *Pornography: Men Possessing Women* (London: Women's Press, 1981); Melissa Farley, Isin Baral, Merab Kiremire, and Ufuk Sezgin, "Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder," *Feminism and Psychology* 8, no. 4 (1998): 405–26, https://doi.org/10.1177/0959353598084002; MacKinnon, *Toward a Feminist Theory of the State*; Janice G. Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* (Washington, DC: Potomac Books, 2013).

[32] Kamala Kempadoo, "Women of Color and the Global Sex Trade: Transnational Feminist Perspectives," *Meridians* 1, no. 2 (2001): 35, https://www.jstor.org/stable/40338451.

[33] Glasbeek, *Moral Regulation*, 4.

[34] Chris Bruckert and Stacey Hannem, "Rethinking the Prostitution Debates: Transcending Structural Stigma in Systemic Responses to Sex Work," *Canadian Journal of Law and Society* 28, no. 1 (2013): 59, https://doi.org/10.1017/cls.2012.2.

[35] Valverde, *The Age of Light, Soap, and Water*.

[36] Stacey Hannem and Chris Bruckert, eds., *Stigma Revisited: Implications of the Mark* (Ottawa: University of Ottawa Press/Les Presses de l'Université Ottawa, 2012).

[37] Karl Marx quoted in van der Meulen, "When Sex Is Work," 152.

[38] Also see Emily van der Meulen, "Reframing Prostitution as Sexual and Emotional Labour," in *Advances in Sociology Research*, vol. 6, ed. Jared A. Jaworski (New York: Nova Science, 2010), 305–13.

[39] van der Meulen, "When Sex Is Work," 153.

[40] Durisin, van der Meulen, and Bruckert, *Red Light Labour*, 4.

[41] van der Meulen, "When Sex Is Work," 161.

[42] Kamala Kempadoo quoted in Durisin, van der Meulen, and Bruckert, *Red Light Labour*, 3.

[43] Mariana Valverde, "The Harms of Sex and the Risks of Breasts: Obscenity and Indecency in Canadian Law," *Social & Legal Studies* 8, no. 2 (1999): 182. https://doi.org/10.1177/096466399900800202.

[44] Glasbeek, *Moral Regulation*,1–7; Glasbeek, *Feminized Justice*, 75.

[45] Glasbeek, *Feminized Justice*, 15.

[46] Amanda Glasbeek, "Women Gone Bad? Women, Criminalization, and Representation," in *Criminalization, Representation, Regulation: Thinking Differently About Crime*, ed. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press Higher Education, 2014), 150–53.

[47] Deborah Brock, "Sexual Regulation: Sexing Governmentality; Governing Sex," in *Criminalization, Representation, Regulation: Thinking Differently about Crime*, ed. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press, 2014), 176.

[48] Glasbeek, *Feminized Justice*, 51.

[49] Ibid., 53.

[50] Brock, "Sexual Regulation," ibid.

[51] Glasbeek, *Feminized Justice*, 4–25.

[52] Glasbeek, *Moral Regulation*, 3.

[53] Joan Sangster, "Introduction to Regulation of Girls and Women," in *Moral Regulation and Governance in Canada: History, Context and Critical Issues*, ed, Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 41.

[54] Ibid.

[55] Ibid.

[56] Ibid., 44. Also see Kimberlé Williams Crenshaw, "Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101 (1988): 1358, https://harvardlawreview.org/2020/09/race-reform-and-retrenchment/.

[57] Sangster, "Introduction," 43.

[58] Ibid.

[59] See Michel Foucault, *The Archeology of Knowledge* (London: Routledge, 2002); Michel Foucault, *The History of Sexuality: An Introduction* (New York: Vantage Books, Random House, 1990).

[60] Brock, "Sexual Regulation," 177; Bruckert and Hannem, "Rethinking," 53; Gillian Balfour, "Regulating Women," in *Gender, Law and Justice*, ed. Emily van der Meulen, (Winnipeg: Fernwood Press, 2016), 39; Emily van der Meulen and Marianna Valverde, ''To Serve and Protect? Structural Stigma, Social Profiling, and the Abuse of Police Power in Ottawa,'' in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 314–22; Mariana Valverde, "Canadian Feminism and Sex Work Law," In *Red Light Labour*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 247–55.

[61] Valverde, *The Age of Light, Soap, and Water*, 81–82.

[62] Marianne Valverde, "Introduction to the Age of Light, Soap, and Water," in *Moral Regulation and Governance in Canada: History, Context and Critical Issues,* ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 120.

[63] Ibid.

[64] Foucault, *History of Sexuality*, 25.

[65] Ibid., 125–27.

[66] Glasbeek, *Feminized Justice*, 153–54; Brock, "Sexual Regulation," 175.

[67] Foucault, *History of Sexuality*, 54.

[68] Glasbeek, *Feminized Justice*, 154.

[69] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003), 174.

[70] Sangster, "Introduction," 38.

[71] Chris Bruckert, "Sex Workers Rights Organizing: Women's World 2011," July 2011, Ottawa, ON, YouTube video, 25:50, https://www.youtube.com/watch?v=0uvmXnXvIZo.

[72] Bruckert and Hannem, "Rethinking," 52.

[73] Roots, "Trafficking or Pimping?" 24.

[74] Ibid., 32.

[75] Kamala Kempadoo et al., *Challenging Trafficking in Canada: Policy Brief* (Toronto: The Centre for Feminist Research at York, 2017), https://www.researchgate.net/publication/334849031_CHALLENGING_TRAFFICKING_IN_CANADA_POLICY_BRIEF.

[76] Ibid., 25.

[77] Ibid.

[78] Kempadoo, "Women of Color," 44.

[79] Ibid.

[80] Ibid., 37.

[81] Ibid., 38.

[82] Ibid., 42.

[83] Ibid., 38.

[84] Ibid., 43.

[85] Sarah Hunt, "Decolonizing Sex Work: Developing and Intersectional Indigenous Approach," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 91.

[86] Bruckert and Parent, "Incall Sex Industry," 307.

[87] Ibid., 311.

[88] Hannem and Bruckert, *Stigma Revisited,* 70.

[89] Bruckert and Hannem, "Rethinking," 53.

[90] Bruckert and Parent, "Incall Sex Industry," 322.

[91] van der Meulen, "When Sex Is Work," 156.

[92] Bruckert and Parent, "Incall Sex Industry," 314.

[93] Hannem and Bruckert, *Stigma Revisited*, 70; Bruckert and Parent, "Incall Sex Industry," 319; van der Meulen, "When Sex Is Work," 155.

[94] Gregory Gall, *Sex Worker Unionization* (London: Palgrave Macmillan, 2016); Jake Hall, "Sex Work Is Work—And Its Labourers Are Officially Organizing," *Vice News*, April 17, 2019, https://www.vice.com/en/article/ywygzv/sex-worker-union-rights-movement-uk.

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[96] Mary Childs, Sarah Ciarrocchi, and Cristen Gleeson, *Beyond Decriminalization: Sex Work, Human Rights, and a New Framework for Law Reform* (Vancouver: Pivot Legal Society, 2006), 131.

[97] Bruckert and Hannem, "Rethinking," 322.

[98] Childs, Ciarrocchi, and Gleeson, *Beyond Decriminalization*, 135.

[99] For more, see Elya Durisin, Kamala Kempadoo, Megan Lowthers, and Magdalena Sabat. "A Sex Work Research Symposium: Examining Positionality in Documenting Sex Work and Sex Workers' Rights." *Social Sciences* 6, no. 2 (April 5, 2017): 39, https://doi.org/10.3390/socsci6020039.

[100] Hannem and Bruckert, *Stigma Revisited*, 60.

[101] Bruckert, "*The Protection of Communities and Exploited Persons Act*," 2.

[102] van der Meulen, "When Sex Is Work," 157.

[103] Also see Rosemary Hennessy and Chris Ingraham, *Materialist Feminism: A Reader in Class, Difference, and Women's Lives* (New York: Routledge, 1997), 1–3.

[104] Carole A. Stabile, "Feminism and the End of Postmodernism," in Rosemary Hennessy, and Chris Ingraham, *Materialist Feminism: A Reader in Class, Difference, and Women's Lives* (New York: Routledge, 1997), 396.

[105] Antonio Gramsci, "The Modern Prince," in *Selections from the Prison Notebooks*, ed. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1973), 138.

[106] Durisin, van der Meulen, and Bruckert, *Red Light Labour*, 28.

[107] Glasbeek, *Feminized Justice*, 4.

[108] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

[109] Ibid., 7.

[110] Ibid., 11.

[111] Ibid.

[112] Ibid.

[113] Ibid., 9.

[114] Ibid., 13.

[115] Ibid.

[116] Ibid,. 15.

[117] Robyn Bourgeois, "Race, Space, and Prostitution: The Making of Settler Colonial Canada," *Canadian Journal of Women and the Law* 30, no. 3 (2018): 371–97.

[118] Specifically, Bourgeois draws on Shereen Razack's racial-spatial formula. See Sherene H. Razack. "Race, Space, and Prostitution: The Making of the Bourgeois Subject," *Canadian Journal of Women and the Law* 10, no. 2 (1998): 338–60. However, what Bourgeois does differently is excavate and illuminate the relations between race, space, and prostitution in existing scholarly and mainstream accounts in the wake of the Truth and Reconciliation reports on missing and murdered Indigenous women and girls in Canada. She notes that her goal is to not only demonstrate the continuing validity of Razack's framework, but also to further establish an ongoing pattern connecting prostitution with the dominant systems of oppression and violence in settler colonial Canadian society.

[119] Bourgeois, "Race, Space, and Prostitution," 374.

[120] Hunt, "Decolonizing Sex Work," 91.

[121] Bourgeois, "Race, Space, and Prostitution."

[122] Ibid., 385.

[123] Ibid., 375.

[124] Razack quoted in ibid.

[125] Ibid., 375.

[126] Ibid., 376.

[127] Ibid., 385.

[128] Ibid.

[129] Also see Sherene H. Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," in *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002), 137.

[130] Anna M. Agathangelou, *The Global Political Economy of Sex: Desire, Violence, and Insecurity in Mediterranean Nation States* (New York: Palgrave Macmillan, 2004), 22.

[131] Ibid., 23.

[132] Coulthard, "Red Skin, White Mask," 15.

[133] Ibid., 25.

[134] Bourgeois, "Race, Space, and Prostitution," 377.

[135] On the politics of racialized desire, see Agathangelou, *Global Political Economy*, 70–73.

[136] Bourgeois, "Race, Space, and Prostitution," 382.

[137] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, vol. 1a.

[138] Ibid., 241.

[139] Ibid., 242.

[140] Sylvia Van Kirk, "The Role of Native Women in the Fur Trade Society of Western Canada, 1670–1830," *Frontier: A Journal of Women Studies* 7, no. 3 (1984): 10, https://doi.org/10.2307/3346234.

[141] Bourgeois, "Race, Space, and Prostitution," 385.

[142] Ibid., 384.

[143] Ibid., 382; Kempadoo et al. have similarly noted this which frames their discussion of UN protections of mobility rights in *Challenging Trafficking*, 5.

[144] Bourgeois, "Race, Space, and Prostitution," 381.

[145] Ibid.

[146] Ibid., 384.

[147] Razack quoted in ibid., 376.

[148] Razack, "Gendered Racial Violence."

[149] Bourgeois, "Race, Space, and Prostitution," 383.

[150] Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963), 5.

[151] Razack, "Gendered Racial Violence," 155.

[152] Bourgeois, "Race, Space, and Prostitution," 397.

[153] Ibid., 375.

[154] Ibid., 374.

[155] Bruckert and Hannem, "Rethinking," 59; Glasbeek, *Feminized Justice*, 5; Emily van der Meulen and Elya Durisin, "Why Decriminalize? How Canada's Municipal and Federal Regulations Increase Sex Workers' Vulnerability," *Canadian Journal of Women and the Law* 20, no. 2 (2008): 311.

[156] Bruckert and Parent, "Incall Sex Industry," 309; Glasbeek, "Criminalization," 166; van der Meulen, "When Sex Is Work," 160.

[157] Hannem and Bruckert, *Stigma Revisited*, 71; Glasbeek, *Moral Regulation*, 5; van der Meulen and Durisin, "Why Decriminalize?" 301.

[158] Also see Hunt, "Decolonizing Sex Work," 94.

[159] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, para. 86–89, https://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72.html.

[160] Hannem and Bruckert, *Stigma Revisited*, 21.

[161] Ibid., 71.

[162] Foucault, *History of Sexual*ity.

[163] Ibid., 26.

[164] Valverde, *The Age of Light, Soap, and Water*, 120.

[165] Scott Hamilton, "Foucault's End of History: The Temporality of Governmentality and Its End in the Anthropocene," *Millennium* 46, no. 3 (2018): 382, https://doi.org/10.1177/0305829818774892.

[166] Asad, *Formations of the Secular*, 135.

[167] Ibid., 150.

[168] Ibid., 192.

[169] Ibid.

[170] Ibid., 135.

[171] Ibid., 149.

[172] Ibid., 157.

[173] Ibid., 13.

[174] Ibid., 24.

[175] Ibid., 27.

[176] Ibid., 110.

[177] Ibid., 156.

[178] Ibid.

[179] Ibid.

[180] Ibid., 158.

[181] Ibid.

[182] Darcie Bennett and Brenda Balek, *Evaluating Canada's Sex Work Laws: A Case for Repeal* (Vancouver: PIVOT Legal Society, 2016), 75–79, https://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/1960/attachments/original/1480910826/PIVOT_Sex_workers_Report_FINAL_hires_ONLINE.pdf?1480910826.

[183] *Bedford*, 2010, para. 187.

[184] Balek and Bennett, *Evaluating*, 76.

[185] Ibid., 33.

[186] Ibid.

[187] Ibid., 12.

[188] Ibid., 11.

[189] Kempadoo, Kempadoo et al., "Challenging Trafficking in Canada," 6.

[190] Ibid., 23.

[191] Ibid., 8.

[192] Ibid., 15.

[193] Ibid., 8.

[194] Ibid., 26.

[195] Ibid.

[196] Graham Hudson and Emily van der Meulen, "Sex Work, Law and Violence: *Canada v. Bedford* and the Human Rights of Sex Workers," *Windsor Yearbook of Access to Justice* 31, no. 1 (January 2013), 124.

[197] Ibid., 123.

[198] Ibid., 118.

[199] Childs, Ciarrocchi, and Gleeson, *Beyond Decriminalization*, 182.

[200] Balek and Bennett, *Evaluating*, 65.

[201] Lana Ray, "Pipelines, Prostitution and Indigenous Women: A Critical Analysis of Contemporary Discourse," *Canadian Woman Studies* 33, no. 1-2 (2018): 107–16.

[202] Ibid., 110.

[203] Ibid., 111.

[204] Ibid., 112.

[205] Ibid., 108.

[206] Ibid.

[207] Ibid., 107.

[208] Ibid., 113.

[209] Ibid., 109.

[210] Ibid.

[211] Ibid., 114.

[212] Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2007).

[213] Ibid., 96.

[214] Ibid., 121. Also see Covenant of the League of Nations (Including Amendments adopted to December 1924), Article 22, paras. 1-2, https://avalon.law.yale.edu/20th_century/leagcov.asp.

[215] Anghie, *Imperialism*, 122.

[216] Ibid., 133.

[217] Ibid., 135.

[218] Ibid., 163.

[219] Coulthard, *Red Skin White Masks*, 10.

[220] Ibid., Marx as cited by Coulthard at note 39.

[221] Ray, 110.

[222] Ibid., 165.

[223] Ibid., 166.

[224] Ibid.

[225] Ibid.

[226] Ibid., 174.

[227] Ibid., 213.

[228] Ibid., 204.

[229] Ibid., 207.

[230] Sangster, "Introduction," 44.

[231] Glasbeek, *Feminized Justice*, 25.

[232] Ibid., 6.

[233] Roots, "Trafficking or Pimping?" 23.

[234] Anna M. Agathangelou and LH.M. Ling, *Transforming World Politics* (New York: Routledge, 2009), 2.

[235] Sylvia Wynter, "Beyond Liberal and Marxist-Leninist Feminisms: Towards an Autonomous Frame of Reference," *The CLR James Journal* 24, no. 1 (2018): 32.

[236] Ibid., 37.

[237] Ibid., 38.

[238] Anna M. Agathangelou, "Neoliberal Geopolitical Order and Value: Queerness as a Speculative Economy and Anti-Blackness as Terror," *International Feminist Journal of Politics* 15, no. 4 (2013): 459.

[239] Ibid.

[240] Ibid., 455.

[241] Ibid., 454.

[242] Agathangelou, *Global Political Economy*, 14.

[243] Ibid., 6.

[244] Valverde, "Introduction" 120; Valverde, *The Age of Light, Soap, and Water*, 34–36; Glasbeek, *Feminized Justice*, 154; Emily van der Meulen, Elya Durisin, and Victoria Love, eds., *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013), 14; Foucault, *History of Sexuality*, 37.

[245] Bikrum Gill, "A Decolonial World-Ecological Reading of the Global Land Grab: Gambella, the River, and the Fall of Karturi," in *Recentering African in International Relations: Beyond Lack, Peripherality, and Failure*, ed. Marta Iñiguez de Heredia and Zubairu Wai (New York: Palgrave Macmillan 2018), 244.

[246] Anna M. Agathangelou, Daniel Bassichis, and Tamara L Spira, "Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire," *Radical History Review* 2008, no. 100 (2008): 133.

[247] Anna M. Agathangelou et al., "Sexual Divestments from Empire: Women's Studies, Institutional Feelings, and the 'Odious' Machine," *Feminist Formations* 27, no. 3 (2015): 140–41.

[248] Nathalie Kermoal and Isabel Altamirano-Jiménez, eds., *Living on the Land: Indigenous Women's Understanding of Place* (Edmonton: University of Alberta Press, 2016), 32.

Chapter 4
Sexual Morality and the Post-Structural Scene

Where there is power there is resistance.

—Michel Foucault, *The History of Sexuality*

Introduction

In the previous chapter, I discussed how *Canada v. Bedford* inspired my thinking on feminist historical materialism and its engagements with sex work debates in Canada, as read through moral regulation scholarship. I did this to unpack how Canadian sex-as-work feminists propose secular-liberal humanism in theorizing the construction of sex worker subjectivity. By examining the sex-as-work feminist position, I excavated epistemic and methodological assumptions that foreclose proposing alternative modes of life that exceed secular-liberal contemplation. Building from this, in this chapter, I outline how these scholars also employ Foucauldianism to address some of the gaps of a material feminist approach for tackling the complexity of sex worker struggles over equity and identity. *Bedford* has likewise inspired the questions raised in this chapter. For instance, throughout the constitutional challenge, critical attention was given to theories of moral legalism, sexual morality, and the stereotypes and stigma with which sex workers contend. The impacts off these on sex worker liberties were thus taken under legal consideration in the adjudication of fundamental freedoms. Justice Himel explains, for example, that *Bedford* "demonstrates the tension that exists around the moral, social and historical perspectives on the issue of prostitution and the effect of certain criminal law provisions on the

constitutional rights of those affected."[1] Moreover, that "there is significant social stigma attached to prostitution."[2]

In this chapter, then, I undertake a deeper engagement with sex-as-work feminist theories of sexual morality and power as they are staged in conversations with Michel Foucault. This chapter highlights how sex-as-work feminist genealogies of anti-prostitution discourse in Canada are derived from Foucauldian theories of governmentality. I examine feminist Foucauldianism as it relates to sex work in Canada, and I contend that theories of sexual morality and sex worker oppression remain bound by a liberatory form of agency that is incapable of envisioning sexual freedom outside the bounds of a secular-liberal progressive imaginary and which evades non-secular modalities of agency and power. I argue that this not only evacuates Indigenous anti-colonial futurities but also undermines the post-structural contention that Foucauldian theories of power embody a radical form of non-linear temporality; it defaults, rather, to a biocentric progressive notion of agency, time, and the body. Thus, the purpose of this chapter is to raise question about feminist genealogies and the production of feminist knowledge concerned with sexual liberation. I do so by critically examining how post-structuralism allows moral regulation sex work scholars to posit theories of the sex worker body and agency in formulating their sexual liberation thesis, which I continue to argue, produces epistemic forms of colonial violence.

Foucault, Moral Regulation, and Sexual Commerce

Moral regulation scholar Amanda Glasbeek notes that feminist materialism and post-structural approaches traditionally tend to be thought of as in tension, and in many ways they are.[3] For Glasbeek, moral regulation studies of power "developed in opposition to theories of social

control, and in the context of Michel Foucault's insights;"[4] his work "reminds us of the significance of discourse and sexuality to modern life."[5] Glasbeek argues that "the concept of moral regulation began as a method for understanding the state, especially the development of the capitalist state."[6] For her, Foucauldian insights diverge from the state-centred approaches of materialism in an important way: Foucault argued that the state does not reserve the monopoly over power, nor is it only repressive. Instead, Foucault maintained that power is "productive, constitutive, and exercised through the diffuse construction of knowledges."[7] This compliments material feminist approaches by providing critical insights into "the multi-directional processes of governance"[8] and the role of sexuality as it relates to nation-building.

In Canada, for example, Foucault's theses came at an important time that saw the unfolding of the country's early human rights campaigns.[9] At that time, mobilizing the state as the arbiter and protector of human rights was a central aspect of the movement. However, debates were staged regarding the limited concept of rights and to whom they were afforded. This included commitments to sex and gender equality. Such debates "demanded a rethinking of 'normal"[10] that would challenge ideas about the politics of sexuality, stigma, and governance, as well as the function and power of the state in structuring sex oppression. Specifically, for Canadian scholars, Foucault's insights became advantageous for understanding the human rights struggles of sex workers. Foucault gives the regulation of sexuality and prohibition of sex work a history by tracing its discursive production and its social regulation (also see chapter 3).[11] Discourse analysis is employed to highlight a set of interlocking and mutually reinforcing iterations that comment on the subject as matter and act as its defining characteristics. This can include the collusion of law with morality, which, having the ability to define the subject (who is or is not a criminal, or who is or is not normal) expresses a political authority that legitimizes practices of criminalization.[12]

Foucault's consideration of sexual discourse as productive of subjectivities thus allows insights into the role of dominant social norms and the possibility of their destabilization in the facilitation of social change. For scholars of sex and morality, this destabilization constitutes a form of resistance to moral orders by exposing how the construction of sexual subjectivity takes place at the nexus of knowledge/power regimes and its normative productions through morality regimes and social doctrines.[13] In the context of sex work, Foucault thus provides a lens through which to examine how the relationship between political order and morality shape sexual discourse and social processes related to power and subjectivity.[14] He extends an analysis of sex beyond the problem of the state, exposing, instead, the existence of dynamic epistemic regimes and competing and contradictory truth claims that serve in constructing a human norm.

Importantly, "power" in the Foucauldian sense is multidimensional and emerged from disciplinary practices and from discourses linked to "expert" knowledge systems. This "allows for a consideration of sexual discourses as productive of subjectivities, rather than as prohibitive forces"[15] that highlights how medical and legal discourse and the social sciences have been complicit in pathologizing and criminalizing women deemed sexually deviant.[16] The production of sexual knowledge thus acts as an important technology through which normative identity is made intelligible and governable. On sex, Foucault explains, "it was a new regime of discourses. Not any less was said about it; on the contrary. But things were said in a different way; it was different people who said them, from different points of view, and to obtain different results."[17] He elaborates:

> Not only were the boundaries of what could be said about sex enlarged … but more important, discourse was connected to sex by a complex organization of varying effects, by a deployment that cannot be adequately explained merely by referring it to a law of

> prohibition … there was installed rather an apparatus for producing an even greater quantity of discourse about sex, capable of functioning and taking effect in its very economy.[18]

Mariana Valverde and Lorna Weir explain that while the Marxist theories of "dominant ideology" also problematize the question of sexual norms, they tend to do so "in terms of their relation to class: systems of values and beliefs are envisaged as 'reflections' of more fundamental class interests, determined in production relations."[19] The control and construction of morality and sexuality have also been posited in socialization theory as processes of internalization and norms in primary (familial) and secondary (education or extra-familial) institutions. The problem, however, is that both struggle to "account for the processes through which 'norms' are produced and for the linked, multiple sites across which they are implemented."[20] Foucault, however, allows for a complex account of normative power. For instance, Joan Sangster maintains that in understanding the regulation of sex, Foucault's insights on power/knowledge illuminate how social constructions and legal discourse define sexual normality and abnormality within which "populations and bodies were encouraged to act."[21] This is made possible because Foucault refocuses attention on orientations of power and forms of regulation "not reducible to capitalism and the state."[22] Sexuality, then, is socially and historically constructed based on systems of morals, discourses, and techniques of power, designed to shape sexual power "that inspired insightful feminist critiques of the female body as a 'strategic site of power.'"[23] Elsewhere, this understanding is celebrated by sex work scholar Shannon Bell.[24] Though Bell's work on sex worker subjecthood primarily concerns postmodern theories of linguistic signification à la Jacques Derrida, on the question of the construction of the prostitute body, Bell celebrates Foucault's discourse analysis and genealogy. With genealogy, the strategy of exteriority, notes Bell, refers to taking the surface of events as the fundamental reality and not mere "manifest content" indicating

a more fundamental hidden reality: "The body is the inscribed surface of events."[25] For Bell, the task of genealogy centres on rewriting the prostitute body, which exposes a body totally imprinted by history and the processes of history's destruction of the body.

Alongside these feminists, Glasbeek explains how Foucault transferred the point of analysis from negative Victorian discourses about sex to the "veritable discursive explosion about sex" that challenges the dichotomization of coercion versus consent when theorizing power. [26] Foucault's insights are important to understanding the relationship between sexuality, knowledge, and public order because his theories raise larger questions of epistemic power and sovereignty that transform the way sexual governance is understood. For example, if we recall from chapter 3, Glasbeek contends that contemporary constructions of sex worker identity are contingent upon adherence to a model of moral citizenship organized around normative-emphasized femininity that is based on socially constructed identities linked to social citizenship.[27] Normative femininity is also responsible for demonizing supposedly sexually deviant women through discourses of pathology and immorality that Glasbeek also links to patriarchal and maternal feminist policing of sexual behaviour.[28] For Glasbeek, prostitution has consistently functioned as "the central metaphor for the equal moral standard,"[29] which "opens up the terrain of the regulation of sexuality beyond explicit sexual 'deviance.'"[30] This topic is also expanded on by Mariana Valverde, whose analysis of Canada's anti-prostitution legacy remains a seminal genealogy to moral regulation studies of sex work and stigma.[31] Valverde, however, is not concerned with the study of moral politics as a means of imposing bourgeois sexual morality on others. Rather, she argues that a Foucauldian analysis of discursive formations of moral politics exposes how discourses of morality seek to cultivate self-transformation in the production of ethical sexual subjectivity. Through Foucault, Valverde's genealogy traces how sexuality became an object of interest in public debate and the

role played by moral reform campaigns during turn-of-the-twentieth-century English Canada. Her analysis of Canada's anti-prostitution policy thus reveals how the sex trade and sexual subjectivities are coded as "social evils" that continue to demand public commentary. For Valverde, the ongoing prohibition of sexual commerce in Canada speaks to a larger political project of the production of ethical subjectivity—reminiscent of the social purity movement of the late 1800s and early 1900s, for instance—that is preoccupied with anxieties about the search for a proper moral sexual order. It is within this context of the emergence of the Dominion of Canada in the post-abolition/prohibition era that prostitution increasingly came under the auspices of social reform movements, and it is these historical movements that continue to inform the contemporary prohibition movement that views sex work as a social problem within a larger context of the state's concern with solving problems of public health, poverty, and crime.

Valverde, then, also indexes a crucial moment in the construction and expansion of carcerality as a dominant paradigm for addressing social problems related to sexual deviance that she links to Foucault's biopolitical and disciplinary theses. Biopower is characterized as "a power whose highest function was perhaps no longer to kill, but to invest life through and through."[32] Biopower made "knowledge-power an agent of transformation of human life."[33] For Valverde, the campaigns "against prostitution, immoral amusements, and other public manifestations of vice" sought to "regulate morality, in particular sexual morality, in order to preserve and enhance a certain type of human life."[34] The discursive production of knowledge about sex and the immoral thus embody a technology of biopower. They are not merely campaigns to punish and repress but "stressed the need to conserve, preserve, and shape human life: to conserve its physical health, to preserve its moral purity."[35] Law and institutional power, then, do not fade into the background but rather come to operate as a normative institution increasingly incorporated into apparatuses

whose function is regulatory. As such, this "normalizing society is the historical outcome of a technology of power centered on life."[36] For Valverde, the politics of sexual morality are thus not only about banning obscene books or suppressing prostitution but, as she importantly shows, relate to processes of moral governance embodied by "a campaign to educate the next generation in the purity ideals fitting to this age of light and water and soap."[37] Sexual subjectivity, at the same time, is intertwined with the making of its English Canadian bourgeoisie at the expense of a sexual subclass, thus highlighting the interconnection between disciplinary power and state-making.

In *Criminalization, Representation, Regulation: Thinking Differently About Crime*, Deborah Brock, Amanda Glasbeek, and Carmela Murdocca discuss governmentality as an illustration of the production of disciplinary power, which they also contend shapes peoples' modes of conduct. Governmentality refers to Foucault's notion of the "art of governing," meaning how government is accomplished and how certain behaviours are brought about through social regulation.[38] Taken together with Foucault's conception of power, knowledge, and discourse, governmentality similarly expresses how forms of knowledge are used to produce and arrange society. In this way, biopower and governmentality work together because governmentality is "a broad concept that can include a wide range of regulations, norms, [and] rules that shape behaviours and comportment."[39] For Glasbeek these frameworks demonstrates how "representation of female criminalization is an important technology through which the boundaries of normative femininity are made intelligible and governable."[40] It is through these systems of moral governance that the demonization of sex work and sex workers takes place. Likewise, Brock explains that from this level of analysis, sexuality gets constituted through social practices, norms, and discursive regimes that describe and regulate it through the production of truth claims about sex. The law also draws on this social context to evaluate that which is being constituted. The

tension, then, "is inescapable because law itself has become a governmental technology" that is "attributed, above all, to the processes of normalization, something Foucault considered to be among the most effective means of regulation in contemporary Western societies."[41]

Through this, sexuality is understood as a scientific object of knowledge/power in the West that is used to govern modern populations and provides an important architecture for the theoretical projects of feminist scholars of sex and morality. This is because sex, Foucault explains, "became an immense apparatus for producing truth … sex was not only a matter of sensation and pleasure, of law and taboo, but also of truth and falsehood, that the truth of sex became fundamental, useful, or dangerous, precious, or formidable: in short, that sex was constituted as a problem of truth."[42] Highlighting the relationship between power, knowledge, and sexuality as linked to discursive forms of control through networks of normalization, Foucault shows how, during the seventeenth through to the twentieth century, the rise of capitalism can be observed as predicated on the proliferation of discourses about sexuality that shaped the formation of "Man" as a modern political subject. The emphasis "on the body should undoubtably be linked to the process of growth and establishment of bourgeois hegemony,"[43] he notes. This produced "a specific type of discourse on sex … a specific form of extortion of truth, appearing historically specific, and in specific places."[44] It is also through this that these feminists posit analytics of power to understand the discursive production of sexual subjectivities, wherein power governs physical and political bodies of the population by giving itself the function of administering life through disciplinary technologies. As Brock notes, this demands a set of social processes that take on two forms. The first includes "disciplining the body through penetrating and shaping our very sense of ourselves, and the second, intervention into the life of the population as an entirety."[45] For Brock, both meet in sexuality because Foucault identified "operations of power in sexuality that indicate how people

in the West have been, in effect, 'made-up' as sexual beings since the late nineteenth century."[46] These operations took on four forms. The first was to develop a micro-sexual regime of surveillance to monitor "peripheral sexualities." The second included an incorporation of "perversions" into individual bodies. The third required apparatuses of power to study, analyze, and discuss sexuality within frameworks of health and pathology. And finally, the fourth included power-knowledge apparatuses as a mechanism for inciting multiple sexualities as a "new science of sex."[47]

Biopolitics for Foucault thus take hold of the biological health of a national population, in that biopolitics defines the exercise of sovereign state power to "foster life or disallow it" or make live or let die.[48] As such, sexuality figures as a primary object of knowledge for safeguarding the ordering of human multiplicities as the site of power, regulation, and discipline involved in the production of Man and the modern nation state. This underscores the modern state's preoccupation with the collection and production of knowledge pertaining to sex and sexuality. On the question of these discursive shifts Foucault writes the following:

> In concrete terms, starting in the seventeenth century, this power over life evolved in two basic forms; these forms were not antithetical, however; they constituted rather two poles of development linked together by a whole intermediary cluster of relations. One of these poles—the first to be formed, it seems—centered on the body as machine … the second, formed somewhat later, focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes … their supervision was affected through an entire series of inventions and regulatory controls: a biopolitics of the population. The disciplines of the body and the regulations of the population constituted the two poles around which the organization of power over life was deployed.[49]

Biopower, Foucault argues, replaced public displays of torture with surveillance and self-regulation as a means of organizing and managing populations. Moreover, for Bruckert and Hannem, Foucault underscores how "common knowledge" about sexuality and morality "are reiterated in judicial reasoning, encapsulated in juridical-legal discourse, reified as truth, and ultimately embedded in case law—power/knowledge in the making."[50] This power/knowledge nexus functions as a regulating mechanism of moral governance. For Glasbeek, then, it is not surprising that moral regulation scholars who undertake analysis of sex do so through governmentality studies, which extends the analysis beyond the realm of formal state apparatus to include non-state agents and, more importantly, power-knowledge centres within the analysis of the governance of everyday life.[51] For Valverde, genealogy similarly provides critical insights into this by understanding sexuality and political citizenship through discourses of power. This allows moral regulation studies the ability to trace past and contemporary discourses that construct the view that women's sexual desire is "the most dangerous of forces, the worst threat to civilization, and hence as that which most needs taming."[52] Importantly, then, these genealogies of sex work prohibition that trace how power is mapped onto a body deemed sexually deviant—which gets reproduced through social relations of power—explicate power as beyond functionalist control and repression.

Thus, many sex work scholars including Chris Bruckert and Stacy Hannem,[53] Amanda Glasbeek,[54] and Mariana Valverde[55] situate their theorizations of morality, stigma, and regulation of sex work within the context of Foucault's genealogy of sexuality and theories of power to trace social constructions of sexual deviance and the sex worker body alongside the emergence of the modern Canadian neo-liberal state. They use Foucault to interrogate nation-building that gets mapped through the criminalization of identities deemed deviant or abnormal.[56] This can be

structured by the production and internalization of norms,[57] which for Foucault refers to a system of measurable intervals through which individuals can be distributed around a norm that both organizes and is the result of that distribution.[58] As Steven Best and Douglas Kellner explain,

> Where archeology attempted to show that the subject is a fictitious construct, genealogy seeks to foreground the material context of subject construction, to draw out the political consequences of "subjectification," and to help form resistances to subjectifying practices. Where archeology criticized the human sciences as being grounded in humanist assumptions genealogy links these theories to the operations of power and tries to put historical knowledge to work in local struggles. And where archeology theorized the birth of human sciences in the context of the modern *episteme* and the figure of "Man," genealogy highlights the power and effects relations they produced.[59]

Hence, whereas archeology is an excavation of epistemological power that archives what can be spoken and thought of in a particular discourse to ascertain how/why particular ways of thinking, analyzing, and knowing the social and political world are archived and potentiated, the advantage of a genealogical analysis is its ability to document political processes, social practices, historical relations, and their impacts upon meaning. For sex worker scholars, this is historically linked to discursive knowledge regimes concerned with Judeo-Christian morality and maternalism that seek to regulate or produce self-regulation through discourses of the immoral.[60] Sex work scholars Chris Bruckert and Stacey Hannem note that "drawing on Foucault's understanding of power/knowledge, we can see how, in encoding judgement as a discourse of risk in law, those who supported the dominant religious framing of immorality surrounding sex work effectively silence alternative understanding and obscure the complex realties of sex worker's everyday lives."[61] As a technique of power it disciplines and makes the subject both an object and instrument with the

goal of producing docility. As Foucault states, "a body is docile that may be subjected, used, transformed, and improved."[62] This facilitates the production of desired sexual subjectivities through regulation and surveillance, which when internalized become self-referential in the production of a sexually moral society.[63] As Valverde and Weir note, Foucault's work thus explicates the "systematic importance of extra-state regulatory agencies in liberal-democratic state systems" for "concluding with ruminations on the struggles of the immoral."[64] Therefore, power is never something that is merely imposed or attained wherein the individual is understood not merely as a discursive construct but also as the effect of political technologies through which the subject and the soul are constituted. These feminists thus interpret Foucault's theories to examine the construction of a human sexual norm in Canada against how sex workers are constructed as sexual deviants.[65] This highlights how "the moral and the sexual were not sets of social practices independent of economic and political regulation,"[66] but rather, Foucauldian feminism allows one to respond to a dichotomy between coercion (state centred) and consensus (related to value systems and acculturation) to treat political developments and sexual imperatives as conjoined rather than treating morality, politics, and economics as separate.[67]

For Sangster, however, "economic imperatives, state power, and ideology remain important themes in Marxist analyses of the creation of a moral culture within the context of bourgeois economic relations"[68] because this theory of social construction evaluates how a humanist individual negotiates economically determined structures of class antagonism that produce social relations and the organization of sexual conduct. Foucault, on the other hand, as an anti-humanist, de-naturalizes Enlightenment theories of nature and being, understanding instead the political production of human agency as the effect of discourses of power flowing through them. Rather than being a natural product to structures, the subject embodies a discursive site of

power. The subject as a site of discursive power is read in Bruckert's theorization of stigmatized labour that traces "the historical processes of moral regulation"[69] to show how structural and interpersonal stigma intersect to draw legal parameters in reproduction of moral boundaries around sexuality. Interrogating the normative and discursive assumptions about good/bad sexuality underscores how sexual subjectivity and agency is situated within a broader normative, regulatory, and discursive framework of governmentality.[70] This criticism is embodied perfectly in Bruckert's scathing critique of the *Protection of Exploited Persons and Communities Act*, the 2014 parliamentary decision that effectively recriminalized activities related to prostitution in Canada following the landmark constitutional challenge *Canada v. Bedford*. As Bruckert states, "the assertion that sex work is *inherently* violent and exploitative is a foundational assumption of the new legal framework—remove this assumption and we are left with little more than legal moralism … replace prostitution with any other occupation—construction, policing, taxi driving—and the statement that nothing can be done to reduce workplace risks becomes unthinkable."[71] Bruckert's reading of Foucault thus seeks to unpack. And for Glasbeek, Foucault traces the production of sexual subjectivity, which she draws on to expose "normative expectations that we may try to achieve, resist, or actively subvert."[72]

The Fact of Colonialism: Indigeneity and Foucault

Chris Bruckert and Colette Parent also recognize that feminist critiques of sexual morality should acknowledge "the role of racialization and the impact of colonization on Aboriginal women," suggesting, therefore, that "we need also to recognize that colonization plays a role in the exclusion of sex workers as women with agency."[73] Sarah Hunt (Kwakwaka'wakw) takes up

this task in her chapter in *Selling Sex*, "Decolonizing Sex Work."[74] Here, Hunt traces how colonial discourses govern and regulate Indigenous sex workers. Drawing on the work of Edward Said, Hunt makes connections between the Indigenous Other and Said's Orientalist Other.[75] For Said, Foucault's theory of discourse shows the way in which the Orient is discussed and analyzed, and thus constructed as a text that purports to contain knowledge about it. Discourse in colonial and imperial contexts of power thus pertains to the way in which Europe makes statements, authorizes views, describes them, teaches them, and disseminates and institutionalizes them for the purpose of dominating, restructuring, and having authority over the non-European world.[76] As Said explains, "expertise is attributed to it the authority of academics, institutions, and governments can accrue it … such texts can create not only knowledge but also the very reality they appear to describe. In time such knowledge and reality produce a tradition, of what Michel Foucault calls discourse."[77] The power of discourse, he notes, is produced and exists in an uneven exchange within various kinds of power and is shaped to a degree by the exchange with political power, power intellectual, power cultural, and power moral, among other modalities. In this way, discourse correlates to a Western projection on, and will to govern over, the Other. Knowledge as a technology of power constructs realities in a colonial environment, so that the very act of construction is a sign of dominant power as well as an attempt to confirm the superiority of the dominating culture and its naturalization. For Said, the relationship between the Orient and Occident is "a relationship of power, of domination, and of varying degrees of complex hegemony."[78] In addition, "the Orient has helped to define Europe (or the West) as its contrasting image, idea, personality, experience."[79]

For Hunt, so too is the relationship between Indigenous sex workers and Canada. Indigenous women and their sexuality are fabricated through discourses of the racialized sexual

Other to "construct essential differences between dominant and marginalized groups."[80] In Canada's specific settler colonial context, the relationship between Indigenous sex workers and Canada is predicated on a colonial fantasy that imagines them as "sexually licentious savages, beasts of burden and were conflated with an imagined colonial landscape, which signified that it was open for settlement."[81] This practice constructs Indigenous women as less than human, which foregrounds the denial of their rights and humanity. Hunt notes, however, that while the actual descriptions of Indigenous women may have shifted over space and time, one thing has remained the same: Indigenous women continue to be portrayed as inferior Others "in need of saving for their own good."[82] These processes shaped the formation of the Canadian state and inform its continued relationship with Indigenous populations. This is because colonial discourse, Hunt points out, formalizes "Canada as the paternal figure to Indigenous people, with the power to decide how the lives of 'Indians' were to be lived.'"[83] This is possible by constructing Indigenous peoples through racist stereotypes that imagine them as inferior to settler populations, as well as sexist stereotypes that imagine women as inferior to men. Moreover, "it can be argued that the violence itself has become hypervisible, but that it does not count as real violence, because Indigenous women are seen as less than human, as unworthy of response; violence is normalized and assumed to be part of the everydayness of Indigenous spaces."[84]

Here, Hunt undertakes a genealogy that traces normative violence through discourses of morality, victimization, and violence against Indigenous women. Through knowledge practices, social and legal constructions of Indigenous sex workers produce norms about them as sexually violable, deviant, and devoid of agency.[85] These processes construct an archive that reproduces stereotypical images of Indigenous sex workers that is not disconnected from law's organization of colonial experiences. Discourse analysis here exposes how colonial knowledges intersect with

law to naturalize violence. Together, their construction of Indigenous inferiority is also rendered real through colonial law, such as the *Indian Act* that sanctioned widespread sexual and physical abuse in residential schools that were mandated by the state. This evidences the intersection of regimes of knowledge and disciplinary power designed to produce genocidal conditions. Through the discursive construction of Indigenous inferiority, Christian missions and secularized colonial law networked with theories of biological racism to produce discourses of colonial racialized and sexual hierarchies.[86] As well, Hunt points out that the *Indian Act* laws are designed to prevent Indigenous women from entering colonial public spaces and were used to criminalize relationships between Indigenous women and non-Indigenous men. All of this was based on the view that, with the arrival of European women, Indigenous women's reproductive and familial roles were a threat to the colonial state.

For Hunt, "the violent reconstruction of Indigenous identities as inherently savage—more than racialized and sexualized, but categorically Other, within the broad discourse of Western identity—is rendered invisible through its naturalization."[87] It authorized the fear of Indigenous sexual availability, which remains prevalent today, and embodies the general principles of a racist and sexist patriarchal order that endorses "the stereotypes of squaw, Indian princess, and sexually available brown woman, as well as the violence justified by these images of us."[88] On a discursive level, Hunt discusses how these anxieties exist in the moralistic stance against sex work, and sex work's conflation with inherent exploitation. Within this paradigm, Indigenous sex workers are constructed "as nameless, voiceless, placeless victims, in memory of past injustices."[89] This approach functions through colonial power/knowledge regimes that have been used to dehumanize and stigmatize Indigenous sex workers and draws on discourses of pathology and criminality.[90] The intersection of pathology, criminality, and colonialism for Indigenous sex workers has been

used to reconstitute the colonial imagination through paternalistic and infantilizing tropes that seek to position Indigenous sex workers as devoid of agency.[91] Elsewhere, Hunt also points to the prevalence of this in academic and governmental use of anti-sex work and anti-trafficking discourses, which she notes problematically "advance an explicitly anti-prostitution prohibitionist stance in which all people who trade or sell sex are victims of exploitation."[92] At the same time, Hunt notes that anti-trafficking is "used in efforts to avoid criminalizing adult sex workers and instead to see them as victims of trafficking."[93] Discourse, here, operates through the creation of categories of contemporary knowledge that limit the possibilities of Indigenous sex workers determining their representation.

But as Hunt also notes, Indigenous communities are not outside these normative discourses either, as some also retain anti-sex work ideologies that reproduce colonial stereotypes about Indigenous women. This leads Hunt to ask the following: "As Indigenous people, we have long experienced being spoken for, misrepresented, and silenced by dominant discourses about Indians and Others. Why, then, are we continuing to reproduce these conceptualizations in our own communities?"[94] For Hunt, acknowledging the discursive violence of law "exposes the material consequences of legal categories, including how the Other is produced, excluded, and naturalized in this process."[95] In addition, she indicates that in the context of a human trafficking framework, the victimization discourse fails to make important distinctions between Indigenous peoples (youth/women)[96] and Indigenous experiences (sexual exploitation/sex work).[97] Anti-sex work and trafficking approaches instead construct Indigenous peoples as an undifferentiated population, conflating youth and adults due to paternalistic categories of victimization while "their varying degrees of agency and choice remain unexamined."[98] The problem, however, as Hunt explains, is that trafficking and violence discourse redirects attention away from the role of the colonial state

in generating violence against Indigenous people; instead, it appeals to the state for a powerful legal response to the violence the state itself is responsible for creating. As such, "for Indigenous women and girls, law's violence has always been inherent to their representation as legal subjects, positioned in ways that facilitate and legitimize their marginal status in colonial power relations."[99] Moreover, moral discourses have created a relationship of dependency that so far "has not worked in Indigenous women's favour and has, in fact, led to the perpetuation of colonial power relations."[100]

For Hunt, then, discursive power plays a powerful role in colonial regulations of sex. Foucault's method contributes to a decolonizing approach—a critical unpacking of the historical and social construction of Indigenous pathology and sexual deviance as it relates to the sex trade. Examining moral discourse in this way can expose how colonialism's violence is expressed in the construction of Indigenous deviance. Such methods provoke moving beyond the constraints of dominant conceptions of Indigenous objectification and dehumanization to instead recentre the voices and agency of Indigenous sex trade workers. In drawing on Foucauldian insights, Hunt thus promotes the need for creating "new representational strategies for a future in which people who trade or sell sex can be humanized not only after they have disappeared or been killed, but in recognition of their position as rightful subjects."[101] This also requires acknowledging Indigenous conceptions of agency, which "can be very different from European or Canadian ones."[102] In drawing on Foucauldian analysis, then, Hunt shows how colonial law is dependent on disciplines of thought (non-Indigenous feminism and criminology), which comprise governmental technologies that organize Indigenous social and sexual life. Through this, there is a disciplining of Indigenous sex trade workers' bodies that also shapes Indigenous conceptions of the self. The internalization of an anti-Indigenous ideology, which Hunt describes as inherent to the sex-as-

violence feminist ideology, functions as a way through which Indigenous peoples constitute themselves within systems of power by regulating Indigenous bodies, thought, and conduct that can be anti-Indigenous in how they reproduce stereotypes about the agency of Indigenous sex trade workers.

On the Predicament of Foucault: Western Humanism and Feminist Agency

Elsewhere across feminist fields, Foucauldianism has not been uncritically accepted for addressing questions of gender and sexual un/freedom within environments of racial colonialism, and specific attention has been given to the limitations of biopolitics. For instance, Alexander G. Weheliye, quoting Sylvia Wynter, states that "feminism's insurrection must sabotage 'its own prescribed role in the empirical articulation of its representations in effect by coming out of the closet, moving out of our assigned categories' in order to abolish these assemblages."[103] For Weheliye, Foucault does not go far enough to do this; in destroying only the Western bourgeoisie's conceptions of gender and sexuality, he leaves intact the "genre of human" on which it is predicated. Thus, he does not aspire to create "a different code for what it means to be human."[104] For Weheliye, Foucault's theorizing simply reinscribes the humanist subject of "Man" because its personification of the human insists on a radical possessive individualism that presumes that we have entered a stage in human development where all subjects can be and desire to be granted equal access to the Western conception of humanity that we all desire to accomplish. This idea is underscored by Sylvia Wynter, whose work highlights how Foucault's post-structural subject—the universalized "Man"—like both liberal humanist subject (Man-as-norm) and the materialist subject (Labour-as-norm), is part-and parcel of a secular-liberal argument that "develops the

concepts of a governing morphogenetic fantasy" and model of sociality of the contemporary socio-historical order. As Wynter notes, Foucauldian feminism takes "the form of representation" as the object of inquiry, rather than sexuality as its object. Foucauldian feminism does not take its own role in the mode of production as the object of inquiry either, but rather, "the representational mode of these; and the role that these representations play in the legitimation of multiple forms of coercion, of social and psychic domination; its role then in the structuring code of the order, a code which … points with respect to the functioning of the genetic code, it uses its human agents as its 'survival machines,' as the mechanisms through which it articulates its own intentionality."[105] In this way, Foucauldian feminism functions as a legitimating discourse that inscribes a governing code of what it means to be human in biocentric and normative secular terms.[106]

For Weheliye, the problem is also that Foucault's work neglects thinking deeply about the gendered and sexual provenances of racial assemblages. This negation evades the possibility of alternative modes of life alongside subjection, exploitation, violence, and racialization that define modern humanist agency. Specifically, Foucault's biopolitics aspires to transcend racialization through recourse to absolute biological matter that no longer supports portioning humanity. Weheliye notes that biopolitics misconstrues how profoundly race and racism shape the modern idea of the human and writes off other theorizations "allowing bare life and biopolitical discourse to imagine an invisible biological substance anterior to racialization."[107] Foucault does this by locating modalities of "real" racism in an unidentified elsewhere, *habeas corpus*, and in law more generally—at least when administering racial distinctions, which recognize the possibility of the humanity of the racialized subject as only in the restricted idiom of Western juridical personhood-as-ownership. This stems from Foucault's contention that the biopower of the European state "makes live and lets die." Foucault states that "this will allow power to treat that population as a

mixture of races, or to be more accurate, to treat the species, to subdivide the species it controls, into the subspecies known, precisely, as races. The first functions of racism: to fragment, to create caesuras within the biological continuum."[108] It is at this moment, explains Weheliye, that politics takes hold of the biological, where the biological health of a nation, for Foucault, comes to define the exercise of state power, and which produces "racism that society will direct against itself, against its own elements, and its own products. This is the internal racism of permanent purification, and it will become one of the basic dimensions of social normalization."[109]

However, Foucault carefully establishes that racism predates this moment, and that racism's function and quality had merely shifted, maintaining that it "had already been in existence for a very long time, But I think it functioned elsewhere."[110] "Racism," Weheliye continues,

> which up to this point had led a peaceful conceptual and historical life in an unspecified terra incognita, thus journeys from the uncharted periphery into the heart of the modern European nation-state. Yet, despite locating the insistence of modern racism in "colonization, or in other words, colonizing genocide," for Foucault, in a reversal of colonial modernity's teleology that locates the temporal origin of all things in the West, racism only attains relevance once it penetrates of borders of fortress Europe.[111]

Foucault, then, places racial difference in a field at a distance, thus inscribing race as a "real object" or a "primitive notion" outside of the European imperial environment. For example, this is demonstrated in Foucault's theorization of the origins of modern racism in colonialism, wherein he uses the Third Reich to illustrate the full reach of biopolitical power. While important to consider, Foucault does not consider the historical relationality and conceptual continuity between Nazi racism and other forms of biopolitics, including those techniques that were perfected through genocides against Indigenous peoples or racial slavery. As Weheliye questions, "Why not simply

examine biopolitics of Nazi racism qua Nazi racism? Why must this form of racism necessarily figure as the apex in the *telos* of modern racialized assemblages?"[112] In addition, he notes that Foucault does not describe or attend to this elsewhere, and as such, it materializes as a primitive topography, operating as constitutive outside of his theory of biopolitics. For Foucault, racism only becomes relevant once it penetrates Europe's geopolitical locality; even though the originating leap of racism can be found in the colonized "rest," only its biopolitical rearticulation in the "West imbues it with the magical aura of conceptual value."[113] Weheliye notes the following:

> In logic, primitive terms, or notions, also referred to as axioms or postulates, name instantly understand terms that are used without elucidating their signification. The means of all other concepts in a logical system are determined by these primitive terms and by previously established expressions. Over the course of his argument about the genesis of biopolitics in the lectures, Foucault will continue to distinguish European state racism and biopolitics from those primeval forms of racism that linger in the aforementioned philosophical, geographical, and political quicksand of an unspecified elsewhere; at least, that is what we are asked to infer because of Foucault's taciturnity about the reach and afterlife of those other modalities of racialization.[114]

The problem, as well, is that Foucault's biopolitical racialization hinges upon its contrast with more narrow definitions of racism. He makes a distinction between "ethnic racism" and racism that deals with the mad or deviant, which he characterizes as "racism of the evolutionist kind, biological racism,"[115] through which biopower racializes these sets of humans that are not distinctive in the racial epidermal schema but nevertheless get classified as deviating from full humanity of the species. As Weheliye points out, methodologically speaking, Foucault's biopolitical theorizations occlude European imperialism and its racial assemblages because he

uncritically embraces an ontological differentiation between ethnic and biological racism, which allows for the continuation of the naturalization of racial categories and the idea that there can be a biological sphere that is somehow outside the subject of ethnic racism. All modern racism, however, is biological at first, explains Weheliye because it holds as natural—usually in evolutionary terms—the inferiority of targeted subjects, and because, as Wynter previously pointed out, racialization is instituted in the realm of human physiology as the sociogenic selection of a group in the name of embodying all humanity.[116] Simply put, "there exists no significant difference between ethnic and biological racism in the way Foucault imagines, since both rely on the same tools of the trade: racialized assemblages."[117] Nevertheless, "Foucault can only authenticate the uniqueness and novelty of European biopolitical racism by conjuring the antithetical spirits of racism as always already situated in a primitive elsewhere."[118]

Nigerian feminist scholar Oyèrónkẹ́ Oyěwùmí similarly holds critical sentiments concerning the biological matter of feminist Foucauldianism's social theory discourse and the body—that is, that society is constituted by bodies as bodies.[119] Oyěwùmí notes that in the West, "the body is the bedrock on which the social order is founded, the body is always *in view* and *on view*. As such, it invites a *gaze*, a gaze of difference, a gaze of differentiation—the most historically constant being the gendered gaze."[120] For Oyěwùmí, the West's privileging of the visual and the centrality of the body in constructing difference foregrounds biological foundationalism and biological determinism in post-structural conceptual categories of sex and gender, despite the argument that gender is socially constructed and not a biological fact. Both Michel Foucault's and Judith Butler's interrogations of sex and gender underscore (albeit in different ways) how the social construction of gender is a foundational tenant of post-structural feminist theorizations because it was interpreted to mean that gender differences are not ordained by nature, but rather

mutable and thus changeable (i.e., the opposition between social construction and biological determinism).[121] However, despite attempts to separate the two, gender cannot exist without sex since the body is promoted as the base of both categories, which results in biology as the ideology for mapping the social world.

Judith Butler, for instance, belabours this interconnectedness, noting that "gender must also designate the very apparatus of production whereby the sexes themselves are established."[122] Similarly, for Oyěwùmí, "in western constructions, physical bodies are always social bodies, there is really no distinction between sex and gender."[123] For her, asserting that women as a social category—a concept that is foundational to Western feminist discourse—did not exist in Yorùbá culture prior to contact should "not be read as a kind of post-structuralist deconstruction of the body into dissolution."[124] Rather, the body was and remains corporeal; the body was not the basis of social thought, identity, roles, exclusions, and inclusion, however, social identity was relational and not essentialized by perceptions of bodies. The concept of "women" and the body as deployed in the West is invoked in feminist scholarship that rearticulates Eurocentric epistemologies about the Western experience that are also rooted in philosophical discourses about distinction among mind, body, soul, and in distinctions between the body and the social.

The question, then, is if *corporeality* and *vision* are apt models of knowledge of understanding social hierarchy. In post-structural sex work feminism, this is determined by normative social relations that retain biology as the foundation of social power and change. For Oyěwùmí, post-structural feminist social categories are bound by optics that are founded on a logic of *body-reasoning*—that is, "the conception that biology provides the rational for the organization of the social world … this cultural logic is actually a bio-logic."[125] Hence, if the question for sex work scholars is, "Why can sex not be sold freely?" the explanation is the same: that the sexual

subject is biologically predisposed because of the West's optical and biological blocks of genetic endowment, which decide on which sexed and gendered bodies power is displayed and how it is differentiated. Oyěwùmí, however, critiques the assumption that physical bodies are only social biologies, pointing to tensions in explicitly biological explanations for accounting for social hierarchies. She thus critiques transcultural feminist assumptions of post-structural feminist theory as a universal, arguing that post-structural feminism is based on a perception of human sexual dimorphism and critiquing the biological sign system that accompanies its theorizations.

In like manner, for understanding sexual agency proposed by post-structuralism, Saba Mahmood questions the prevalence of Foucault's theories that posit the sexual body as a historical mapping of power, that is, "the inscribed surface of events"[126] totally imprinted by history and the processes of history's destruction and construction of the body, which positions the subject as an effect of power. Mahmood instead asks us to consider how the specificity of a bodily practice is important to understanding the kind of relationship it presupposes to an act it constitutes, with particular emphasis on what is made possible in ethical subject formation via the bodily practices of non-secular religious and/or magical rites.[127] As Mahmood argues, an analysis of the particular form that the body takes transforms our conceptual understanding of the act itself. As she notes, "bodily behaviour does not simply stand in a relationship of meaning to self and society, but it also endows the sex with certain kinds of capacities that provide the substance from which the world is acted upon,"[128] and hence, with embodied power "the *show* of practice is explored rather than their [the bodily behaviour's] symbolic or hermeneutical value."[129] Bodily practice, then, operates as a terrain upon which the topography of a subject comes to be mapped, which elaborates the architecture of the self through the immanent form a particular bodily practice takes. This explicates the self in the *work* bodily practices perform in the crafting of the subject rather than

simply emphasizing the meanings they signify in the cultivation of ontology. This is significant because the body is not the effect of power alone or a surface onto which a history of discourse is mapped. Rather, Mahmood's insights move within and beyond the forms/norms of the post-structuralist tendency to locate power as exterior and denaturalizes the secular idiom of the power of public exteriority and privatized interiority—not to be confused with the liberal feminist public/private divide noted by sex work scholar Amanda Glasbeek, who considers sexuality (and its politics) as "an ostensibly private concern."[130]

Here, denaturalizing the exteriority/interiority divide refers to the assumption of socially prescribed forms of behaviour as necessarily constituting the sole conditions of the emergences of the self, as such, and as being necessary to its realization. For Mahmood, models of bodily behaviour are not regarded as explicitly external social impositions that construct an individual and cultivate being. The body, instead, is a site in the cultivation of power that can be viewed through prescribed forms of conduct, which potentiate a scaffolding through which the self can be realized—a self that exceeds the liberal notion of autonomy and extends the horizon of possibilities and practices by which one acts upon and recreates the world. The body, rather than being confined to a secular idiom of physiological discourse and affinities of body-reasoning, expresses how particular relationships are inhabited and enacted. It can be agentive in the sense that it can be an active practice relationship inhabiting a space and time. In these instances, physical and social dichotomies cease to be explicitly delineated along distinct lines as modes of living in a relationship and retaining the ability to live such relationships over time transforms the body from passive experiences into active ones, which redefines the ways of living in this world.

There are a few things that are being problematized here. First, there is a problematization of the provincialization of Western theories of the body and individual agency. This complicates

the distinction of power between the individual and the social and complicates how forms of power and agency are cultivated. In turn, this provides a more complicated orientation of the body and sexuality than that of Foucauldian feminists, who tend to conceptualize norms on a model of doing and undoing that proposes social norms as "the necessary ground through which the subject is realised and comes to enact their agency."[131] Power as it relates to sexuality, then, can be understood beyond the historical processes of normative dominance and the marking of sexually deviant bodies. Rather, these insights build on Foucault's elucidation of power to suggest that "the set of capacities inhering the subject—that is, the abilities that define her modes of agency—are not the residue of an undominated self that existed prior to the operations of power but are themselves the product of those operation."[132] This understanding of power and bodily formation therefore asks us to conceptualize sexual agency as not simply a stand-in for resistance to relations of domination, but rather as a capacity for action that specific relations of subordination create and activate. Likewise, though she does not explicitly state it, Mahmood's critique of this paradigm is also reminiscent of critiques of the subject/object dialectic that underwrite materialist liberation insofar that feminist Foucauldianism suggests that sex workers as reactive agents can only realize the potential for freedom through a dialectic struggle of subversion or resignification of norms, which, in this context, alludes to a progressive teleology of feminist Foucauldianism.

Importantly, then, what unites Weheliye, Oyěwùmí, and Mahmood is their collective disavowal of post-structuralism's exoteric agency/resistance lexicon that operates on a binary logic of subjection/subversion. This lexicon can be observed, for instance, when Valverde explains that moral regulation has always been concerned with norms of a sexual order; both how they are produced and how they can be resisted.[133] Elsewhere, Valverde and Weir note that, when situating their theorizations of "concepts necessary for an understanding of sexual rule and resistance,"[134]

they "keep in mind the dialectical interplay between rulers and ruled, regulation and resistance, and the internal contradictions within both rulers and ruled."[135] Glasbeek also notes that moral regulation scholars prefer to understand sexuality as a form of regulation rather than control, "in large part because it can better allow for issues of agency and resistance."[136] This addresses the problem of how moral constructions and regulations of sexuality require understanding them as "normative expectations that we may try to achieve, resist, or actively subvert."[137] However, as Mahmood has shown, resistance conceived as such "points to one way in which a particular kind of deep motivation can be attributed to an essentialized subject-agent."[138] That is to say, that the binary of resistance/subordination does not lead us to challenge the use of the term "resistance" to describe an entire edifice of feminist human action, including those who may be socially, ethically, and politically idiosyncratic to the Western liberal feminist goals concerned primarily with opposing dominant social norms.

We are asked, then, to question whether it is even possible to identify a universal category of acts, such as resistance, outside of the ethical and political conditions within which such acts acquire their meaning—that is, the racial and sexual assemblages of colonial and imperial orders and their power politics that dictate the organization of sexual life. Underscored, instead, is how Foucauldian feminist theories of power/resistance subscribe to a liberal progressive imaginary based on a notion of agency that remains entrapped within a normative dialectical struggle. This category of resistance imposes "a teleology of progressive politics on the analytics of power—a teleology that makes it hard for us to see and understand forms of being and action that are not necessarily encapsulated by the narrative subversion and re-inscription."[139] Instead, Mahmood's insights seek to delink agency from the goals of progressive historicism that incarcerate the notion of agency within the tropes of resistance against dominating and oppressive operations of power.

Moreover, these insights point to a notion of bodily power that is predicated on a relationship between the immanent form a normative act takes, the model of subjectivity it presupposed, and the kinds of non-secular authority upon which such an act relies. Freedom in the West, Mahmood explains, is normative to feminism as it is to liberalism, which positions women's agency as consubstantial with resistance to relations of domination and the concomitant naturalization of freedom as a social ideal. This accounts for the overwhelming tendency within post-structural feminist scholarship to conceptualize agency in terms of subversion or the resignification of social norms, locating agency within those logics that resist the dominating and subjectivating modes of power in question.

Alternatively, we are presented with an important critique of the normative political subject of post-structuralist feminism as remaining a liberatory one. This highlights how its notion of agency elides dimensions of human action, the ethical and political status of which does not map neatly onto the logic of repression and resistance. Within that lexicon, there is an assumption that any form of external force that "subjects" is necessarily a problem for feminist progress because it interferes with liberal individualist sovereignty, which demands the imposition of a progressive teleology of movement in a single direction from "more" pain to "less" pain.[140] The movement is presupposed by the embrace of a distinctive democratic (anti-clerical and anti-supernatural) politics that reconceives of sacredness as residing in the individual consciousness and right. Those who are caused pain are saved by sovereign individualism, because pain (as interference) is thought to be inimical to progressive reason as the historical triumph of individual autonomy.

Likewise, for Weheliye, the agency/resistance archetype "obfuscates—and not in a productive way—the textures of enfleshment, that is, the modes of being which outlive the dusk of law and the dawn of political violence."[141] As an explanatory model it assumes a full, coherent,

and self-present subject working against something or someone. This is a problem for those deemed fungible[142] or ontologically impossible[143] because it does not reflect their social and historical contexts. For Weheliye, more interesting questions include "Why are formulations of the subjected only deemed liberatory if they resist hegemony and/or display the full agency of the oppressed?" and "What deformations of freedom are made possible that the resistance/agency paradigm fails to account for?" This is not to suggest that agency and resistance are irrelevant terms. Rather, as Weheliye contends, we might come to a more complicated improvisatory understanding of extreme subjection if we do not presuppose what forms its disputations should take on by confining it to a logic of circumventing the structure versus agency. Similarly, for Oyěwùmí, the problem of the agency/resistance framework stems first from the Western logic that is given to the body. So, whether it is old biologies (nature/determinism) or new biologies (social construction/gender), the theory of agency/resistance remains intact: only the power of those constituted through the gaze of Europe's conceptual social and normative hierarchies (determined by its social-biological relations) can enact and embody real power relations to resist the discursive normativity that is historically mapped onto a body. The body-based social reality occludes alternative modes of knowledge, power, and being, opting instead for a human universal that is structurally bound in an endless struggle of those who are either empowered or disempowered in an atmosphere of subjectifying external secularized normative power. This renders those who subscribe to other ways of life that do not conform to body-reasoning as "no-bodies"—literal non-agents who do not figure into conceptualizations of action proper—and functions to deny their possibility of affecting local and global politics and history.

With this, I would also argue that Foucault's methodological project that understands Man as a theory of human-as-process fails to articulate what Wynter characterizes as an autonomous

frame of reference related to a schema of Being necessary to emancipatory politics. It reads, instead, as reconstructing the truth of Europe's morphogenic fantasy as a fixed referent to secular humanist philosophies.[144] This is in part because Foucault's theses remain embedded in the French liberal tradition, the analyses of which "are delimited by a universalization that is not truly global because it presumes the structure and subject of politics to be ontologically European, masculine, and propertied" and "does not explicitly address French colonialism."[145] But also, because it does not present life outside of secular-organic contemplation, Foucault's theory of social bodies defaults into a mode of thought that is deeply rooted in life as an empirical fact that can be mapped and observed. The sexual subject, I argue, thus remains entrapped within discourses of natural human sexual history.

If we recall, Foucault argues that the body, "required to be docile in its minutest operations, opposes and shows the conditions of functioning proper to an organism. Disciplinary power has as its correlative an individuality that is not only analytical and 'cellular,' but also natural and organic."[146] The body, then, is conceived of as a form of organic matter as knowledge (*zoe*).[147] This "new object is the natural body susceptible to specified operation."[148] However, as Foucault explains, governmentality is no longer just about the body but "should [also] strike the soul."[149] For instance, in "The Body of the Condemned," Foucault famously claimed that "the soul is the prison of the body,"[150] but he empties the meaning of the soul from its theological or supernatural conception. Instead, the soul is reconceived as "the effect and instrument of a political anatomy"[151] and of techniques of power of penal mechanisms, and it becomes the subject of disciplinary apparatuses aimed at transforming the subject through normalization—medical, pathological, and carceral. It is "produced permanently around, on, within the body by a functioning of power that is exercised on those punished."[152] The soul, I argue below, as a product of governmentality and

disciplinary power, is thus constituted as a scientific practice that becomes intelligible through governmentality, self-transformation, and disciplinary constructions of ethical subjects.

For as Scott Hamilton argues, a pillar of governmentality is Foucault's specific rendering of time, which emerged from an epochal shift in Western cosmology that structured indefinite governmentality and through which Foucault developed and applied his method of genealogy that accounts and confirms for his theories of disciplinary power and biopolitics. This historical time took hold in the West by replacing Christian cosmological temporality as a linear path progressing towards eschatological salvation, which through a transition moved "pastoral power away from the church's shepherding of souls to the government of a state existing in an indefinite historicity."[153] This transition depends on the de-governmentalization of the theological cosmos that rendered possible a political temporality that is used to "diagnose the Chronos of a disciplinary power that isolates and individualises bodies through regimes of future-oriented examination and determination, so they can be regulated and coordinated."[154] It "required a prior intersection with pastoral power that no longer used scripture as a technology to shepherd souls of the flock, but rather, could now use physics and mathematics to reveal the centre figural nature of processes and patterns created by individuals and the population of the state."[155] What is important here, then, is how governmentality is theorized as a type of calculated statistical power. Discipline, as such, is conceived of as an individualized mode of governmentalizing Man through the emergence of a disciplinary society that is accounted for through quantification, calculation, and amendable measurement. And, as I will suggest, it is through secularization of calculable time that the disciplinary power of sexual morality and moral regulation becomes manifest. In this framework, subjects and objects are rendered "material and discrete atomistic entities"[156] that can be measured and analyzed in relation to one another, but which are also susceptible to manipulation (discipline)

that fosters a biopolitical data-drive causal account of historical (genealogical) occurrences. Consequently, I argue that despite his important critiques of the emergence of Man as a product of scientific knowledge/discourse, Foucault's governmentality and genealogy of sex risks dissolving its insights into an endless biological and scientific temporal structure of social history that undermines the post-structural project of radical temporal discontinuity.[157]

This perspective on discipline and the secularization of the soul resonates with Mariana Valverde's work on sexual morality and moral authoritarianism. In "'Despotism' and Ethical Liberal Governance," for instance, she notes that Foucault began destabilizing the ontologies of traditional morality, including liberal morality, by tracing the evolution of modes of authority from Greek ethics to Christian pastoralism to medical taxonomies."[158] In "The Harms of Sex and the Risk of Breast," she also emphasizes the insights of Foucault's theory of governmentality for understanding the formation and reproduction of moral/ethical subjectivities because governmentality supports "the need to move beyond structuralist thinking."[159] For Valverde, biopolitics expands thinking on governing "both bodies and 'souls' for modern forms of social power,"[160] the processes of which include discipline, innovative technologies of the self, and the deployment of sexuality. The soul, Valverde explains, is not separated from Foucault's discussion of the emergence of a "moral self" through "the cultivation of a particular subjectivity requiring constant self-supervisions."[161] Like *habitus*, biopolitics is the regulatory processes of the production of social and sexual subjectivities. We see this, for instance, in Valverde's genealogy of policing sexual ethics in Canada.

On the one hand, her genealogy retains the methodological assumptions laid out by Foucault in *The History of Sexuality,* which she uses to account for the (yet-to-be-liberated) sex worker whose emancipation depends on their evacuation from eschatological forms of

governmentality, reconstituted, instead, as an individualized modern subject. Her genealogy of moral governmentality thus accounts for the past in specific periods not only to make comparisons between events (theological governmentality of sex and modern moral regulation of sex) that quantify, calculate, and measure that transition between the two, but also to theorize the possibility of a liberated sexual subject by breaking free from pastoral forms of power and policing of sexual ethics (Foucault's historical rupture). This genealogy centred on tracing the relationship of anti-sex work morality to social purity in Canada that "was indeed concerned about urban vices, but its real aim was not so much to suppress as to re-create and re-moralize not only deviants from its norms but, increasingly, the population of Canada as a whole."[162]

On the other hand, social purity, Valverde notes, is based on a fear of national degeneration concerned with the social and "physical process of decay that can only be halted if the individuals, the cells of the body politic, take over their innermost essence."[163] Essence, here, stands in for the soul, secularized by Foucault in a process that Mitchell Dean describes as a mode of subjectification wherein "the *telos* of punishment then is discipline itself, the new political technology of the body designed to operate on the body so that the subject will govern him or herself as a docile and useful individual."[164] In this sense, modes of "punishment" directed at sexual subjects target less the criminal act and more the "soul" or system of cognition of the deviant, meaning, "the circumstances, instincts, passions, desires, and effects of environment or heredity."[165] Afterall, when speaking of disciplinary power, Foucault maintains that it is the "very materiality as an instrument and vector of power; it is this whole technology of power over the body that the technology of the 'soul'—that of educationalist, psychologies, and psychiatrists—fails either to conceal or compensate, for the simple reason that it is one of its tools."[166]

Hence, if the soul is a prison of the body, and if the soul is made up on the internalization of environmental circumstances through disciplinary technologies of governmentality that construct the "essence" of the individualized subject that enables self-transformation, then it is not a stretch to suggest that the soul, for Foucauldian feminism, is a question of secularized politics—of political exteriority, structures of power, and their disciplinary apparatuses that subjectify the individual who then internalizes and regulates their behaviours accordingly in the production of modern sexual ethics. For instance, technologies of discipline radiate from discursive power that is first and foremost external to the agent. These technologies are rooted in, for example, institutions of authority that delineate structures of knowledge/power—medical, pathological, and carceral. Moreover, it is through the retention of governmentality's *telos* that genealogy rearticulates the scientific edifices of secularized, calculated time. It is within this historical orientation of temporality that Valverde's genealogy of moral governance and disciplinary power is accounted for. It is based on a historical establishment of social relations that provides a series of statements on the "essence" (soul) of bodily subjectification as a system of discursive and disciplinary regulation. Her method, then, similarly governs the way in which sexual liberty is talked about by acting as a mode of feminist disciplinary power. This theory of the soul, I am suggesting, also denotes the assumption that socially prescribed forms of behaviours (discourse) are regarded as explicitly external disciplinary technologies that seek to potentiate the cultivation of ethical subjectivities. As a result, theorizations of the soul similarly lend themselves to a rearticulation of reactive forms of liberatory agency—that is, the resignification and subversion of forms of power.

Moreover, these critiques of biopolitics, disciplinary power, and Foucault's secular rendering of the soul are not incongruent with Indigenous critiques of Western philosophical and

settler-colonial hegemonic interpretations of the world. Here, I am recalling Glenn Coulthard (Dene) and his discussion of grounded normativity, where he notes that there are "significant differences between Indigenous and Western metaphysics" which revolved around "the central importance of land to Indigenous modes of being, thought, and ethics."[167] Specifically, Coulthard reminds us that neither Indigenous systems of cognition or conceptions of the body can be reduced to questions of Western or colonial political and ontological orders. Rather, Indigenous bodies house ethical sacred ontological frameworks that are shaped by reciprocal relationships between human and non-human forms of agency, and are informed by struggles not only for land, but also, deeply informed by land as a mode of place-based knowledge.[168] The body exists as an embodied relationality that is mutually constitutive of a system of sacred cognition linked to "the modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationships with human and nonhuman others over time."[169] This is not to suggest, however, that within biopolitical arrangements that Indigenous peoples do not feel the impacts of disciplinary power deployed by institutions of settler-colonial authority. Instead, it is to point out that Indigenous subjecthoods do not circumvent the sacred into the essence of the secular in their ontological formations. Instead, Indigenous extra-human power and agencies pinpoint the epistemic limitations of using Foucauldianism as a framework to account for non-secular forms of power that take part in Indigenous negotiations of settler-colonial disciplinary regulations. It underscores that Foucauldian theories of power are not totalizing, and his categories have limits for accounting for embodied non-secular forms of transformative thought, action, and power, indexed for instance, by Coulthard's grounded normativity which characterizes Indigenous ontological formations as regenerative embodied relations between Indigenous peoples, the scared, and the land.

Therefore, the unquestioned acceptance of Foucault's divisions of history and social relations of power makes visible a series of tensions. What his feminist genealogies reveal is a biocentric genealogy of progressive history and secular-liberal forms of agency and power. Valverde, for example, sought to prove a connection between a contemporary moment (anti-prostitution prohibition) and its historical construction (discursive productions of morality/immoral) that requires a tracing of instances of power across a historical epoch (the emergence of the Canadian nation state). From this, Valverde and her interlocutors locate their analyses of sex and morality in Foucault's genealogical time through which the politics of feminist sex work activism becomes legible.[170] They do this to show how the production of morality regimes continue to regulate contemporary sexual practices by way of legal and extra-legal mechanisms linked to social constructions of purity, deviance, and criminalization.

In this sense, ethical subjectivity is temporalized within a genealogical construction of history that does not escape governmentality's *telos*. It "subjects" them and demands a necessary rejection of its signifying power through a genealogical teleology of progressive liberatory sexual politics. This is important because in Canada, having "good" (light) or "bad" (dark) sex is characteristic of colonial power. Colonial power precedes Valverde's interrogation of the sexual morality of the bourgeoisie because the scope of the sex trade's condition structures and is also structured by Coulthard's colonial-relations and metaphysics. In other words, her very genealogical classification of sexuality and its emergence through archives of morality and nation-building is based on racialized sexualities that are colonized by the domain of sexual morality as the necessary condition of disciplinary power. For these reasons, constructing European women's sexuality as, to repeat Valverde, "the worst threat to civilization," profoundly misconstrues the complicity of colonial vectors of sexual politics and genealogy, governmentality, and biopolitics

in the matrices of imperial power/knowledge. Moreover, it discounts how feminist genealogies also constitute forms of disciplinary power, which obscures Foucauldian feminism's role in the hegemonic "light side" of the imperial Same's authority in tracing and defining the scope of sexual relations in Canada. Racial assemblages of colonial sexual difference are instead placed some distance from conceptual contemplation that writes off theorization of colonialism by locating it in a feminist elsewhere that restricts sexual personhood to the secular-liberal idioms of Western methodologies. In consequence, I argue that Valverde, like Foucault, recentres Canada and Europe's historical experience as the universal conceptual norm of liberatory agency. From this "norm," she and others draw theoretical conclusions regarding the status of sex workers in the Canadian context that remain embedded within the epistemic and temporal assumptions of Foucault's methodologies. Thus, Foucauldian feminism also articulates an anthropocentric understanding of the individual, as it historicizes a biocentric genealogical tracing of secular progressive history.

On the Predicament of Secular-Liberal Empowerment

So far, I have reflected on the limitations of Foucault's genealogies of sexuality, disciplinary power, and biopolitics. I have sought to highlight how feminist theories of moral regulation remain entrapped within a progressive *telos* that occludes the possibility of subject formation beyond secular discursive and disciplinary power as it remains invested in a genealogical scientific edifice that accounts for ethical sexual subject formation. In this section, I ask that we continue with this line of thought to further contend with sex worker agency as it relates to histories of the secular and the colonial. Being critical of Foucauldian feminist methodologies is important because, as I

will show below, it allows us to expand on how post-structuralist genealogies retain epistemic fidelity to secular liberatory forms of agency.

As Talal Asad has pointed out, one of the major motives of secular-liberalism is the idea of provincializing agency; mainly, the idea that we all have an equal and innate desire to be sovereign individuated subjects that reject other sovereigns or interference with individual freedom and autonomy.[171] Secular-liberal notions of empowerment and desire are preconditioned by this assumption, in that agency is conceived of as the capacity to realize one's own interests against the interference of things like transcendental will, custom, or tradition. This idea stems from Enlightenment rationalism that redefined pain from a conceptualization that previously articulated it through a transcendental language of religious obsession to a secularized one. Asad notes that the Christian embrace of suffering and masochism and its accompanying justifications were attributed to a teleology of spiritual progress that constituted not only a particular form of agency through divine meaning but also an economy of moral action. Emotion in this new context, however, has "generally been thought of as belonging to an internal economy of the self, the notion reinforced that agency means the self-ownership of the individual to whom external power always signifies a potential threat."[172] Empowerment, then, is attributed to semantic and institutional networks that make possible ways of relating to other people, things, and oneself, where the desire to evade pain is a central quality to freedom.

Disempowerment, or pain, is also defined and investigated through the functions and sensations of the body. It is understood as having an origin internal to a mechanistic world and therefore susceptible to the elements of the world. As Asad explains, this stems from the early encounters between Indigenous peoples and the European explores who became increasingly interested in explaining away the "occult power" of the shamans they encountered. Pain came to

be labelled as a secular myth of punishment for original sin (a sort of divine pain) and was translated into the myth of punishment for transgressions against the laws of nature. Nature was therefore endowed with and personified the agency originally possessed by God. On the one hand, this sought to discredit forms of non-human agency and, on the other, redefined pain and illness as nature's punishment for omission in one's regime. Pain, therefore, came to inhabit a discourse between physician and patient and a de-ontologized language in the context of experimentation. Importantly, it was through this that the concept of "experiences" could be put to the test in larger theories of identifying an internal state through external manipulation, which would come to ground secular notions of corporeality where "the entire body was thoroughly investigated from head to toe."[173] The natural body, then, could now be incorporated into a social demonstration of mechanistic philosophy that would change the conceptual grammar of pain into natural terms.

However, the notion that pain is a private experience also came to be assumed through this encounter. It is the idea that pain can only be understood through one's own certainty of their experience, which operates against a contrasted doubt in another's experience. Thus, secular pain does not see pain as social relationship. It does not understand pain as more than a way of constituting irrefutable evidence of corporal forms of experiences, nor as a way of constituting the epistemological locus of the status of "the body" as well as its moral potentialities.[174] This honours a romanticism with a metaphysical question to which a secular notion of agency is the response: "Given the essential freedom, or natural sovereignty, of the human subject, and given too, its own desires and interests, what should human beings do to realize their freedom, empower themselves, and choose to please?"[175] The assumption here, and this is critical to our study of moral regulation Foucauldianism, is that power—and pain—are external and repressive of the agent, meaning that power "subjects" them, and that the agent as "active subject" has both the desire to oppose power

and a responsibility to become more powerful through this opposition, so that disempowerment—pain and suffering—can be overcome. On the contrary, as Asad reminds us, pain is not merely a private experience but a public relationship. Pain expresses how particular relationships are inhabited and enacted. The task of confronting power, then, is taken to be more than an individual one—it is also grounded in a historical project that is concerned with increasing the triumph of individual autonomy.

At issue, then, is the requirement that a subject be both socially and historically constructed, but also that, from a political perspective, it acts in some sense "autonomously" within norms, rules, and practices of power. In this way, there is a presentation of struggle (resistance) and opposition (deviation) as "normal" to the human condition, where agency is conceptualized as individual self-empowerment and resistance—that is, a "desire to move in a singular historical direction: that of increasing self-empowerment and decreasing pain."[176] This is important because the secular-liberal point of Foucauldian sex work scholarship generally maintains that there are two mutually exclusive positions: one is either active in asserting agency (subversion of norms) or passive (as in the object/resignification), operating under the idea that there is a universal desire to move away from pain; pain is understood as an entity that interferes with an individual's capacity for autonomous modes of action. The problem, Asad notes, is that we should not "assume that a proper understanding of agency requires us to place it within the framework of a secular history of freedom from all coercive control."[177] The paradox, he also explains, "is that the self to be liberated from external control must be subjected to the control of a liberating self already and always free, aware, and in control of their own desires."[178] As Mahmood notes, Foucault calls this the paradox of subjectivation, wherein "the very processes and conditions that secure a subject's subordination are also the means by which she becomes a self-conscious identity and agent."[179] Moreover,

feminist agency in the context of freedom from sexual morality becomes about the capacity to liberate one's self from the predations of the history of moral authoritarianism.

Janice Acoose (Saulteaux) maintains, however, that some Indigenous forms of agency diverge from these.[180] For some, Indigenous agency cannot be reduced to the qualities of secular-liberatory agency based on the subversion/resignification paradigm, or the virtues of exclusive Canadian humanist agency that foregrounds the potentiality of moral regulation scholarship's sex worker subjectivity.[181] This is because some remain deeply imbricated in relational forms of sovereignty that extend beyond the secular-liberal concepts of individual empowerment. For some, it is a relationship with Sky Woman, a creator of Mother Earth. Indigenous women's agency and resistance, here, is based not on principles of evading transcendental wills but on principles related to (a) the inseparability of human and non-human agency, place, and ancestry; (b) the social and political relations that connect and/or disconnect Indigenous women from place; (c) reciprocal reinforcing knowledge/place/history traditions that shape and inform the political present; and (d) interconnectedness of place, non-human relationships, spirituality, and land.[182] Leanne Betasamosake Simpson (Nishnaabeg) also describes Western theories of liberation as having "for the most part failed to resonate with the vast majority of Indigenous peoples."[183] With liberation, Simpson notes, "from a Nishnaabeg perspective, we have to engage our entire bodies: our physical beings, emotional self, our spiritual energy and our intellect."[184] While Simpson is not responding to this specific feminist scholarship on sex work, her ideas are critical to complicating feminist Foucauldian theories of agency and resistance. Here, agency and resistance pertain to sacred forms of authority.

This is important, Zahir Kolia explains, because it means that there are Indigenous life forms that do not emerge from European epistemological registers, and that pre-colonial ontology

continues to exist outside of colonial institutions. Moreover, it means that Indigenous ontologies do not exist within a singular and secular realm of historical time that subsumes other conceptions. They related to sacred domains of land, space, time, and ancestry that exist as coeval constellations of reciprocal relationships, which is not the case within secular modalities where agency is limited to human enterprises. Indigenous articulations of agency are linked to temporalities related to sacred geographies and non-human agencies that challenge linearity of genealogical and disciplinary calculation and manipulation by inscribing a spatiotemporal discourse that is both outside and prior to its modern schemas, pushing back on the fixed boundaries of homogenous temporal structures. What distinguishes these matrices is an ethical orientation and relational system that goes beyond the confines of the secular and is bound by immaterial transcendent agency. As Kolia argues, Indigenous embodiment of multiple life-worlds through agency transgresses monological linear time, evidencing "the complex interwoven articulations of time, space, and relationality can challenge the spatial and temporality of the modern colonial state."[185]

It is for this reason that Indigenous scholars like Sarah Hunt maintain that "having the possibilities for one's recognition determined by hegemonic power structures has implications that span representational and material realms, as the inability to be comprehended as a legitimate subject is both dehumanizing and deeply implicated in the normalization of violence."[186] The imposition of feminist knowledge to define modes of sexual agency can reconstitute violence by delegitimizing Indigenous socio-legal norms and identities when "Indigenous women and sex workers are categories of belonging predetermined by colonial power relations."[187] These scholars raise questions about the existence of multiple modalities of non-secular sexual agency that inform the experiences of Indigenous sex trade workers. However, the methodologies of a moral regulation scholarship occlude these articulations of agency by suggesting that sexual freedom

must be delinked from spiritual realms that emerge, for example, from Indigenous conceptions of space, memory, and time, such as grounded normativity[188] or place-based practices.[189] These practices constitute land, human agency, and ancestry as a network of immaterial transcendental agency, creating an ethical-relational system that moves beyond the conceptual frames of secular time and space.[190] For some Indigenous peoples, then, sex and agency exceed the boundaries of secular liberal modalities of agency.

As I see it, feminist theorizations need to be situated first and foremost within their colonial epistemic preconditions. As Agathangelou and Ling maintain, "it is not enough to focus on the legal and moral conditions that impact individual's personhoods (such as their desire or agency) but also the conditions that produce them."[191] These conditions are necessary as part of larger structures of racial and colonial divisions of labour that "affect the production of hierarchal sexual and racial relations amongst different subjects as well as their desires."[192] Resistance and agency, then, must be understood within a colonial politics of individualism, marketization, and entrepreneurship that is combined with legacies of perpetual exploitation and colonization, all of which are founded upon Europe's epistemological domination.[193] And the moral regulation feminist architecture of sexual agency and resistance must be careful not to abstract the global political economy of sex's nexus with epistemological colonization that conditions imperial assemblages of sexuality out of its analysis. This requires a meaningful engagement with Ingenuous subjects whose erasure the state sought to make possible through the very pathologies that feminists like Valverde are concerned with. In this way, feminist post-structural accounts, I argue, also leave incomplete Foucault's call to an archeology of knowledge. For instance, as Aubrey Neil notes, "Valverde's archeology of knowledge is closer to a Marxist mosaic than to a deconstruction of the era's dominant discourses. It is relevant and powerful, but it does not entirely

fulfill its promise to conduct Foucauldian investigation of discourse. A Foucauldian history of fetish should show the whole scale of one particular discourse of one specified period."[194] Valverde, instead, places Indigenous peoples as *a priori* to theorizations of sexuality, history, freedom, containment, origin, and difference, which serves as the grounds and precondition for structuralism and formalism (as well as post-structuralism and post-formalism).[195] The problem, though, is that the pathologies of exclusion that characterized this era are firmly based in colonial pathologies of oppression. However, in tracing the normative (ethical) subject, and by only superficially acknowledging colonialism in passing on their way to make the argument for the primacy of Judeo-Christian sexual morality in the production of sex work subjectivity, these feminist methods ignore the fact that imperialist Western epistemology structures all sexual political relations in Canada, including its temporal orientations that condition their genealogy's account of what can be known about "sex" and "resistance."[196] In this sense, I read them as attempting to transcend colonialism by abstracting a notion of a totally decentred feminist and sexual subjectivity by not excavating colonial epistemic violence in constructions of the im/moral. These kinds of analytic moves, it has been noted, are "responsible for the historical and the theoretic-practical exclusion of non-white women from liberatory struggles in the name of 'Women.'"[197] Moreover, I read these methods as promoting a liberal separation of violence (colonialism) from politics (sexuality).

Final Thoughts

Moving cautiously to avoid the label of feminist anthropologist who comments upon spatiotemporal difference (that is, "the distance separating savagery from civilization on the

diachronic line of progress"[198]), I endorse Indigenous scholars who promote the idea that Indigenous agencies and modalities of power can and should be understood within their own epistemic rationalities.[199] I reference them, then, not to fetishize Indigenous worldviews or reduce them to a discourse of inclusion/exclusion or suggest that they are inherently incompatible and antithetical to articulations of contemporary sexual struggles. Rather, it is to highlight how in provincializing Foucault there remains a secular-liberal, and thus colonial, ethos within feminist Foucauldianism that severely underestimates how Indigenous subjects understand realties of power that exceed Foucault's theory of political exteriority. Instead, some Indigenous forms of agency/power do not assume a homogenous notion of power, but rather, acknowledge that different configurations of power can cohabit multiple material and historical spaces. Configurations of power are also the product of specific non-secular formations since many bodily and embodied practice claims to power exist within and beyond the matrices of the secular-liberal social hierarchy and not totally outside of the domain of its power and knowledge. Importantly, this also "reveals a radically different conceptualization of the role bodily behaviours plays in the construction of the self, a difference that in turn has consequence for how the horizon of individual freedom and politics is imagined and debated."[200]

How, then, can we understand the implications of provincializing Foucault within a colonial condition? I suggest that sex worker liberation in a colonial condition should not be understood as beginning and ending with Europe, where agency is predicated on the rejection of external subjection or resignification of sexual norms. Such assumptions risk reproducing what V.Y. Mudimbe characterizes as epistemological ethnocentrism.[201] Epistemological ethnocentrism refers to remaining methodologically dependant on formulas that both begin and end with Europe. Thus, by theorizing sexual agency, there remains an epistemological assumption that genealogies of

colonialism and non-European modalities of thought, agency, and knowledge are only relevant for consideration when their experiences are necessarily scrutinised by a Foucauldian epistemological, methodological, and conceptual gaze, otherwise there is nothing that "we" can learn from "them" in struggles over sexual un/freedom. This occludes critical insights regarding morality's relationship to sex through the prism of coloniality. It is not enough to simply suggest that Foucault is Eurocentric. Rather, what needs to be traced is the methodological limitations of Foucauldian feminism for thinking about power.

Thus, as I have attempted to show, moral regulation feminists do not draw attention to the ways that contemporary racialized and gendered suffering and the political brutalization inherent to sexual politics in Canada are always imbricated in the colonial construction of feminist humanity and its territorializing racialized assemblages. Their chosen genealogies of anti-sex work discourse and their methodologies for accounting power instead celebrates the relevance of Canadian disciplinary concerns and methodological formations that privilege white theorizations of sex as a field of study. This is because it is not enough for sex work scholars to merely name the colonial condition; they must also excavate its violence in all its forms in their theoretical interventions concerning sexual commerce. Indeed, the violence of morality, capitalism, and carcerality all share a locus in Canada's settler-colonial and imperial projects of land appropriation and Indigenous dispossession, which foregrounds the epistemological architecture of sex work scholarship. As Bonita Lawrence (Mi'kmaw) and Enakshi Dua note, "though critical theorists may ignore contemporary Indigenous presence and struggles, Canada certainly does not."[202]

Therefore, throughout this chapter I have attempted to show how moral regulation scholarship's conceptual dependence on feminist Foucauldianism is incapable of envisioning sexual freedom and flourishment outside of the bounds of a secular-liberal imaginary that is deeply

colonial in its condition of possibility. As such, this scholarship remains entrapped within a methodological formula that rearticulates Europe's territorializing assemblages, thus leaving intact the liberal humanist subject of Man as the precondition to the conceptual formula of moral regulation feminism regarding sex worker un/freedom. I have come to this conclusion by examining the methodological gaze of post-structural feminists and their secular-liberal orientations. Their theory of agency remains a liberatory one because the subject remains trapped within an understanding of "agency as reactive" [203] whereby sex workers as actors are responding to a constraining political environment based on normative disciplinary power. This strict framing of agency limits our epistemological understanding of power to one that is liberatory because of its preoccupation with a discussion of operations of discursive power as constitutive of outside of the subject that resignifies and subverts sexual norms. The resistance/agency and subversion/subjection paradigm similarly resonate with the classical liberal desire of the subject to evade repressive ideological boundaries and to redraw such boundaries—for instance, those that delineate sexuality as dependent on a vision of a new moral integrity that moves in a single historical trajectory. Agency is understood as the necessity of realizing one's own interests against the weight of another sovereign's, such custom, tradition, theology, or other transcendental wills in a teleology of "evading pain" as an extension of progressive individualism. I thus read moral regulation's sexual agency project as predicated on the liberal humanist desire of autonomy, accumulation, and self-expression that constitutes the substrate in the forms of acts of sexual resistance when conditions deem it necessary, which offers a limited opportunity of freedom to a select group of subjects.

It is for this reason that this chapter has sought to index why I also read moral regulation sex work scholarship as complicit in constructing a feminist subjectivity that I understand as a radically

liberal feminism. This is because, methodologically, their feminist intellectualism is in the knowledge genesis of Western intellectual imperialism. Racial assemblages of sexualized colonialism are likewise occluded in the process because their methods insist on radical possessive individualism, which granted access to the Western conception of the human as a secular, sovereign, self-owning agent that is concerned only with evading pain as a liberatory form of secular agency. In this sense, the scholarly and disciplinary authority of the moral regulation feminist paradigm cannot transcend its rejection of morality because its theories do not simply describe the colonial world in which it operates. It actively produces the colonial condition with very specific feminist imaginaries of the future and political agendas based on secular-colonial moralities. Hence, in seeking to extend Canadian moral regulation feminist socio-legal culture, moral regulation feminism "guarantees the promise of freedom that needs to be redeemed or warns of the decline and corruption that threaten that promise, but it always demands the redemption of subjects if they vindicate their human status and join the universe of free, equal, and sovereign individuals."[204] Fundamentally, what is revealed is the sedimented nature of the imperial hierarchies of the scholarship that ultimately leads back to Europe by restoring an inheritance of secular-liberal humanity. In chapter 5, I bring these ideas into tighter focus. In this final chapter, I queer moral regulation feminist theories of the sexual and their methodological grids for making their pronouncements. I argue that moral regulation feminism cannot claim to step outside the violence of sexual empire insofar as its methodological exercises undertake an imperial practice of disciplinary gatekeeping. In remaining faithful to a disenchanted notion of sexual experience and being, this feminist tradition networks with colonialism and neo-liberal capitalism, which is sustained through disciplinary politics within the academic-industrial complex.

Notes

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[2] Ibid., para. 117.

[3] Amanda Glasbeek, "Introduction," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 2.

[4] Ibid.

[5] Ibid., 5.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Dominique Clément, "'Rights without the Sword Are but Mere Words': The Limits of Canada's Modern Rights Revolution, in *A History of Human Rights in Canada: Essential Issues*, ed. Janet Miron (Toronto: Canadian Scholars' Press, 2009), 44.

[10] Ibid., 51.

[11] Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: McClelland & Stewart, 1991).

[12] Clément, "Rights," 48.

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[14] Amanda Glasbeek, "Women Gone Bad? Women, Criminalization and Representation," in *Criminalization, Representation, Regulation: Thinking Differently about Crime*, ed. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press, 2014), 167.

[15] Glasbeek, "Introduction," 5.

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[18] Ibid., 23.

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[22] Ibid.

[23] Ibid.

[24] Shannon Bell, *Reading, Writing, and Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994).

[25] Foucault as quoted in Bell, *Reading*, 11.

[26] Glasbeek, "Introduction," 5.

[27] Glasbeek, "Women Gone Bad," 165.

[28] Ibid., 166; Amanda Glasbeek. *Feminized Justice: The Toronto Women's Court, 1913–34* (Vancouver: UBC Press, 2009), 18.

[29] Glasbeek, *Feminized Justice*, 51

[30] Ibid., 95.

[31] Mariana Valverde, "Introduction to the Age of Light, Soap, and Water," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 117–41.

[32] Foucault, *History*, 139.

[33] Ibid., 143.

[34] Valverde, "Introduction," 125.

[35] Ibid.

[36] Foucault, *History*, 144.

[37] Valverde, "Introduction," 119.

[38] See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd ed. (New York: Vintage Books, 1995).

[39] Carmela Murdoca, "Michel Foucault: Theories and 'Method,'" in *Criminalization, Representation, Regulation: Thinking Differently about Crime*, ed. Deborah Brock, Amanda Glasbeek, and Carmela Murdocca (Toronto: University of Toronto Press, 2014), 25.

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[41] Brock, "Sexual Regulation," 195.

[42] Foucault, *History*, 56.

[43] Ibid., 125.

[44] Ibid., 97.

[45] Brock, "Sexual Regulation," 197.

[46] Ibid., 200.

[47] Ibid., 201.

[48] Foucault, *History*, 138.

[49] Ibid., 139.

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[53] Bruckert and Hannem, *Stigma Revisited*, 19-20.

[54] Glasbeek, *Feminized Justice*; Ibid, "Introduction" in *Criminalization, Representation, Regulation*, xiv.

[55] Valverde, "Age of Light," in *Moral Regulation*, 125.

[56] See also David Garland, "'Governmentality' and the Problem of Crime: Foucault, Criminology, and Sociology," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006) 357–85.

[57] Valverde and Weir, "Struggles," 75.

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[63] Brock, "Sexual Regulation," 202.

[64] Valverde and Weir, "Struggles," 76.

[65] Bruckert and Hannem, "Rethinking," 33–34; Glasbeek, "Women Gone Bad," 153; Glasbeek, Introduction," 5; Valverde, "Introduction," 124.

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[96] Ibid., 29–30.

[97] Hunt, "Decolonizing Sex Work," 90.

[98] Ibid.

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[100] Hunt, "Representing," 26.

[101] Ibid., 36.

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[122] Butler, *Gender Trouble*, 7.

[123] Oyěwùmí, *Invention*, 12.

[124] Ibid., x.

[125] Ibid., 11.

[126] See Foucault as quoted in Bell, *Reading*, 11.

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[129] Ibid., 122.

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[131] Mahmood, *Politics of Piety*, 19.

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[134] Valverde and Weir, "Struggles," 87.

[135] Ibid., 86.

[136] Glasbeek, "Introduction," 5.

[137] Glasbeek, "Women Gone Bad," 164.

[138] Mahmood, *Politics of Piety*, 71.

[139] Ibid., 9.

[140] Asad, *Formations*, 71.

[141] Weheliye, *Habeas*, 91.

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[149] Ibid., 17.

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[151] Ibid.

[152] Ibid., 29.

[153] Hamilton, "Foucault's End," 375.

[154] Ibid., 379.

[155] Ibid., 384.

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[169] Ibid.

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Chapter 5
Queering Sexual Morality: Disenchantment and Sexual Divestment in Empire

> Underlined by power, the epistemological dimensions of knowledge always derive their modalities from a particular place: they speak from and to that place.
>
> —Zubairu Wai, *Epistemologies of African Conflicts*

Introduction

Taking *Canada v. Bedford* as my conceptual point of departure in previous chapters, I have examined how feminist critical legal studies, feminist anthropology, feminist materialism, and feminist post-structuralism theorize sex and morality through the prism of Canada's sex work debates. Moreover, I have discussed how such approaches are networked with colonial law, Cartesian fundamentalism, spatiotemporalizations of difference, Western humanism, and secular forms of liberatory agency. Another important aspect of *Canada v. Bedford* is its recognition of the experiences of queer and transgender people in the sex trade. For example, the 2010 findings note that roughly 20 per cent of street-level sex trade workers are transgender.[1] The decision similarly raised concern over "the unequal application of the existing laws such that many indoor prostitutes operate with virtual impunity, while vulnerable and marginalized street prostitutes, especially aboriginal and transgendered persons as well as drug addicts, are routinely criminalized."[2] For the Canadian HIV/AIDS Legal Network, the violence and degradation that queer and transgender sex workers experience should be attributable to the impugned laws, as criminalizing the measures that sex workers take to protect themselves perpetuates stigmatization that makes them a target for violence. They maintain that this stigma likewise interferes with sex workers' abilities to access health services because differential treatment exacerbates already

existing prejudices and disadvantages that sex workers face despite the fact that there "is nothing inherently degrading about sex work."[3] They further note that "some members of the gay and transgendered communities, whose sexuality and gender expression is frequently marginalized, find that sex work provides acceptance of their sexuality and gender expression."[4]

In this closing chapter, then, I examine sex and morality through the lens of queer theory, seeking to punctuate the larger theoretical aims of this dissertation—that is, to show how sex work scholarship in Canada is embedded in forms of power that reproduce colonial hierarchies through the institutionalization of disenchanted feminism at the intersection of morality, sex, and queer theories of temporality. In so doing, I "queer" queer theory by thinking about the relationship between coloniality, secularity, and sex through the lens of sexual empire. Anna M. Agathangelou, Daniel Bassichis, and Tamara L. Spira characterize sexual empire as the ways in which empire (re)consolidates itself through the solicitation and reproduction of specific ways of being, desiring, and knowing that are beneficial to the constitution of a global world order.[5] At the same time, this demands the foreclosure and/or destruction of racially and sexually aberrant Others. Crucially, like its dealings with heteronormativity, sexual empire requires that certain forms of queerness also be rendered capable of incorporation into the project of neo-liberal imperialism, while Others are rendered continually "abject, unworthy or unable to be assimilated into either hetero- or homonormative citizenship."[6] For queer sexualities to enter into citizenship, then, they must police racialized sexualities through an intellectual labour of gatekeeping (as a process of empire-building) "in exchange for seductive promises of membership into the (so-called) new world order."[7] Gatekeeping in this way is a form of "predatory and pathological sexualization that must be marked and liquidated for good (queer) citizens to stage their entrances into the body politics."[8] Collusion with empire thus becomes the cost of belonging.

I have organized this chapter into three sections. The first examines the concept of disenchantment through the influence of Max Weber. I pair this with a discussion of Indigenous sex ontologies to tease out the colonial nature of disenchanted interpretations of history and subjectivity. This supplies an important conceptual backdrop to the sections that follow. In the second section, I stage two distinct lines of inquiry. One line of inquiry examines how anti-sex work ideology pervades forms of criminalization that exceed anti-prostitution legislation but are also embedded within youth anti-sexting initiatives. Here, anti-sex work ideology is named as an important site specifically for "queering" sexual morality using queer theories of time that respond to anti-sex work moral legalism. Shannon Winnubst defines queering as having its roots in the political, psychic, philosophical, and political "refusal of any confining set of boundaries—in whatever guise they might appear." [9] To be queer is to "refuse, undermine and undo any foregone identity," and thus, the meaning of queering is "radically open-ended and uncontained."[10] Examining the perverseness of anti-sex work morality in legal regimes that exceed Canada's anti-prostitution legislation will expose how queer critiques of legal moralism related to youth anti-sexting initiatives are important to the study of sex, morality, and the law because queer theory and moral regulation scholars provide an important feminist dialogue on normativity and sexual activity. However, despite these important contributions to the study of morality, sex, and the law, I argue that such insights remain within a disenchanted notion of sexual subjectivity that cannot account for Indigenous articulations of sexual agency or Indigenous peoples' anti-colonial struggles around sexual liberty. This is because the chosen genealogy to structure the argument demands the separation of "private forms of reason" from "public politics," which have the effect of subsuming Indigenous ontologies and theories of sexual politics into the domain of cultural and area studies. This assumes that Indigenous scholars must empty their theories of sex of all sacred

forms of being and cognition to be considered sites of struggle in feminist scholarship's approach to using moral regulation to critique law and society. In this way, queer theory undertakes the practice of gatekeeping in ways that institutionalize logics of empire.

The second line of inquiry builds on this by examining how pro-sex advocates produce disenchantment when staging responses to Indigenous sex trade workers who understand prostitution as a system of violence. Talal Asad describes disenchantment as a Eurocentric worldview that helps structure the project of modernity through which particular peoples can seek out and attain forms of power. It depends on a secularization of life to generate experiences of space, time, and the consumption of knowledge that politicizes the idea of a direct access to reality, something that requires "a stripping away of myth, magic, and the sacred."[11] I thus look to investigate conflicting hermeneutical frames of the sexual. Here, a hermeneutical account involves a process of examining the meaning making of queer interpretations of sex and morality. However, through a renewed interpretive attention to queer theories of time, I seek to further elucidate additional meanings of sexual morality in terms of sexual morality's presupposed colonial historical and epistemological contexts in which queer characterizations of sex, morality, and time are theorized within. Thus, moving beyond concerns over established sexual norms, this chapter remains vigilant to how common secularized feminist knowledge about sex must be called into reconsideration in the pursuit of deeper understandings of its imperial meanings and implications for the governing of subjects.

In this chapter, I denote how enchanted orientations of the social and the sexual exceed queer investment in disenchanted sexual experience when thinking about sex, law, and morality. This serves to alert readers to the limitations of feminist engagements with sex and morality when such engagements remain entirely secularized. I highlight the retention of strict scientific

rationality in feminist activism, which problematically activates disenchanted notions of time, history, and subjectivity in seeking to reject Indigenous interpretations of violence in the sex trade. Here, I also focus on epistemology and violence by asking that pro-sex feminists be mindful of the conceptual grammars they draw on to stake their claims. The grammars they deploy, I will argue, reproduce forms of colonial violence that they fight against in other important advocacy work they perform elsewhere, for instance, advocacy for missing and murdered Indigenous women and for Indigenous women in the sex trade.[12] For example, I respond to Kerry Porth, who was the chair of Pivot Legal Society's board of directors from 2012 to 2017. Under Porth's direction, the Pivot Legal Society has been a key site of grassroots organizing regarding missing and murdered Indigenous women in Vancouver's Downtown East side, with some of its most notable work involving the Robert Pickton trial.[13] While I seek to unpack the implications of Porth's epistemological modalities in addressing the sex-as-violence feminist position, this should in no way suggest that I am attempting to dismiss or minimize either Porth's or Pivot's crucial work on combating violence against Indigenous women in Canada and their critical work promoting sex worker justice. Rather, I seek only to highlight the insidious ways that coloniality is embedded within our feminist conceptual grammars, which can often be taken-for-granted sites of sexual empire.

The third and final section speaks not only to the chapter's broader aims but also to the aims of the dissertation as a whole. In this section, rather than try to correct others' representations of feminism and sexuality, I seek to unpack the situatedness of secularity in Canadian moral regulation studies of sex and law, and to question the kind of knowledge it produces, the kind of world-making capacities of this knowledge it produces, and the implications this knowledge has for those rendered as non-secular forms of life within the broader politics of the academic-

industrial complex.[14] I will thus consider how such studies should also include in their thinking on "queering time" the role of sexual empire in the production of queer knowledge. Alongside scholars of moral regulation, then, I ask the following: How might we understand the queering of sexual morality as reinscribing the power of empire, and how might we divest our feminist praxis from empire's sexual investments?

Disenchantment and the Two-Spirit Other

It is within the context of his sociology of anthropology, which is concerned with an epistemological examination of secular modernity's political goals, that Talal Asad locates his reading of disenchantment. Through this, Asad offers a powerful genealogical approach to secularism that investigates its emergence, the processes that make it possible, and its coproduction with modernization and civilizational discourse. Yet, while Asad does not accept the idea that secularism resides exclusively in the domain of modernity, he does note that:

> [m]odernity is a project—or rather, a series of interlined projects—that certain people in power seek to achieve. The project aims at institutionalizing a number of principles: constitutionalism, moral autonomy, democracy, human rights, civil equality, industry, consumerism, freedom of the market—and secularism. It employs proliferating technologies that generate new experiences of space and time, of cruelty and health, of consumption and knowledge. The notion that these experiences constitute disenchantment—implying a direct access to realty, a stripping away of myth, magic, and the sacred—is a salient feature of the modern epoch.[15]

As Asad continues, this also conceives of communities characterized as traditional as politically and temporally radically different and departed from sources of political legitimacy in communities defined within a notion of a modern direct-access, temporally homogenous state.[16] While disenchantment therefore permits temporal organization of speed and direction to be plotted with a precise linear trajectory, "there are other temporalities—immediate and mediated, reversible and non-reversible—by which individuals in a heterogeneous society live and by which therefore their political responses are shaped."[17] In this sense, then, disenchantment is a secular gaze that does not account for complex, heterogeneous, non-secular formations of agency, identity, space, and time, but rather, calls for their translation through homogeneous spatiotemporal articulations of society and history. Therefore, apart from the idea of a direct-access society, disenchantment refers to homogeneous time. As a prerequisite for visualizing the entirety of those individual lives that make up a modern national community, empty homogenous time views social organisms as moving linearly and calendrically, as a continuity of a natural progression via clock-time.[18]

Asad reflects on how colonial modernity and the modern state rely on a distinction between the secular and the sacred because, like modernity's many systems and practices of self-identification, the modern state must find ways to define itself against an Other. I believe this is distinctly important to the argument staged here, because as I will argue in this chapter, feminist disciplinary traditions often rely on the same desegregations. More to this point, the students that are subsequently produced based on a pedagogical approach that demand strict boundaries between the secular and the non-secular, are produced in such a way as go out to recreate the state, market, and world around them based on this organizing principle of defining the self and the modern state against a colonial enchanted Other. This practice, Asad details, is rooted in stripping the sacred of a materialist explanation of its power; as manipulatable, determinate, homogenous,

and subject to mechanical laws, which signals towards the construction of a secularized space.[19] It is zoned, instead, within the domain of the symbolic. Symbolic here refers to mystified consciousness that allows for endless interpretive and allegoric meaning as an independent ethic based on mythic interpretation and symbolic imagination that is believed to obscure the realities of "this [materialist] world."[20] Here, the sacred is rendered a category of thought reserved for private contemplation and practice. Designating it as such seeks to limit the sacred's political influence and action. Moreover, this designation of non-belonging in the public, relegates the sacred to the domain of private reason (private ethics). One common knowledge example of this is the modern states demand for the strict separations between civil society and "private spheres."[21] From this position, the modern social world, rather than being neutral, is consolidated by power that also establishes governing structures that enforce processes of legitimating secularity. This deciphering of spheres assumes that public spaces are made up of a political ethic, which is independent of the sacred, and that the political dimensions of the social should be protected from encroachments of private forms of reason. As I will argue, by advancing public/private distinctions like this, some ontological possibilities are shaped while others are foreclosed.[22] Through public/private distinctions such as this, bureaucratic rationalization becomes efficient. For example, at the level of social structures, the state, the law, science, theology, culture, and art all embody distinct social domains that have their own respected rationalities and institutional identities.[23] This requires parsing out customs and ideologies to create public and private offices of social and political life that seek to purify *legitimate politics* from all encounters outside of calculable, rationalist, scientific knowledge. Importantly, this thought process is the product of Enlightenment knowledge. It is an extension of scientific rationality and the authority of

intellectualization that is illuminated by the wide-reaching influence of Max Weber and his notion of disenchantment.[24] Weber, for instance, wrote the following:

> Scientific progress is a fraction, of the most important fraction, of the process of intellectualization which we have been undergoing for thousands of years … Let us first clarify what is intellectualist rationalization … it means that principally there are no mysterious incalculable forces that come into play, but rather that one can, in principle, master all things by calculation. This means that the world is disenchanted.[25]

In Weber's thinking, rationality is natural, and its progression purifies political and historical trajectories of human life from encounters of the incalculable. The incalculable, for Weber, refers to the spirits of the "savage," for whom "mysterious powers" exist, which is in contrast to "Occidental culture." Weber thus designates a secular form of historical time-consciousness that underwrites his reconstructive efforts towards political authority that seek to transform our understanding of life by stripping principles of human order from their sacred meanings. Weber continues, "One need no longer have recourse to magical means to master or implore the spirits, as did the savage, for whom such mysterious powers existed. Technical means and calculations perform the service. This above all is what intellectualization means."[26] Rationalist intellectualization, however, does not eliminate the "non-scientific" but rather displaces it and elevates the logics of disenchanted secular morality to political intellectual authority. Charles Taylor also provides important contemplation on this because he finds that Weber's communication of disenchantment is a problematic description of our modern condition.[27] Thus, we find here a consonance with our investigation because, for Taylor, as Iqbal notes, "the historical passage to disenchantment cannot simply be understood as the subtraction of religion from the social world."[28] Subtraction stories assume polemics of liberation from previous confining

horizons that create limitations to understanding productions of knowledge and the power of such knowledge to reform and organize society. Taylor insists that disenchantment demands ontological preoccupations through a sense of self; "from a self that is open and vulnerable to the enchanted world of 'spirits and powers,'"[29] to one that can "form the ambition of disengaging from whatever is beyond the boundary, and of giving its own autonomous order to its life."[30] Hence, disenchantment denotes a particular existential condition wherein the possibility "exists of taking a distance from, disengaging from everything outside the mind."[31] This is to say, that a salient feature of disenchantment is the interconnected power of rationalist epistemology and secular metaphysical understandings of the world, and thus, a politics that is preoccupied with the production of disenchanted subjects at this intersection, and not merely the disaggregation of spheres.

In this sense, Weberian disenchantment not only seeks to "measure the distance between religious origin and historical change through the division of time"[32]—for example, the rupture that resulted in the Enlightenment epoch and its subsequent secularized temporalization of world history—but also through "the enchanted world this is "the world of spirits, demons, and moral forces which our ancestors lived in."[33] In this respect, continues Taylor, "of course, science in helping to disenchant the universe, contributed to opening the way for exclusive humanism."[34] As he points out, there is a banality of everyday disenchantment in that "each one of us as we grew up has had to take on the disciplines of disenchantment," for instance, "we regularly reproach each other for our failings in this regard, and accuse each other of 'magical' thinking, of indulging in 'myth,' of giving way to 'fantasy'; we say that X isn't living in our century, that Y has a 'mediaeval' mind, while Z, whom we admire, is way ahead of her time."[35]

The argument continues that such rationalist theorizations permit secular materialist fantasies. "Nature" is thus "reconceived as manipulatable material, determinate, homogenous, and subject to mechanical laws,"[36] and anything beyond that is "peopled by irrational events and imagined beings."[37] These separations become a way for the colonial to define, assess, and regulate the human imagination, to which irrationality was attributed, and to construct instead "disparate places, objects, and times, each with its qualities, and each requiring conduct and words appropriate to it."[38] This is because reason requires that false things be "either proscribed and eliminated, or transcribed and re-sited as objects to be seen, heard, and touched by the properly educated sense."[39] Rationalist skepticism, then, redefines what constitutes inside and outside material bodies and codes as either legitimate or illegitimate states of mind that call people to particular political actions. Hence, these separations not only allowed "God" to be represented apart from the "supernatural" (or primitive magic) but also signalled a secular space that began to emerge through modernity.

As I will show, this is significant to the argument I stage here because it highlights that the theological and the supernatural are unique in the history and orientations in relation to the designation of public thought and private reason. It would be unwise, thus, to collapse them both in the homogenous notion of sacred within attending to their particularities. This is because, in encounters with the non-European world, we also witnessed the construction of "religion" and "nature" as universal categories that reorganized colonialism's diagnostic formula of civilization. Transcendent forms of power were rearticulated through ideas of varieties of humans on an evolutionary spectrum delineating particularity between pagan and religious transcendence.[40] Moreover, religion, Asad explains, once purified of its "magical" elements, was understood as the original site of morality in that religious morality was concerned with responsibilizing agents for

their actions and to their God. The Weberian substrate of disenchantment thus sought to de-spiritualize the human and ascribe to social and political life the temporal inevitability of a modern, materialist, scientific humanity so that secular morality "could replace God by the individual conscience of men and women."[41] This is because science gave us a naturalistic explanation of the world that opens the way for an exclusivist humanism, one dependent upon a "pre-modern condition"—characterized by a world of ancestors who lived mythologically amongst spirits and sacred moral forces—that evolved into the modern condition in which we now exist. Disenchantment imposes not only a time consciousness and self-understanding that affirms a notion of progressive civilization but also a process of reordering society along these lines in the service of colonial modernity.

Asad complicates this further, however, by asking us to apprehend multiple overlapping and heterogeneous temporalities that demystify this secular modern historicism. To do this, we must situate our understanding of disenchantment alongside an analysis of the role of coloniality in conditioning secular temporality. Asad highlights that the sacred came to categorize everything of social interest, such as tradition that society renders, for instance, as expressions of symbolism or cultural representation.[42] The sacred was constituted as a transcendent force that can be imposed on the subject and a space. In this sense, there is an essentialization of the sacred as an external transcendent power. Therefore, if we look closely, a modern, secular orientation of disenchanted life adopts an understanding of itself as a system of rationalization that depends not only on juxtaposing the religious and secular but also on coloniality's presupposition of the savage's mythology as an object of speculation. The speculative nature of the savage's mythology is significant here. Recalling Weber, its proximity with Occidental culture similarly authorizes disenchantment's myth of supernatural (belief) versus rationalist intellectualism (knowledge).

What is assumed through this is a secularization thesis about the development of modernity that requires the structural differentiation between European and non-European knowledge, which I argue, results from the separation of the enchanted from public "politics." This was part of the authorization of a reorganization of life towards a modern *telos*. Within this reorganization of life, speculation potentiates the marking of a disenchanted secular society because the process of disenchantment is colonialism's privatization of the savage's mythologies. In the disenchanted world, then, there is a parsing out of the realms of religious and superstitious mythologies distinct from the "political realms." Distinct from religious discourse, superstitious mythology is thus articulated "on the side of the primitive, of the inferior races, the peoples of nature, the language or origins, childhood, savagery, madness—always the other, as the excluded figure."[43] Mythology is a "vocabulary of scandal that indicts all figures of otherness."[44] Myth and magic, then, are used as synonyms for the irrational; they are "a way of thinking that stands in contrast to the secular"[45] but which contributes to the construction of modern historical knowledge. This is echoed by Taylor, who similarly noted that in the enchanted world, the "people don't necessarily believe in God, certainly not in the God of Abraham, as the existence of countless 'pagan' societies shows."[46] Apart from this, disenchantment's notion of direct access to society requires homogenous time as a prerequisite for an imagined national community,[47] "so that images of a pre-modern past acquire in retrospect a quality of enchantment."[48] Homogeneity helps facilitate the idea of direct access to society because it supports the notion of empty secularized clock-time, which rejects the coexistence of heterogeneous temporalities. It thus functions as an analogy of the time of the modern nation, conceived of as a solid community moving steadily across history that accounts for the origins of the ascension of modern scientific rationalist man.[49]

There are, however, heterogeneous temporalities by which some Indigenous peoples live, and through which forms of sacred knowledge and power continue to shape the political action and social organization of such peoples.[50] These modes of action can be conceived materially in the "visual" sense and also in terms of temporal power, the complexity of which implies something like moving within and beyond the domains of secular space and time.[51] Leanne Betasamosake Simpson (Nishnaabeg) discusses this with respect to Indigenous gender fluidity, sexualities, and relationship orientations that exist beyond colonial conceptualizations that permeate the fabric of contemporary and pre-colonial Nishnaabeg society.[52] Comprised of networks, this society is "a long kobade, cycling through time. It is a web of connections to each other, to the plant nations, the animal nations, the rivers and lakes, the cosmos, and our neighboring Indigenous nations."[53] In particular, Two-Spirit (2SQ) peoples who have lived alternative modes of life to heteronormativity have borne the brunt of modernity's colonial violence through its theft and control of Indigenous sexuality.[54] In speaking about Two-Spirit identity and colonialism's impact on Indigenous queerness and Indigenous queerness's relationship to Indigenous sacred modes of self-consciousness, Simpson highlights how breaking "Indigenous people's social and spiritual mechanisms for processing trauma, for comfort, and for connecting to a higher power is critical to demobilizing our responses to colonial violence."[55] Simpson continues:

> Everything we need to know about everything in the world is contained within Indigenous bodies, and that these same Indigenous bodies exist as networked vessels, or constellations across time and space intimately connected to a universe of nations and beings. All of our origin stories do this, and, really, in the complex reality networked emergence generates, Nishnaabeg itself is a continual generation and iteration of these stories and principles.[56]

While Simpson does not explicitly state it here, I read Simpson's position as one that raises questions about the relationship between colonial modernity, sexuality, and disenchantment. Here, queer Indigenous bodies designate political orders that "house knowledge, relationships, and responsibilities"[57] that are threatening to the success of secular colonial modernity. This is because they embody sacred webs of generative relationships that are not merely in tension with heteropatriarchy but also European civilization projects.[58] Simpson explains that in the Nishnaabeg context, Indigenous spatiotemporal formations of sex and gender are rooted in grounded normativity, which implicates Indigenous political action and anti-colonial struggles in political systems that are linked to the spiritual world. Nishnaabeg-grounded normativity as an ethical framework is what Simpson describes as an Indigenous algorithm that embodies a series of "complex, interconnected cycling processes that make up non-linear, overlapping emergent and responsive network of relationships of deep reciprocity, intimate and global interconnection and interdependence, that spirals across time and space."[59] Because of this, the powerful relationships that queer Indigenous and Two-Spirit people embody—for instance, "consent, diversity variance, spiritual power, community, respect, reciprocity, love, attachment—were the first thing colonizers sought to eliminate."[60] Therefore, by centring Two-Spirit people's colonial experiences, Simpson's reflections rightly point out how colonialism works using disenchantment to recalibrate the sexual orientations of Indigenous sexual identity. Posed as a problem for modernity's colonial providences of heteropatriarchy, Simpson's discussion of the Nishnaabeg universe supplies important insight into the violence of a disenchanted world, while at the same time bespeaks the necessity of enchanted forms of Nishnaabeg life for political modernity to articulate its superiority through secular colonizing endeavours. This is legitimized by the scientific classifications of colonized peoples. Rigid gender identities that have been imposed on Two-Spirit peoples were

reinforced not only by the Church but also by rationalist scientific disciplines, like anthropology, that study gender roles and impose Eurocentric gender binaries "by narrow interpretations of our own thought systems."[61] Colonial impositions of gender categories were "an attempt to break the network of intelligent relationships housed in Indigenous bodies in order to prevent the replication of Indigenous freedom, in order to get land."[62] In addition, while it is true that for 2SQ peoples the colonial project has been about remaking their gender and sexual identities (through residential schools, for instance), in the context of disenchantment we can also understand it as a mode of sexual empire that requires the constant performance and disavowal of the enchanted, racially and sexually aberrant Other. Those accounts of Indigenous gender/sex identities that articulate a capacious historical narrative about Indigenous queerness as a temporal aberration seek to dislodge Indigenous queerness from the flows of disenchanted time. Indigenous being-in-time, as translated through the temporal framework of scientific rationality (anthropology), denies coevalness and orients Indigenous queerness towards a mode of disenchanted history and imperialism's placemaking.

Cree scholar Dana Wesley similarly belabours the significance of anthropology's scientific rationalism in the production of colonial violence as discussed in their genealogy of Two-Spirit youth understandings of their gender and sex identity.[63] For Wesley, the colonization of Indigenous queer and Two-Spirit peoples underscores this best in that, in addition to the violence of Christian morality that instituted homophobia and transphobia within Indigenous communities,[64] colonization can also be attributed to scientific rationalization of the "primitiveness" of Indigenous queer and Two-Spirit identities.[65] For instance, rationalizations accompanied by the colonial state were sanctioned practices of gender dispossession and displacement based on "popular colonial discourses contrasting 'primitive' to 'modern' life."[66] Violence against enchanted Indigenous

queerness as "the loss of tight-knit Indigenous family structures and the severing of any ties to Indigenous culture"[67] was justified by both the normalization of Christianity's homophobia that equates queerness with sin and the anthropological fetishization and misrecognition of Indigenous queer ontologies. Yet, at the same time, rationality is used to justify Two-Spirit peoples' survival of colonial genocide by attributing their persistence to "their abilities to adapt and evolve their traditions."[68] Here, the resilience of Two-Spirit life is reduced to the scientific edifice of empty homogenous clock-time. This idea is pedagogical. Through it, we continue to learn about the superiority of scientific rationalization and its accompanying project of civilizing Indigenous superstitious mythology, and about how Two-Spirit peoples "fit" into modern colonial life. In a more insidious way, we also learn of the survival of "certain" queer ontologies, and what the destiny is of those deemed unable to progress into civilization. This is not to suggest, however, that Two-Spirit peoples are intransigent, but that we may come to a more nuanced understanding of how queer Indigenous life negotiates colonial power and rule if we do not presuppose what forms its temporal orientations take by confining it to a logic of direct-access to a disenchanted society. As Wesley reminds us, projecting uniformity onto Two-Spirit peoples does not allow for the apprehension of membership diversity and dissent, Two-Spirit unique traditions and norms, as well as ways of being and knowing that are constantly moving within and beyond colonial notions of time and space.[69]

In this sense, while enchanted forms of queerness are situated outside the possibility of citizenship and subjectivity, the idea of Indigenous queerness adapting and evolving (effectively becoming disenchanted) into normative gender and queer identities also offers an opportunity for entering into the modern body politics (colonial assimilation). Revealed, as well, is a political temporality and a liminal boundary of colonial modernity that demarcates Indigenous queer

freedom and the disenchanted queer subject of empire. Thus, while there is no doubt that Christian morality has been central to the colonization of Indigenous peoples in how it imposed homophobic ideologies on to Indigenous communities, Wesley also allows us to see how at other times colonial violence has involved banal temporalizations that extend colonial assimilation by stripping away spiritual and ceremonial aspects of Indigenous queerness.[70]

Wesley notes that Indigenous scholars view gender and sexuality as fundamental to these procedures.[71] Importantly, in revealing how Two-Spiritness embodies a movement within and beyond the direct access of disenchanted spatiotemporal frameworks, Wesley and Simpson demonstrate how Indigenous queer subjectivity is based on irreducible heterogeneous temporalities, and thus cannot be entirely accounted for within a disenchanted code of homogenous time. Thus, because for Two-Spirit and queer Indigenous peoples anti-Indigenous gender-based violence necessarily involves temporal assimilation into a rational-scientific paradigm of history and civilization, anti-colonialism for Two-Spirit peoples demands "theorizing their own lives into futures that center Indigenous concepts of nationhood, traditions, and ceremonies!"[72] Part of the dilemma, as Zahir Kolia reminds us, is that "disenchanted accounts of history cannot translate relations that emerge within a spatiotemporal context in which spirits, Gods and supernatural entities have agency in the world."[73] For Kolia, like Asad, Simpson, and Wesley, there are Indigenous life forms that do not emerge exclusively from European epistemological registers; pre-colonial ontologies continue to exist outside of the colonial state and its institutions. As Kolia suggests, Indigenous ontologies do not exist exclusively within a singular or secular realm of historical time, one that subsumes other conceptions; rather, they are reconfigured as distortions that appear "as anachronistic vestiges of nostalgia, superstition, or nativism."[74] A problem lies in the process of essentializing Indigenous cosmologies and spiritual practices—for instance,

Nishnaabeg sexualities—through secular translation. The violence of this mode of translation is that Indigenous queer gender and sex ontologies are mistranslated into a universal temporal historiography that is progressive as well as secular. Two-Spiritness is essentialized and denied its uniqueness to Indigenous subjecthood and power. Resignified are the political categories of colonial modernity that deny the multiplicity of Indigenous subject experiences distinguished by embodied metaphysical relationships, through which Indigenous subjectivity and self-understanding is produced. For instance, a secular reading does not allow for Indigenous identity constituted by a relational bond between the human and the non-human; the material and the transcendent; the past and the future.

Apprehension of this incapacity requires attention to the conflicting relationships between the secular and non-secular, and differing metaphysical conceptions of agency, time, and space. The problem, as Kolia points out, is that Indigenous peoples within heterogeneous cultural practices are coerced into making their aspirations through conceptual frameworks that emanate from colonial systems of representation, and that are regulated by colonial sovereign power and its regimes within a homogeneous political space. Indigenous struggles are thus bound by a paradox of having to reject as well as accept the epistemological and moral registers of colonial discourse, which demands "a melancholic Indigenous subject" whose recourse is to "lament the loss of the ancient customs that define(d) their difference."[75] In short, one of the primary challenges of Indigenous peoples is to exist as autonomous entities while simultaneously being defined within modern colonial structures. Kolia suggests that when considered from the vantage point of the secular co-optation of the sacred, as translated across distinct epistemological conditions, Indigenous models must be characterized as an aporia of fixed fluidity. An aporia in this sense refers to a paradox of simultaneously relying on categories that render some both "fixed" and

"dynamic," highlighting a categorical incommensurability. An aporia of Two-Spiritness thus illustrates a tension in universalizing hermeneutical conceptions of sex and gender, as an aporic structure cannot be understood as exclusively representative of colonial modes or interpretations of Indigenous ontology. Instead, it is also the complex networks of non-secular spatiotemporal formations within which Indigeneity exists.

As Simpson helps us see, the reference to Indigenous articulations of temporality are linked to sacred knowledges and geographies and challenge the colonial denial of coevalness within a spatiotemporal discourse. These logics push back on fixed boundaries and homogenous temporal structures by conceptualizing Indigenous worlds that are both outside and antecedent to modern spatiotemporal schemas of the settler colonial state. What distinguishes these logics is an ethical orientation and a relational system that go beyond the confines of the secular, and that are bound by an immaterial transcendent agency that challenges the spatiality and temporality of the modern colonial state.[76] This can include overlapping relational bonds generated by ceremonial and spiritual practices of "traditionally-rooted" communities that emerged through heterogeneous formations of time and space, which, for Kolia, disenchantment cannot account for.[77]

As Mark Rifkin explains, the problem is the erroneous suggestion that Indigenous non-secular forms of consciousness are hermetically sealed from secular articulations of identity, expression, time, and action. This is because colonial discourse conceives of these forms as radically departed sources of power that are "traditional" in temporally and politically mediated action, and thus spatially and temporally separate from public principles of "legitimate" forms of political thought and action.[78] Inhabiting modernity as a shared experience involves a qualitative shift from something that came before. The tension, then, is that locating Indigenous queerness within a singular shared temporal frame of modernity (history) "refuses the idea that people can

be assessed against frozen images of traditions." At the same time, "positing such temporal sharedness implicitly affirms a kind of recognition that merges Native people(s) into a conception of the present whose contours emerge from the ongoing assault on Indigenous sovereignties."[79] This is the aporia of Two-Spiritness. In other words, the aporia requires that a queer, melancholic Indigenous subject identify with a semiotically defined social reality and "lament" the loss of a so-called ancient queerness custom that define(d) their difference; in doing so, the queer sexual Indigenous person is reconstituted as a disenchanted normative subject.

Together, these scholars highlight the violence of extant disenchanted forms of temporal recognition for queer Indigenous subjectivity. This is the prerequisite, as Asad has suggested, for the emergence of the modern colonial state and its empty homogenous spatiotemporality that defines the colonial situation and modernist historicism. This, in turn, serves the imperial task of establishing order based on notions of de-spiritualization and spatial segregations of private forms of (sacred) reason from public politics. With this as a conceptual backdrop, it is not surprising that disenchantment reproduces an evolutionary continuum from the primitive life to the civilized life. In establishing a (coherent) framework for disenchantment's division of sacred versus secular and public versus private spheres, the systemic reasoning of civilizing reforms is mirrored, indicating one of the ways that the secular came to be understood and practised within the colonial world through theories of what characterizes an authentic human experience.[80] Weberian disenchantment thus designates as primitive those individuals who lacked the criteria given to modern laws by rational authority.[81] As we have come to see, this is built upon rationalist ideals that extend consideration of gendered and sexed typologies that are produced by disenchantment's structures of governance that colonize sacred Indigenous queer ontologies, the practice of which is denoted by the experiences of Two-Spirit peoples. In this way, the temporal dynamics of disenchantment

can be read as presuming the necessity of transitioning to particular forms of self-organization that limit the possibilities of enchanted modes of being-in-the-world, which can be done through disenchantment's need to institutionalize secular normative grounds of passing judgements about legitimate forms of political actions and consciousness, particularly in the context of gender and sexual discourse.

Disenchantment: Private Reason versus Private Space and Irrational versus Rational

Previously, I reflected on how disenchantment as a doctrine of secular colonial modernity is predicated on the delineation of public/private divides; this necessitates a specific distinction between *private reason* and public principle and requires the scared to be placed in the former by the secular. Drawing on the experiences of Two-Spirit peoples, we come to understand this through disenchantment's preoccupation with Indigenous queerness. Disenchantment pronounces upon temporally meditated representations that define a colonial national personality by identifying the sacred discourses that appear to threaten it. Asad reminds us, however, that "private reason is not the same as private space. It is the entitlement to difference, the immunity from the force of public reason."[82] This is to say that secularism as a doctrine requires that a distinction be made between public principle and private reason (meaning political ethics as distinct from the sacred), which locates Indigenous enchanted forms of life in the latter. Enchanted queer ontologies, for example, are rendered purely "private matters" of cultural or spiritual contemplation, as a precondition of a secular ethics. However, because neither of these spheres can be concretely separated and defined, an examination of what belongs to these places must be considered alongside the sources of disenchantment that make such designations possible. Therefore, because theoretical and practical

problems remain in feminist understandings of the domain of the sexual, this section will unpack the relationship between each of these designations in order to expand our thinking on the relationship between morality, sex, and the law.

With this in mind, there are several instances throughout my readings of moral regulation scholarship where I have been alerted to the primacy of disenchanted feminist tendencies. I read these discussions as maintaining distinct separations of private reason from public politics and, in so doing, demarcating strict boundaries between what kinds of feminist knowledge about sexual freedom are discernible when examining the question of sex, morality, and the law. To begin, moral regulation scholar Amanda Glasbeek, in defining what constitutes a moral regulation approach, explains the following:

> Instead of asking how moral concerns affected the regulation of sexually problematic behaviours, moral regulation scholars ask why sexuality—an ostensibly private concern—has become important enough to warrant public intervention and action … rather than treating morality and politics as separate, moral regulation scholars argue that political developments are always conjoined with moral imperatives.[83]

I agree with Glasbeek and her contention that political developments and moral imperatives are always conjoined, but I must also ask whether such separations are even possible, let alone desirable, in a colonial context. Below, I discuss two examples that seek to show how moral imperatives and political developments are conjoined through feminist investment in secular disenchantment sexual subjectivity. When situated in a colonial context, this requires theorizing sexual liberty as being beyond a private concern to make sense of how disenchantment as a system of secular morality is responsible for organizing sex and gender hierarchies via disenchanted being and history. Here, I am thinking about Asad's contention that disenchantment is a prerequisite of

colonial modernity by generating secularized experiences of time and space through the consumption of knowledge. To this end, the following examinations of feminist pedigrees on sex and morality will serve to demonstrate the implications of production and consumption of feminist knowledge when "queered" within a disenchanted feminist epistemic framing.

Inquiry One: Queering Anti-Sex Work Morality

An interesting examination of feminist pedigrees on sex and morality takes place at the intersection of moral regulation and queer theory studies of risk/safety discourses directed at youth anti-sexting initiatives. For instance, to document the moralization of sexuality, Lara Karaian makes vital connections between current legal and extra-legal moral regulations of youth practices of sexting and those of anti-sex work ideologies. Karaian's analysis of risk/safety discourse serves to highlight a sexual respectability politics around discourses of "risk," which function as proxy for moralizing and governing sexuality in Canada. In recent times, as Karaian notes, "moral panic about the prevalence and potential negative consequences of teenage sexting, including its legal consequences for youth, has ensued."[84] For Karaian, this has resulted in an intensification of crime prevention strategies directed at youth that are designed to deter youth sexual expression, which is indexed by the practice of circulating private consensual sexual images. Here, crime control campaigns depend on a social and legal context of "slut shaming" and the fear of the "pornification of society," and look to render teenage girls responsible for the prevention of the supposed harms that accompany the circulation of consensual intimate images. Such campaigns therefore oblige "a particular demographic of teenage girls to abstain from consensual and at times constitutionally protected sexual expression."[85]

Drawing on moral regulation scholar Mariana Valverde's genealogy of anti-prostitution ideology in Canada, Karaian suggests that these crime prevention strategies reify the notion of white, middle-class, heterosexual teenage sexuality, which has "long embodied the moral connotations of ... purity, spirituality, transcendence, cleanliness, virtue, simplicity, chastity and whose interests have long informed protectionist and crime prevention movements in the Canadian legal context."[86] If we recall, Valverde did an excellent job tracing particular anxieties around sexual expression in her genealogy of purity movements in Canada, wherein she examined how theological discourses intersected with legal reforms and philanthropy to establish a sexual order through moral governance systems that targeted the practice of prostitution in Canada.[87] Valverde put into feminist intellectual terms what happens when religious discourse takes on power to administer public principles related to sexual norms and behaviours. In discussing ways that society has policed normative sexuality, Valverde showed how the practice sought to accord "pure" subjects a position of moral superiority by restricting sexual activities and criminalizing a notion of "deviant" sexual subjectivity. This required the proliferation of anti-sex work ideologies expressed as sexual dichotomies such as the moral/immoral and whore/virgin. For Valverde, the woman who was considered "pure" was also partially a public construction who did not attain the identity of chastity and purity through silence alone.[88] We need also note that this fear over the pornification of society is not unconnected from the larger context of *Bedford*. For instance, in the 2010 findings, submissions were made that raised concerns over "the causes of prostitution as economic disadvantage, childhood sexual abuse, drug use and the effect of pornography on young persons."[89] Alongside Valverde, *Bedford* similarly recounts "social purity movements" in the late nineteenth and twentieth centuries and "the emergence of a more paternalistic concern on the part of the legislators with the protection of girls and young women from the ravages of vice."[90]

Importantly, Karaian's discussion establishes connections between the moral regulation of youth sexuality and prostitution in that it shows that contemporary forms of sexual expression embodied by sexting and its accompanying risk discourse is informed by these early anti-prostitution campaigns and the theological moral panic that continues to shape present-day anxieties about sex work and prostitution. Moreover, it shows that such anxieties are linked to anxieties over "polluting" white, heterosexual girls' privileged status as the "family jewels of middle-class gentility and racial purity."[91] Social technologies are thus increasingly conceived of as disgracing moral authority and resulting in the intensification of criminalizing the circulation of sexually explicit images, which panders to anti-porn and anti-sex work ideology.[92]

For instance, current narratives cautioning against the vices of these forms of sexual expression are similarly documented in digital technology platforms that narrate the risks to girls and women who use of technology because of the potential for them to fall victim to the "perverse" world of pornography and prostitution.[93] For Karaian, this has informed how and why the consensual circulation of sexual images is being governed under Canada's child pornography laws. As Karaian and Katherine Van Meyl elsewhere explain, "to the extent that youths' self-created and distributed digital sexual imagery may technically be classified as 'self-produced child pornography,' youthful sexters have been constructed as a menace not only to themselves but also their peers."[94] In the context of girls, they note that such efforts highlight not only adult fears about so-called good girls being disgraced but also fears that raced and classed boundaries will be blurred; because immodesty is also constructed among young girls through "white trash" stereotypes, some fear the devaluing of the moral authority of white, middle-class heterosexuality. Karaian explains for example that:

> By reiterating warnings about girls' use of technology to create and distribute images, as well as warnings about the ease with which these images can be manipulated, proliferated, and rendered "permanent" either on-line or in someone's private collection of downloaded imagery, the campaign implies that the shame that "good girls" bring on themselves will not pass but rather morphs into stigma, like "a mark on the body ... identifying a person permanently with his or her disgrace."[95]

These characterizations, Karaian notes, signal larger ideological attachments to the currency of white femininity and youth sexuality that provoke social insecurities about the potential decay of white privilege and the precariousness of white social positions. Linking anti-sexting initiatives to anti-sex work ideologies illustrates the embeddedness of prostitution prohibition discourse within the ongoing and historical legacies of criminalizing so-called sexual deviants and their sexual practices, which actively challenge the normative sexual order. Like mainstream ideologies about sex workers, sexters are conceived of as having a double status—as both the victims and perpetrators of their self-produced sexual content—and practice and remain entrapped with problematic dichotomies: good/bad, risk/safety, moral/immoral. For Karaian, this is in part due to moral anxieties around the mainstreaming of sexuality and the rise of "raunch culture" and its normalization and politicization of public forms of sexual expression. Sexting gets coded as symptomatic of larger anti-sex work discourse where youth become increasingly at risk of being "pornified" and socialized into sex work due to the rise of raunch culture "by virtue of its public and 'excessive' sexual nature."[96]

Interestingly, Karaian also elucidates how this raises important questions about queer temporalities. For Karaian, when youth sexting is situated within the context of queer temporalities (and subcultures) that have developed in "opposition to the institutions of family, heterosexuality,

reproduction and kinship-based notions of community,"[97] there can be a dissociation from the dyadic model of "risk/safety." The risk/safety framework seeks to temporally precondition one's identity through the development of a certain normative sexual subjectivity by way of a moral community that is delineated by linearity. While queering critiques of linear temporality are important, I will argue, however, that such ascriptions of queer theory similarly reinstitutionalize teleological, linear, colonial modernity, in which it sets disciplinary boundaries through its retention of a disenchanted queering of sex and morality.

Importantly, for some queer theorists, contemporary politics of normalization are also grounded in a temporal disposition that orients linearity towards a preconceived future.[98] For example, Shannon Winnubst provides a genealogy of queer theory's engagement with temporality that includes a discussion of how queer critiques have noted that the future is wielded by a normative force that emerges through a figure of a "Child." A forceful trope, its possibility is based on reproductive futurism inscribed by linearity. What we have before us, Winnubst explains, "is a fairly simple syllogism: the political is constituted by and on the horizon of the future; the Child represents that future with an untouchable sanctity; therefore, to threaten the Child is to threaten the political per se, to position oneself outside of the political."[99] From this position, "queering" the Child can disrupt a temporal orientation that necessitates the disavowing of linearity.[100] Queer theory, then, gives voice to problems related to future oriented temporality, which is linked to the production of moral sexuality and subjectivity and speaks directly to tensions around sexual representation and expression directed at youth sexual behaviours based on regimented notions of the Child and teleological orientations. Queer theories of time offer the opportunity to reconsider how youth sexting imagines different futures outside of the dominant assumed life experiences of birth, marriage, reproduction, and death. In similar fashion, sex work activism has looked to

rethink a sexual futurity beyond the domain of human sexual reproduction and heterosexual intimacy. Drawing on the insights of queer theory scholar Judith Halberstam and their theorization of "queer time" and "risk," Karaian and Van Meyl elucidate what a queer theory of temporality encompasses:

> Queer time for me [Halberstam] is the dark nightclub, the perverse turn away from the narrative coherence of adolescence—early adulthood—marriage—reproduction—child rearing— retirement—death, the embrace of late childhood in place of early adulthood or immaturity in place of responsibility. It is a theory of queerness as a way of being in the world and a critique of the careful social scripts that usher even the most queer among us through major markers of individual development and into normativity.[101]

Therefore, for Karaian and Van Meyl, queering temporality has benefits for complicating "one's identity construction, development of community and sexual subjectivity—but also how the practice may not fully conform to any causal and linear mode of calculation."[102] This is significant because queer theories of time, like Indigenous queering of colonial temporality, are seeking to denaturalize orientations towards a future that forecloses the possibility of queer life. For Karaian and Van Meyl, studies of the calculation of sexting's risks acknowledge the blurred boundaries of public/private space, for instance, and variables like subjective categories of "youth/adult" and "risk/safety." This is necessitated by the recognition that both youths and adults equally sext, which also denaturalizes the natural calculation of emotional development attributed to the youth/adult binary by recognizing that shared sexual expression practices complicate static notions of sexual maturity and the youth epistemology.[103] In this sense, queer theory disrupts accounts of heteronormative temporalities insofar as "teenage sexting shores up threats to the natural and normative progression of teens' future selves as untarnished, economically self-

sufficient, free (from imprisonment), and most important of all, alive."[104] In this sense, temporal disruption takes place by challenging the idea that adulthood is defined by a particular form of reproductive and sexual maturity. Karaian and Van Meyl elaborate:

> While they [adults and adult sexters] revere the construction of the universalized, rational, and respectable "normal" neo-liberal sexual subject who is capable of making responsible decisions in their own interest, they conveniently disregard the fact that the "future" adult sexual subject who they set out to protect can, and does, in our current time and space, engage in the practice with equal regularity to adolescents and indeed accesses sexting tips from any number of mainstream print and online sources.[105]

This further serves to underscore how the risk/safety discourse is not only constrained by linearity but also by how this linearity is embedded within anxieties and fears about youth and, in particular, the future prospects of young girls and their capacity to become "well-rounded women." Such a discourse is reliant on heteronormative, gendered, raced, and classed notions of temporal reproductivity and Canada's anti-sex work and anti-porn legacies of moral regulation.

Adding to this, Emily Lockhart notes that risk/safety discourse has a marginalizing impact on "youth including low-income youth, youth of colour, and those who are members of the LGBTQ community."[106] She further notes that "girls might be using sexting as a way to claim their sexual citizenship in societies that continue to deny them the same rights to sexual citizenship as heterosexual men and boys."[107] Here, sexual citizenship is taken to refer to a few things. As Lockhart explains, "sex has long been implicated in citizenship in that broader conditions of belonging have been conditional on a set of sexual norms and practice."[108] Sexual citizenship draws "attention to the ways in which citizenship borders are constructed through the creation of sexual subjects" and "the limitations of the liberal model of citizenship."[109] Sexual citizenship thus

calls into question public discourse's relationship to the body and its sexualized identities, practices, expressions, and desires while addressing efforts to construct specific boundaries around who can engage in sexual practices by also constructing ideas about who is and who is not deserving of the right of sexual agency and protection from violence.[110] It is also about the right to be free from sexual oppression and to have guaranteed protection from violence, which ensures that sexual citizenship "recognizes the importance of sexual autonomy" and the "inappropriate policing of consensual teenage sexual expression."[111] This complicates how women, girls, and queer youth stage claims of sexual expression through the dissemination of consensual intimate imagery to help establish their own sexual citizenship, and the benefits that accompany this, in a society that regularly denies them the same rights to sexual citizenship to which heterosexual men and boys easily have access. For Lockhart, what is highlighted is the "gendered nature of the moral panic over teenage sexting" that is both infantilizing and dangerous.[112] As we can see, moral panic over youth sexting reconfigures anti-sex discourse that translates into the criminalization of youth sexual expression through discourses of risk/safety and perpetrator/victim logics that maintain dominant relations of power and the status quo of society.

This scholarship takes important steps towards addressing the problem of a risk/safety discourse as a temporal paradigm. Thus, queer theories of time denaturalize everyday, taken-for-granted categories of being like "youth" and "adult" by situating these categories within a broader theory of discursive and temporal power. In so doing, this scholarship responds to regimes of moral regulation that seek to govern sexuality and sexual expression. As this analysis has shown, the fear over public expressions of sexuality and private sexual behaviours speaks to the pervasiveness of discourses of stigmatization related to anti-sex morality, and it presents an opportunity to challenge dominant concepts of sexual life and regimented divisions of public/private spaces. In *Selling Sex*,

Ivo and JJ expand on this in relation to Indigenous youth experiences in the sex trade. They note, "We had our teachings taken away in the name of the church and colonization, and we now have to deal with a stigmatization of sex and sexuality that wasn't there before. Through this, our bodies are policed."[113] They continue, "It was the legacy of the church and the morals it imposes on its devotees and followers. Those morals have had a huge effect on our society to the point where we as young Indigenous peoples have limited ways to identify ourselves in terms of both sexuality and gender."[114]

In reflecting on forms of private reason (for instance, religious morality) and the problems they present to youth—and queer youth in particular—when authorized to arbitrate sexual representation, expression, and practice within a society, Karaian and others have highlighted the existence of a heterosexual moral and temporal violence that has been mobilized under the guise of legal initiatives framed as youth health policy. Disrupting temporal futurities of heteropatriarchy with queer theories of time is important, then, because it attends to how categories like "child" and "youth" are mobilized to articulate the naturalness of the linearity of moral communities. This, in turn, serves to highlight ongoing contestations of hegemonic power that are linked to theories of moralization. Likewise, Lockhart rightly point outs that when considered as a question of citizenship rights, sexual expressions are shown to be a primary factor in the designation of legitimate sexual subjects that depend on discursive constructions that revolve around, for example, binaries of deserving versus underserving, safety versus risk, and promiscuity versus purity; these binaries highlight a sexual respectability politics that seeps into public policy. The process of constituting sexual subjectivity takes place, then, through temporal negotiations of struggles over the moral autonomy to circulate consensual private sexual images that celebrate notions of sexual agency. For instance, Karaian and Van Meyl explain that they share concerns

over “adults’ willingness to accept uncritically an adolescent subjectivity that claims to have been harmed and victimized, but not accept an adolescent subjectivity that claims desire, autonomy, and consent.”[115] Similarly, Lockhart “recognizes the importance of sexual autonomy and sexual self-efficacy of minors and encourages us to think critically about state control of childhood sexuality and the importance of sexual citizenship rights in those contexts.”[116] These scholars thus expose the tensions around moral regimes that constitute, shape, and inform the production of subjects through temporal discourses of risk/safety/purity. Hence, while moral regulation scholarship maintains that sex is ostensibly a “private concern,” these scholars have illustrated how the regulation of sex is activated by public commentary that espouses anxieties over public expressions of sexuality that can be linked to moral fears of the pornification of society. To complicate this further, Karaian shows that sex is not only a matter of the right to private space but also the right to public sexual expression. Thus, youth safety/risk discourse exemplifies the social and normative barriers to sexual citizenship, in that sex and sexuality are regulated and constituted through a dichotomization of the world. Individuals take part in sexual practices and identities within a social context in which sexual morality contributes to the construction of the divide between public and private spheres. In this social context, the public/private divide, in allowing for the adjudication of the appropriateness of different expressions or qualities of sexuality, becomes a way of controlling and disciplining sexual conduct and identity. “Desired” sexuality is thus associated with normative reconstructions of these (non)normative sexualities (queer sexualities). Thus, their allocation to specific spaces that are temporally oriented becomes a way of soliciting and shaping the production of sexual ontology and sexual behaviours.

Within this context, I understand these scholars to be reflecting on the problem of “unjustified” or unwarranted interference in sexual matters. They belabour the point that sex

resides within the sphere of the private. As such, public principles (criminalization discourse) and private reason (moral or religious ideologies) should not interfere with expressions of private sexuality. I come to this conclusion by two avenues. One is by highlighting how this scholarship remains invested in Valverde's feminist genealogy of the threat that religious and moral discourse poses to secular sexual liberty and the scholarship's dependence on the modern colonial state's articulations of secular-liberal rights discourse concerned with (sexual) citizenship status. The other is through Lockhart's critique of sexual morality and the suggestion that accessing citizenship rights (the public *polis*) will help facilitate the designation of queer and youth sexual identities as legitimate forms of subjectivities. However, alongside Asad, I wonder how defaulting to citizenship/rights arguments risks subsuming all forms of enchanted modes of being and self-consciousness exclusively into the domain of private reason. Specifically, what are the implications of circumventing enchanted forms of sexual subjectivity into the exclusive domain of private reason for queer Indigenous youth?

To begin, scholars like Lockhart and Karaian, in failing to problematize the implications of universalizing the concept of "youth," decontextualize the historical specificities of colonial policing that targets the sexual practices of Indigenous populations. For example, this dissertation has documented at length how Indigenous populations have been governed in ways that are distinct from their settler counterparts. Indigenous youth have been constructed as highly sexualized in ways that are distinct from settler girl populations who have historically been constructed as "moral guardians" of the white race. Because of the hypersexualization of Indigenous women and girls that is based on the legacy of colonial governance, Indigenous youth populations are also at an extremely heightened risk of sexual exploitation, violence, criminalization, and over and under policing. The final report into missing and murdered Indigenous women and girls found, for

instance, that "in some communities, sexually exploited Indigenous children and youth make up more than 90% of the visible sex trade, even where Indigenous people make up less than 10% of the population."[117] It also found that 73% of gender-diverse and Two-Spirit Indigenous people had experienced some form of violence due to transphobia, with 43% having experienced physical and/or sexual violence. These experiences are motivated by intolerance, fear, and hatred of Indigenous gender identity. The report places great emphasis on the recognition of sexual abuse that Indigenous youth continue to experience in their communities and within state institutions. This ongoing abuse is, in part, because of the violent afterlives of the residential schooling system that has affected Indigenous communities and, in part, because of a general acceptance of and apathy towards violence against Indigenous youth in Canada. This clarification is important because the report underscores tensions in how Indigenous and settler communities have defined "safety" and "risk" as it relates to youth sexual health in a settler colonial environment. It also encourages scholars to further complicate the theory of understanding the relationship that Indigenous communities have with under policing and criminalization given the legacies of sexual violence that continue to pervade settler society, settler institutions, and Indigenous communities.

What I am drawing attention to here is not merely a question of morally regulating youth sexuality. What needs to be attended to is the racial politics of sexual violence inherent within a settler colonial context, and how this can impact Indigenous youth in unique ways. It is about how Indigenous youth have never been constructed as morally pure and how they are in need of "protecting," which takes place through what these scholars have identified as a discourse of "risk," "safety," "innocence." Thus, Indigenous youth are not subject to the same regulatory practices of settler youth populations. What is missed by scholars like Lockhart when they deploy their concept of "youth" is a genealogy of policing sex that has always been concerned with

controlling Indigenous nations as a whole. This is magnified by the state's policy of asserting control over Indigenous women and girls and their ability to birth Indigenous nations, which is an explicit form of state violence that targets Indigenous women's sexual reproduction and which, in turn, contributes to the dehumanization and objectification of Indigenous women, girls, and queer Indigenous people.[118] What is also missed is that there are First Nation parenting norms and practices that differ from those imposed by settler colonial society.[119] Contrary to Lockhart's and Karaian's concept that conceives of youth as junior possessive liberal individuals, First Nations have culturally specific ways of raising youth, with an emphasis on keeping them safe in a colonial environment. The concept of "youth" has diverse meanings across communities in relation to teachings, protocol, and creation that links the physical, emotional, cultural, and spiritual wellness of youth to the survival of the community as a whole. More to this point, some Indigenous populations articulate a worldview about sexual behaviour and sexual practices that links sex to the passing from the spirit world to the physical world.[120] The relationship of the self to sexual behaviour in this context cannot be reduced to categories of "sexual citizenship" through the adjudication of the colonial state's rights discourse. This is because these are the very categories and structures of power that precondition the dispossession of Indigenous youth populations to begin with, and do so by mediating them through settler epistemologies and colonial laws that re-establish the authority of colonial sovereignty to define what are legitimate versus what are illegitimate modes of being in the world.

My other concern is that while it is crucial to acknowledge that sexual oppression arises out of confrontations between private reason and private space, doing so does not obviate coloniality's disenchanted spatiotemporal trajectory. This spatiotemporal trajectory is implicit in secular modernity's authorization of sacred/secular divides. In a colonial condition, this divide

designates what forms an appropriate mode of sexual expression, through which dominant technologies of Euro-Canadian colonial governance and sociality assemble sexual subjectivity. Hence, while an analysis of how "shared material conditions can engender forms of perception in common, providing a frame of reference through which individuals reckon with their joint environment,"[121] queering theories of sex, time, and morality "still occur within a settler frame of reference."[122] Instead, Indigenous conceptualizations, articulations, and impressions of time exist within and beyond the frameworks that are "explicitly or implicitly oriented around settler needs, claims, or norms—a pluralization of time that facilitates Indigenous peoples' expressions of self-determination."[123] Understanding sex and sexual ontology within settler-time—that is, notions, experiences, and narratives of white Eurocentric temporalities—thus normalizes non-Indigenous presence. Importantly, pushing back on the demarcation of strict divides and instead showing the oscillation between these domains emphasizes the facticity of Indigenous presence while putting it in relation to settler-driven forces and notions of change. As such, these queer critiques of normalization fail to provide the tools for anti-colonial liberation because they do not give meaningful philosophical attention to the colonial underpinnings of queer theories of violence.[124]

What does this suggest with respect to queer Indigenous temporal formations of relational sexual embodiments and the project of sexual citizenship? The repeated innovation of the imperative of private forms of reason in the safeguarding of sexual citizenship alludes to a "normalization" of the *telos* of secular colonial modernity. It codes Indigenous queerness within convention temporal terms of "tradition" and "culture" rather than coeval queer being-in-time-and-space. What is more, Gayatri Chakravorty Spivak reminds us that this is a disciplinary exercise where sacred knowledge and pre-colonial genealogies of sexuality that shape political action are de-politicized and confined to the idiom of private forms of reason. Indigenous sexuality and

queerness are disciplined and removed from the auspices of legitimate gender and sexual studies defined as a secularized sexual politics, often being relegated to studies of cultural relativism and ethnic/area studies.[125] The sustained focus on the predicament of private reason, then, without complicating coloniality's rendering of superstition on the side of the "irrational," and hence a "private" form of reason as articulated by Weber, is one of the ways the intellectual division of labour sustains colonial and imperial boundaries of disciplinary knowledge. Moreover, Agathangelou, Bassichis, and Spira discuss this as an expression of sexual empire, wherein normative queerness might be offered incorporation into the parameters of citizenship at the expense of the banishment of racialized, sexualized queerness. In this sense, sexual citizenship is the drawing of disciplinary boundaries in exchange for colonial violence "recapitulating a narrative of the deserving versus the undeserving (non)citizen."[126]

The dilemma, then, is that while these scholars do important work to queer temporal categories of "youth," "child," "sex," and "risk," as well as spatial politics of private/public morality related to sexuality, they also leave intact secular Enlightenment's disenchanted teleology that segregates private reason, which is the means by which certain epistemological possibilities about sexual subjectivity are legitimized and not others. As an illustration, let us further consider how the politicization of knowledge concerned with sexual moral autonomy involves colonial state power. In helping to characterize and regulate sexual subjectivity, colonial power in this context expresses a "progressive" commitment to every individual's rational legal right to evade the encroachment of the sacred on sexual expressions, something that I am neither denouncing nor celebrating. My purpose is to point out that defining certain sexual experiences and assigning to them a particular time and space has the simultaneous function of limiting modes of sexual expression that exceed secular disenchanted contemplation. As well, despite queer theory's

allusion to heterogeneous temporalities in its "queering" of sexual morality, I contend that these insights are "progressive" in an orientation propelled by secular-liberal rights discourse and, therefore, reconstruct the myth of the superiority of colonial civilization's sexual epistemologies.

Karaian suggests, for instance, that moral regulations of sexting interfere with "constitutionally protected sexual expression,"[127] which for Lockhart requires "thinking about sexual rights" as fundamental to securing the legal rights of citizenship.[128] However, by defining sex in relation to the principle of individual moral autonomy and free choice, this institutionalization of civil liberties and national rights discourse is one of the ways that colonial modernity attempts to resolve the conflict around sex and the enchanted. As Asad explains, the individual is "encouraged in morality as well as in law to govern himself or herself, as befits the citizen of a secular, liberal society."[129] This reflects the idea of society being an aggregate population of disembodied individuals possessing subject rights and immunities and endowed with moral agency that deal solely with "a worldly" disposition. Sexual activity in this sense is defined and directed by autonomous human agency free from external interference of power that encroaches upon the autonomy of the possessive individuated secularized self. Sexual agency as a possessive form of secular-liberal individualism and experience are explained in static terms, as an exclusively materialist fantasy that does not recognize enchanted or scared authority as legitimate modes of individual or collective forms of sexual or bodily sovereignty. In contrast, sexual agency that mobilizes heterogeneous categories of the social and the sexual, and which invokes different modalities of space and time, does not demand sharp boundaries of inside/outside that divides up the organization of social and political power. As JJ and Ivo, Wesley, and Simpson all remind us, when read through the prism of a secular-coloniality that shapes the possibility and limits of sexual action(s), any modality of sexual agency that requires an understanding of the

existence of sexual power beyond the prism of colonial materialism is rendered a fanciful extension of a world peopled by irrational events and imagined beings. This is a threat to normative colonial queer sexual progress, because for queer theorists, the encroachment of private forms of reason on possessive individualism is a threat to accessing the full scope of sexual citizenship rights.

These studies of sex, then, belong to a world where there is a strict boundary between the spiritual and the material,[130] and they provide rationalist, materialist explications of the sexual that similarly purify sexual reason of enchanted forms of being. Here, "naturalistic materialism is not only an offer but presents itself as the only view compatible with the most prestigious institution of the modern world, viz., science."[131] We see this, for instance, in how this form of personal morality, or moral autonomy, is translated into legal rights to exercise one's sexuality without hindrance. Here, liberal secularity is smuggled back into the public and sexual domain by way of colonial governances that assume the sacred to be encroaching on liberatory agency.[132] This ordering impulse institutionalizes boundaries within feminist knowledge production that, while denaturalizing the divides between public/private space, does not transcend the epistemic public/private divides of secular coloniality; instead, it keeps intact Enlightenment's construction of private forms of reason as separate from public principle. This is an act of boundary making that delineates who is in and who is out in the making of the queer sexual subject. In so doing, it dedicates some forms of knowledge about sex to the goals of progressive sexual liberty that are legitimate to feminist struggles of the sexual and immoral, while other forms of feminist knowledge concerned with heterogeneous, non-secular forms of sexual consciousness are reduced to private symbols—for instance, as dimensions of private reason and shared feelings about

cultural fulfillment regarding superstitious speculation. Karaian, for example, is skeptical of "spirituality" and "transcendence."[133]

For me, there are limitations to understanding sexual freedom at the intersection of moral regulation theory and queer theories of temporality by not complicating colonialism's separation of myth and magic from the secular. For instance, suggesting that any interference with possessive individualism is a problem for the liberation of sexual subjects from things like homophobia, "whorephobia," and heteronormativity does not address sexual morality's larger genealogy that emerges from colonization, which continues to structure Indigenous queer sexual life within a settler colonial context. It does not meaningfully attend to the hypersecular assumptions about what constitutes sexual empowerment as conceptualized by Karaian's and Lockhart's notion of citizen and sexual rights (based on the principle of liberal individualism). Citizenship and sexual citizenship rights, defined as such, are founded on the idea of an imagined colonial national and the rise of its "public sphere." They are grounded in secular, homogenous time and an Enlightenment rationalist idea of direct access to it that substantiates coloniality through the denial of heterogenous spatial and temporal epistemologies.[134] It therefore risks missing how the secularization of the domain of the sexual is an imperialist feminist project that, in retaining Enlightenment's rigid separations of the supernatural from the secular, has the ability to recolonize Indigenous queer and Two-Spirit peoples, and it does so by assuming that there is a desire on the part of Indigenous subjects to assimilate into a normative white settler colonial queer identity right-based recognition. Instead, Indigenous enchantment is subsumed within a homogenous totality of the problem of sacredness, and it is then taken up in moral regulation scholarship as a form of private reason that is threating to queer sexual freedom. Wesley has previously raised this concern, noting that "colonial histories also set the context in which Indigenous people who do not conform

to colonial gender norms have been defined by outsiders: a process that distorted Indigenous people's lives and required the creation of Indigenous theories of gender and sexuality that can decolonize academic knowledge."[135] For Wesley, Two-Spirit peoples must constantly contend with the tyrannical reality that "there is disconnect between the academically-defined description of the word and the lived realities of this identity."[136]

Taking seriously the relationship between the colonial and the sacred is therefore critical to anti-colonial struggles. Two-Spirit peoples are subject not only to the ecclesiastic violence of colonial missions but also to colonial expressions of disenchantment that function to colonize Two-Spirit identity by stripping it of its sacred orientations. I contend that feminist scholarship that undertakes critiques of the gender and sexual politics of a colonial society must contend with and centralize this vector of domination as well. In my reading of Wesley and Simpson, this requires challenging the predominance of secular theory and acknowledging the ongoing erasure by non-Indigenous academics of Indigenous theory in the practice of knowledge production. This raises the important question about colonial zoning of epistemologies, which underscores some of the reasons why Indigenous peoples are skeptical about the emancipatory potential of non-Indigenous academic knowledge,[137] particularly for Two-Spirit peoples. As Wesley notes, there are serious concerns that "research would replicate a problematic neo-colonial relationship."[138] Queering sexual morality requires going beyond intellectual "queering" of gender and sex categories related to inclusion/recognition, or cultural relativist contemplation regarding the place/role of "traditional" practices in public life. Rather, it demands a radical recognition of the role of disenchantment in organizing social and sexual life.

I argue that while their insights about discursive and moral power should not be easily discounted, these scholars also articulate a feminist genealogy that inscribes disenchanted energy

to the debates on sexuality. Feminist disenchantment means stripping the sexual from everything that cannot be "accessed," because it is coded as existing beyond rationalist thought, including sacred heterogeneous elements. In purifying sexual domains of "the sacred," these scholars' default to a form of rationalist, scientific thought that relegates anything sacred (myth and magic) to private reason or symbolic/cultural superstitions, and thus become secondary in thought to (secular) theories of the sexual. For Joyce Green (Ktunaxa and Cree-Scots Métis), these kinds of disciplinary claims suggest that "Native feminist politics is not necessarily similar to the feminist politics of other communities."[139] Simpson echoes this, maintaining that "those who think and live within Indigenous intelligence systems are marginalized within the academia and are not positioned as theorists or thinkers" because "the parts of us that embody Indigenous intelligence are also marginalized and often invisible to the academy."[140] Agathangelou similarly notes that academic tendencies to focus on cultural specificity "silence the class contradictions in its racialized and sexed appearances of politico-economic relations in the production of knowledge."[141] Philosophical boundary-making accomplishes this by coding the production of knowledge geographically,[142] rather than along the lines of discipline or methodology. That is to say, in the dominant Eurocentric-identity of gendered whiteness through which moral regulation feminism theorizes sexual politics, the domains of anything not secular (i.e., Indigenous and other non-secular sexuality) are bracketed as being non-legitimate sites for feminist explorations of gender and sexual oppression. They are instead relegated to "Studies"—Indigenous, Cultural, or Area—as if the human and thematic subjects of these fields were somehow immune or off-limits to theorizations of queer forms of gender and sexual violence. Such compartmentalization (or prohibition) has the deleterious effect of rendering sexual morality an entirely separate sphere of

violence to that of the encompassing domination by white-supremacist, colonial-capitalist patriarchy's colonization of populations.

This disciplinary move draws rigid conceptual and theoretical borders and reinstitutionalizes feminist boundaries of a sacred/secular realist schism that generates knowledge and experiences of sex that are dependent on modernist projections of what direct access constitutes and what is considered the legitimate domain of the sexual. The idea of a modern society that is based on a notion of direct access is not to be equated with the removal of the religious from public life;[143] rather, it is to be equated with a temporal trajectory of coloniality that implies that legitimate experience and sexual politics are constituted through disenchantment alone and instituted through the inter-related practices of individualism and citizenship.[144] In other words, the process of "queering" time and sexual morality, in order to lay claims to sexual citizenship rights, also requires the side-lining of Indigenous heterogeneous life from dominant feminist theorizations of sexual and secular-liberal feminist public life. This articulation of sexual politics thus relies on the colonizing/modernizing state's investment in the myth of a distinction between private reason and public politics. This process of affirming the division of these two realms, as we come to see through scholars of colonialism, is the product of disenchantment's de-ontologizing of the sacred and concomitant banishment from public politics through the colonization of non-secular Indigenous gender and sex cosmologies. The result is that Indigenous sexual regulation in feminist knowledge production takes place through attachments to Enlightenment forms of reason. The methodological parameters that queering sexual morality lay down cordon off non-secularist forms of human difference within a colonialist society that underwrite all queer politics in a colonial condition.[145]

Inquiry Two: Scientific Rationality and Sex Work

In Durisin, van der Meulen, and Bruckert's text, *Red Light Labour*, I also read scholars of sex and morality as investing in disenchanted forms of feminist theory, which I will discuss below. But first, let us return to Weber and his notion of disenchantment. If we recall, Weber wrote that "only by strict specialization can the scientific worker become fully conscious … certainly calculation is also an indispensable prerequisite."[146] Science contributes to the technology of controlling life by calculating external objects as well as man's activities,"[147] and, he continues, "the fate of our time is characterized by rationalizations and intellectualization, and above all, by the disenchanted world."[148] By way of example, let us now consider how *Red Light Labour* contributor and leading *Bedford* advocate Kerry Porth responded to prostitution abolitionist Bridget Perrier (Anishinaabe).[149] For Perrier, the sex trade functions as an oppressive system that feeds and is fed by colonial violence.[150] Before the Standing Committee on Justice and Human Rights, Perrier testified to her experiences of violence while in the sex trade, including her experience of being trafficked into prostitution for most of her youth and some of her adult life:

> I was lured and debased into prostitution at the age of 12 from a child welfare-run group home. I remained enslaved for 10 years in prostitution. I was sold to men who felt privilege to steal my innocence and invade my body. I was paraded like cattle in front of men who were able to purchase me, and the acts that I did were something no little girl should have to endure in Canada, the land of the free.[151]

Porth, in turn, explains that such accounts by abolition feminists can be dangerous because they are laden with "morality politics," which are "infused in discourses on sex work, and emotionally charged survivor narratives are held as the one and only truth, they tend to distract from everyday

experiences and systemic issues."[152] For Porth, prohibitionists use highly emotive language and dramatic storytelling intended to generate shock and pity through selective empathies that can have the effect of shutting down debates by seeking to delegitimize the ideas and experiences of those who challenge moral orthodoxy.[153] What is more, in rejecting the idea that sex work is inherently violent and maintaining that such accounts are overly simplistic, Porth contends the following:

> We seem to be living in an era when what people *believe* to be true means more than what evidence *proves* to be true … when confronted with contrary evidence, people express outrage or disgust rather than engaging in meaningful dialogue. It is very difficult to have a rational debate when feelings matter more than facts![154]

While I am not interested in revisiting the pro-sex versus abolition feminist debates about the factuality of sex worker–centred accounts of experience, what is important to note here are Porth's conceptual grammars. They illustrate that while it is not an explicitly stated element of this feminist interaction, secular disenchantment is a salient feature here. With this, we can read Porth's sharp distinction between fact, belief, and feeling, and her rearticulation of the rational/irrational binary as an epistemic signalling to disenchanted secularization/modernization that resonates with Weber's social scientific edifice. From a philosophical perspective, Porth reproduces feminist disenchantment with her retention of Enlightenment's ideals of reason and rationality that serve a categorical function of distinguishing between civilization (rationality) and primitiveness (irrationality).[155] It is a declaration of the superiority of secular forms of scientific reason upon which colonial modernity can assume its natural maturity. This organizing principle of rational/irrational and belief/fact speaks of a projected "chain of being" comprised of "differential/hierarchal degrees of rationality … between different populations, their religions, cultures, forms of life; in other words, their modes of being human."[156] It uplifts the objectification

of secular science that is used to restructure imperial and colonial social control over non-European people's (sexual) ways of being and knowing on which the scientific facts of modern historical knowledge systems depend.[157] It functions, then, as a descriptive statement about a political sexual subject that characterizes an Indigenous woman within a master code of Enlightenment reason as an irrational Other in contrast to a feminist civic-humanist, rationalist self-conception.

The way that Porth circumscribes "legitimate sexual experience" from the domain of "irrational experience" has meaning and is embedded in power; it consolidates what Weber's disenchanted substrate presumed to be rigid sacred/secular boundaries and assumes that, to become a full conscious feminist sexual subject, social theorists must understand and translate sexual experience through scientific rationality and disembodied universality.[158] This echoes the sentiments of Weberian disenchantment, which holds the inevitability of science as vocation in modern social and intellectual life. It echoes, too, Weber's own proclamation that "in the field of science only he who is devoted solely to the work at hand has 'personality' … scientific work is chained to the course of progress."[159] This is constructed against the irrationality of "primitive" forms of knowledge. As a production site of knowledge and power, this assigns more value to Porth's own Western empirical scientific location, which delineates a temporal trajectory of sexual progress wherein a secular feminist human sexual norm is created. This is a norm from which Perrier, an "irrational" Indigenous woman, is evacuated. Asad reminds us that these sharp divisions function as fundamental tools of Enlightenment/positivist/colonial social and political thought, in that this thought process places Perrier, an Indigenous object of Canadian colonization, in a spatial and temporal area outside of Porth's own, thus reconfiguring colonial modernity's temporality by way of disenchanted feminist subjectivity. This assumes an exclusive feminist scientific diagnostic model of sexual theory that imposes its own Western epistemic structure of sexual normality. In

this method, enchanted forms of sexual knowledge are rendered both irrational and internally mechanistic of private contemplation.[160]

Hence, in confronting Porth's conceptual grammars, we learn that sexual experience has been secularized for moral regulation scholars. This feminist dialogue flirts with retelling a romantic story of the rational triumph of disenchanted feminism over irrationality. It retains the disenchanted epistemic assumption that non-secular articulations of encounters with the domain of sex are obstacles to the efficient and rational organization of sexual progress. These feminist scholars are therefore caught, on the one hand, between struggles over Western civilization and progress and colonialism's destruction of the Indigenous sexual Other (by means of philosophical policing of sexualized experience that draws on colonial fictions and locates all experience within the material body), and "private" forms of reason as explicitly separate from the public politics on the other. As a mechanism of power, Porth's conceptual grammars function to purify the domain of the sexual from anything that cannot be calculated, and thus, remain invested in an Enlightenment methodology that demands strict categorization of Indigenous sacredness within private forms of cultural flourishment. It is an expression of disenchantment that Porth's engagement with Perrier holds the savage and its mythologies within the realm of the irrational superstitious magic that is imagined as separate from the public domain of "legitimate politics." This dialogue thus illuminates a rearticulation of feminist disenchantment that weds sexual facts to secularized experience, which similarly panders to a Cartesian formula that makes divisions between body, mind, and spirit.[161] This is necessitated by coloniality's separation of human and non-human forms of power and agency, including creation/materiality, human/nature, mind/body, soul/mind, and individual/collective.

I argue that this feminist coding of Perrier becomes complicit in the reproduction of forms of colonial dominance that can get expressed through the validation of strict practices based on feminist disenchantment. As such practices and their intellectual articulations and textual representations show, a powerful system of disciplinary boundary making allows the non-Indigenous subject of power to continuously conceive of itself as being at the centre of power and evolutionary progressive political action, regardless of whether or not it acknowledges its reliance on the constant precarious reproduction of sacred (i.e., superstitious) disavowals. There is also no space made for Indigenous sexual subjectivity, but rather, Indigenous sexual cosmologies are de-politicized and presumed to be secondary by virtue of disenchanted feminist epistemic zonings. However, the spiritual or sacred is no less social or political than the secular, and Indigenous subjectivities are anything but static. It could be argued, as well, that European imperialism is no less a cultural interpretation of sexual life than that of its non-European counterparts. This begs the question of how such a regimented scientific approach to sex work can account for non-secular forms of sexual difference. I have suggested that it cannot, and I hope rather that such insights will inspire feminist scholars to begin queering this challenge of translation. Likewise, I suggest that we should refuse a totalizing feminist conflation of disenchantment with sexual freedom.

Disenchantment and Divestment: The Academic-Industrial Complex

To expand our understanding of the implications of how feminists construct disciplinary boundaries that render Indigenous sexual ontologies beyond the domain of politics "proper," in this section I expand these inquiries in an analysis of secular power and disenchantment as it relates to the larger structure of what Agathangelou, Dana M. Olwan, Tamara Lea Spira, and Heather M.

Turcotte have identified as sexual empire and the academic-industrial complex.[162] For these authors, the academic-industrial complex is inseparable from the sexual empire in how its matrices of rule are foundational to disciplining feminist epistemics in the academy and world politics at large. I am concerned, then, with understanding how feminist knowledge is co-opted and mobilized to garner legitimacy for imperialist projects that rely on "promises of belonging, value, recognition, and worth" that are "issued to certain marginalized subjects," while such fruitful promises always take place "on the ground of the other (non)subjects."[163] These studies of sexual empire therefore stress a need to articulate the ways in which feminist sensibilities, including our fears, desires, mournings, and yearnings, are mobilized by regimes of global imperialism in order "to make urgent the producing of solidarities not premised on exploitation, profit, or death."[164] Sexual empire is not just epistemological but is also a geopolitical condition that inscribes an ontological politics; it functions as an architecture in structuring what kinds of subjecthoods can be imaged and realized. As these feminists discuss, studies of sexual empire thus seek to account for and frame our intimate investments in the (non)spectacular modes of violence that empire depends on to (re)consolidate itself.[165] Studies of sexual empire underscore the seductive nature of empire that brings us into its fold to participate in the death of certain communities who live in peril as non-subjects and citizen outsiders by soliciting the production of particular ways of being, desiring, and knowing (while simultaneously destroying others) that are suitably pliable for instituting an imperial world order. For Agathangelou et al., affective economies, that is, the circulation and mobilization of feelings of desire, fear, and pleasure, play an important role in this process, as they can serve to beguile all of us into becoming emotionally, libidinally, and erotically invested in global capitalism's and imperialism's mirages of safety and inclusion.[166] And hence, sexual empire indexes the making of subjects and the process of ontological production that comes

through empire's drawing of power and "the process of seduction to violence that proceeds through false promises of an end to oppression and pain."[167]

This understanding of structural power recognizes that the current system requires freedom for some, but not others, who will need to be transformed to safeguard its proper functioning. Hence, struggles over gender and sexual freedom that are only concerned with challenging material or corporeal violence without attention to the larger structural underpinnings of social relations and processes may miss imperial logics that are embodied through other vectors, including secularity. This notion of empire, explained by Agathangelou and L.H.M Ling, differs from Hardt and Negri's explanation in important ways:

> Where they [Hardt and Negri] see empire as secure, universalized, and certain, run by a self-regulating capitalist system, we present empire as a socio-political formation that attempts two goals: (1) to establish itself as the only available possibility for all, and (2) to deny, dismiss, or erase other worlds. Hegemony thus is not just the collusion between state and civil society institutions to preserve elite interests, as Gramsci theorized, but also the systematic effort to wipe out all other ways of seeing, doing, being, and relating in the world.[168]

In view of this, sexual empire is concerned with prohibiting any admission that other worlds contribute to the making of its own and its futurity. This is dependent on neo-liberal imperium—that is, on sustaining a set of social relations of power that are expressed through everyday interactions and the institutions that support them, including complicit knowledge production in the academy, which draws upon neo-colonial strategies of power through which it is legitimized via articulations of domination based on sexuality, race, class, and gender. Hence, this approach to empire is critical of "an intellectual infrastructure that renders human agency invisible in

producing empire," which "relieves the imperium's leaders and managers, not to mention teachers and students, from assuming culpability for violent conduct and consequences that we face in world politics today."[169]

Agathangelou et al. thus ask that we attend to our knowledge production positionings within the academic-industrial complex, which is reflective of global arrangements of power that make possible particular knowledge relations and productions of subjects and social relations of power.[170] This resonates, for instance, with M. Jacqui Alexander, who discusses how the academy is linked to the global political economy.[171] Our universities, Alexander notes, "make up one of the largest sectors of the service economy in this new transnational empire … In a most direct and related sense, universities provide workers for the economy."[172] For Alexander, the academy's relationship to the global political economy is further reflected in the academy's systems of valorization of particular disciplines, departments, methods, and identities that are based on meritocracy and upward mobility, both of which are grounded in global arrangements of power that presuppose intellectual divisions of labour. This is indexed by ideological attachments to free market ideals that are embedded with the institution's logics—neo-liberal competition—which seeks to define legitimate/illegitimate schools of thought and disciplinary praxis. According to Alexander, we must be attentive to how curriculum and pedagogies are embedded within the workings of empire that operate on a set of Eurocentric assumptions about whose knowledge fits where within productive processes, and how that knowledge came to be designated into its "proper space and place" within the academy. Alexander states, "As Paulo Freire has observed, corporatization requires a 'banking concept of education,' a mode of teaching in which knowledge is an investment, a set of received concepts that need not be subject to critical engagement or dialogic reflection."[173] This brings Alexander to underscore how formations of knowledge

intersect with state and corporate interest in the services of neo-liberal globalization's chains of power and labour, and the way that such interest seeps into the hierarchal organization of our disciplines and the knowledge produced within them. Hence, the imperatives of global markets and the "corporate class requires inequity as one of the terms on which it assists in the management of this new world order."[174] This plays out in intellectual workplace settings, largely because the academy, like other industries, has not escaped neo-liberal systems of racial inequality.[175] These feminist scholars, then, are acknowledging how knowledge formations implicate feminist intellectualization in the political economy of racialized colonialism, and these feminist academics need to consider the ways that their own knowledge productions attach them to a Eurocentric identity of whiteness.

Academic Segregations and Hierarchies: Feminist Genealogies

By queering the implications of moral regulation's choice of feminist genealogies—for instance, Mariana Valverde's genealogy of anti-prostitution ideology in Canada and queer theories of sexual morality—I have sought to provide reflection on how moral regulation feminist scholarship remains invested in Enlightenment methodologies. This investment produces a disenchanted feminist theory of sexual subjectivity and its contingent notions of intimacy and connection, although I maintain that this methodological approach can also be read as dominant throughout the larger landscape of this disciplinary tradition.[176] Importantly, there are a few key consequences of investing in the conceptual grammars of colonial disenchantment, which I will reflect upon here. For instance, because experience for these feminists has been secularized, their subjects of feminism can embody sexuality in a singular secular fashion, which institutionalizes a "legitimate" intellectual sexual subject of law and politics, a process which recreates exclusive

boundaries for those enchanted subjects who do not exist singularly within a paradigm of disembodied homogeneity. There is an implied idea that such transcendent authority and action lack proper rigor for politicizing power relations, or that such politicizations are threatening to the modern articulations of subjectivity. The sacred, instead, through attempts to strip its power of meaning outside of itself, is conceived as private reason, and the "languages and cultures of origin are invoked at best as delexicalized and fun mother tongues."[177] This has practical consequences for knowledge produced by Indigenous scholars because it takes the enchanted to be merely private expressions of sacred contemplation and as radically opposed to political authority of rationalist intellectualization.[178] The systemic reasonings of colonial hierarchies that demand these distinct separations are thus restructured through academic institutionalizations of feminist knowledge production and through the bureaucratized rationalities of the neo-liberal academy. Alexander, too, cautions us against "the perilous boundary-keeping between the sacred and the secular, between dispossession and possession."[179] This is because for many, the personal is not only political but also spiritual, which indexes the limits of secular power by underscoring that "power is not owned by corporate timekeepers or by logics of hegemonic materialism."[180]

For Simpson, this requires understanding Nishnaabeg intellectual practices as inseparable from the sacred teachings of the land. "Land as pedagogy" is "given to us lovingly from the spirits."[181] This approach does not support colonial gender and sex ideologies that seek to master the body and knowledge. The fullest realization of Nishnaabeg society takes place within a context of humility and agency, centred on learning that honours agreements between individuals and the spirit world. This is a profoundly intimate political context that requires balanced and loving relationships within the family, extended family, community, and all living aspects of creation, including non-human forms of agency. Intelligence flows through these relationships as living

entities. Empowerment is thus derived not through the production of data and theory in an exclusively Western and settler colonial pedagogical context, where nature is objectified and decontextualized knowledge, but through "a compassionate web of interdependent relationships that are different and valuable because of difference. Individuals carry the responsibility for generating meaning within their own lives; they carry the responsibility for engaging their minds, bodies, and spirits in a practice of generating meaning."[182]

Boundary Making and Gatekeeping

Thus, there are limits and boundaries to the sort of radical, anti-colonial futures that secular methodological interventions can propose. These institutional segregations of knowledge, and the colonial hierarchies that feminist academics reconstitute within the academy through investing disenchanted sexual subjectivity, enable the continued asymmetrical divisions of academic labour based on "disciplinary legitimacy" that cannot be separated out from the global political economy or from racial and class divisions. Hence, when situated within the academic-industrial complex, we are alerted to how moral regulation feminism's retention of secular-colonial divides (of public principle and private reason) reasserts a disenchanted form of sexual morality and rationalist feminist cognition upon which empire depends. This is due to the fact that the elements of feminism that moral regulation has been preoccupied with, including questions of sex and the law, are empowered by a mechanism of making the (sexual) world meaningful and intelligible, where "the secular has been divested of the Sacred and the spiritual divested of the political" because "this way of knowing is not generally believed to have the capacity to instruct feminism."[183] As such, feminist studies of morality, sex, and law, in remaining intimately invested in a (non)spectacular mode of epistemic violence, reproduce the global divisions of power the how its

mythological enterprise denies, dismisses, or seeks to erase non-secular worlds. As Agathangelou et al. have discussed, empire depends on this to (re)consolidate itself through the segregation of knowledge to re-establish imperial methodologies as the most legitimate possibility in the feminist co-production of subjects. This concerns empire's need to do away with sacredness, magic, and mythology by way of scientific rationality and modern forms of intellectualization.

Therefore, the problem of the process of moral regulation's privatizing of the sacred is that it brackets Indigenous theory as a subsection to struggles over sex and freedom and asks that Indigenous scholarship empty its theories of the sacred forms of reason related to studies of sex and morality. This has the function of purifying feminist investigations of crucial anti-colonial contestations, which inevitably get taken up outside of the discipline. Politically, intellectually, and institutionally, this methodological, philosophical, and disciplinary practice institutionalizes intellectual hierarchies of global power that are based on modernity's colonial regimes that reproduce racialized forms of human differences within the academy. Investigations of questions of sex and morality become misdirected towards colonial reason and how to purify and sanitize sex of non-European, non-secular forms of sexual cognition, which takes place through the retention and centring of whiteness as a project of keeping that maintains a distinction between the "irrational" (unfree) and the "modern" (free) world. As Alexander has discussed, such segregations have very real and practical implications for the production of class relations and accompanying asymmetrical relations of racial and colonial power. This is because at its core, the classroom is an architecture that is shaped by relations of power outside of the academy, but it is also directly implicated in the shaping of that power through its production of student and worker subjects that go on to recreate the world around them through the discourses of power they networked in the academy.[184]

Divestment in Empire

As a set of feminist convergences, the intersection of queer theory and moral regulation scholarship are rendered critical sites of anti-colonial struggles under sexual empire, and because of this, I urge these disciplines to take up the questions of secularism, coloniality, and sexuality simultaneously. In this chapter, my argument was not about inclusion, which translates into integrating scholarship that deals with the sacred and non-secular forms of knowledge into white supremacist environments. Instead, my goal was to raise questions about the intellectual division of labour and the manufacturing power of the academy that segregates the intellectual workplace by defining who can occupy which jobs and disciplines, which makes clear the kinds of privatizations and displacements empire calls upon through the academy. With this in mind, Agathangelou, Bassichis, and Spira and Agathangelou et al. call for "divesting *in* empire." For these theorists, divesting in empire denotes an active project of building alternative social relations and institutions so as to push out empire, much like prison abolitionists speak of "positive abolition" of slavery, the project of which remains ongoing.[185] Divesting in empire calls for strategies in the form of ethical praxis to confront feminist structural entanglements with racism, occupation, and other forms of domination, which requires a repoliticization of the feminist field to expand on its theorizations in order to unite itself with broader global projects that struggle over a variety of industrial complexes that include the military, prison, and human rights, amongst others.[186] Such a project, these scholars emphasize, demands an articulation of the ways in which our most intimate sensibilities are being mobilized by imperial regimes that foreclosed the possibilities of solidarities and action that are not premised on dominant module forms of recognition and redress.

In addition, divesting in empire calls for a deeper engagement with "the political stakes of knowledge production,"[187] highlighting why feminism can and should continue to be a crucial site for radical social change and contestation. This requires an engagement with questions of feminist complicity in sexual politics that support the formation of global power as liberation, which cannot take place if the sexual is separated from the domain of anti-imperialist struggles. As Agathangelou et al. explain, imperialism and sexual politics are not separated "but co-produced with the social order," wherein feminism functions as a "staging ground for power struggles both for and against racial-sexual-colonial empire with the academy and beyond."[188] Importantly, this requires understanding the histories and politics through which hierarchal knowledge practices take place. In turn, these practices reproduce power inequalities through further segregations of knowledge "in the service of dominant institutional practices and mandates presented as a politics of inclusion,"[189] which evades interrogating feminist complicities in histories of violence. In this way, this project asks that feminist studies be attentive to the way in which feminism colludes with sex and empire through investments in the grammar of secular coloniality, which are embodied here as disenchanted feminist ontologies and which I have argued help capitalism meet its demands by calling upon the academic-industrial complex's far-reaching influence.

In summary, I have looked to reflect on this by staging a conversation about the perils of investing in disenchanted feminist theories of sexual knowledge, and about how feminist scholarship, in remaining invested in theories of the sexual through epistemic attachments to the secular-colonial, institutionalizes academic hierarchies of knowledge and a few principles that structure sexual empire. I did this to encourage feminists to think more meaningfully about what it would mean, and what it would take, to divest from these conceptual grammars to imagine anti-colonial futurities. I sought to honour this tradition through my reading of the relationship between

moral regulation scholarship, disenchantment, and coloniality. In the concluding pages that follow, I ask that we do not ignore the internal infrastructure of academic power that retrenches global forms of racialized and gendered forms of domination. Instead, in closing, I will reflect on how moral regulation knowledge is organized within the academy as a function of sexual empire that seeks to structure the kinds of subjecthoods that can be imagined and realized throughout intellectual disciplines and pedagogical approaches; disciplines and approaches that are concerned with prohibiting any admission that other worlds contribute to the making of their own futurity.

Notes

[1] *Bedford et al. v. Attorney General of Canada*, 2010 ONSC 4264 (hereafter *Bedford*, 2010), para. 165.

[2] Ibid., para. 174.

[3] Canadian HIV/AIDS Legal Network, "*Bedford v. Canada*: A Pragmatic Case toward Ensuring the Human and Health Rights of Sex Workers," *HIV/AIDS Policy & Law Review* 15, no.3 (October 2011): 7, http://www.hivlegalnetwork.ca/site/wp-content/uploads/2013/04/Bedford_153_ENG.pdf.

[4] Ibid.

[5] Anna M. Agathangelou, Daniel Bassichis, and Tamara L Spira, "Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire," *Radical History Review* 2008, no. 100 (Winter 2008): 120–43, https://doi.org/10.1215/01636545-2007-025.

[6] Ibid., 127.

[7] Ibid.

[8] Ibid.

[9] Shannon Winnubst, "Temporality in Queer Theory and Continental Philosophy," *Philosophy Compass* 5, no. 2 (February 2010): 138, https://doi.org/10.1111/j.1747-9991.2009.00278.x.

[10] Ibid.

[11] Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 13.

[12] Kerry Porth, "Sex, Lies, and Committee Hearings: Challenging Prostitution Propaganda," in *Red Light Labour: Sex Work, Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 317–28.

[13] See, for example, Brenda Belak, "How the National Inquiry into Missing and Murdered Indigenous Women Should Look," *The Pivot* (blog), *Pivot Legal Society*, March 3, 2016, https://www.pivotlegal.org/submission_on_the_design_of_the_national_inquiry_on_missing_and_murdered_indigenous_women; Darcie Bennett, "Learning from the Failures of the Missing Women's Inquiry," *The Pivot* (blog), *Pivot Legal Society*, November 19, 2012, https://www.pivotlegal.org/learning_from_the_failures_of_the_missing_women_s_inquiry; Peter Kim, "Sex Work is Not Human Trafficking: Pivot's Submission to Canada's Standing Committee on Justice and Human Rights," *The Pivot* (blog), *Pivot Legal Society*, June 1, 2018, https://www.pivotlegal.org/submission_on_human_trafficking_to_standing_committee_on_justice_and_human_rights.

[14] Anna M. Agathangelou et al., "Sexual Divestments from Empire: Women's Studies, Institutional Feelings, and the 'Odious' Machine," *Feminist Formations* 27, no. 3 (Winter 2015): 160.

[15] Asad, *Formations*, 12.

[16] Ibid., 3.

[17] Ibid., 5.

[18] Benedict Anderson, *Imagine Communities* (London & New York: Verso, 1983), 26.

[19] Asad, *Formations*, 27.

[20] Ibid., 63.

[21] See also Sam Han, "Disenchantment Revisited: Formations of the 'Secular' and 'Religious' in the Technological Discourse of Modernity," *Social Compass* 62, no. 1 (March 2015): 79, https://doi.org/10.1177/0037768614560960.

[22] See also Christopher Craig Brittain, "The 'Secular' as a Tragic Category: On Talal Asad, Religion and Representation," *Method & Theory in the Study of Religion* 17, no. 2 (2005): 152, https://www.jstor.org/stable/23551728.

[23] Han, "Disenchantment," 80.

[24] Max Weber, "Science as Vocation," https://www.wisdom.weizmann.ac.il/~oded/X/WeberScienceVocation.pdf.

[25] Ibid., 8.

[26] Ibid.

[27] Charles Taylor, *A Secular Age* (Cambridge, MA: Belknap Press of Harvard University Press, 2007), 29.

[28] Basit Kareem Iqbal, "Asad and Benjamin: Chronopolitics of Tragedy in the Anthropology of Secularism," *Anthropological Theory* 20, no. 1 (July 2020): 6, https://doi.org/10.1177/1463499618770310.

[29] Ibid.

[30] Taylor, *Secular Age*, 38.

[31] Ibid.

[32] Iqbal, "Asad," 7.

[33] Taylor, *Secular Age*, 26.

[34] Ibid., 27.

[35] Ibid., 29.

[36] Ibid., 27.

[37] Ibid., 28.

[38] Ibid., 30.

[39] Ibid., 35.

[40] Ibid., 35.

[41] Ibid., 94.

[42] Asad, *Formations*, 33.

[43] Ibid., 30.

[44] Ibid.

[45] Ibid.

[46] Taylor, *Secular Age*, 26.

[47] Asad, *Formations*, 3.

[48] Ibid., 13.

[49] Anderson, *Imagined Communities*, 26.

[50] Zahir Kolia, "The Aporia of Indigeneity: (Dis)Enchanting Identity and the Modular Nation Form," *Interventions: International Journal of Postcolonial Studies* 18, no. 4 (January 2016): 605–26, https://doi.org/10.1080/1369801X.2015.1131181.

[51] See also Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 13; Bonita Lawrence, *Fractured Homeland: Federal Recognition and Algonquin Identity in Ontario* (Vancouver: UBC Press, 2012), 125–29.

[52] Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017).

[53] Ibid., 8.

[54] Ibid., 45.

[55] Ibid., 143.

[56] Ibid., 21.

[57] Ibid., 127.

[58] Ibid., 134.

[59] Ibid., 24.

[60] Ibid., 126.

[61] Ibid., 127.

[62] Ibid.

[63] Dana L. Wesley, "Reimagining Two-Spirit Community: Critically Centering Narratives of Urban Two-Spirit Youth" (PhD diss., Queen's University, 2015), 1-128.

[64] Ibid., 4.

[65] Ibid., 15

[66] Ibid., 17.

[67] Ibid., 9.

[68] Ibid., 27.

[69] Ibid., 16.

[70] Ibid.

[71] Ibid.

[72] Ibid., 43.

[73] Kolia, "The Aporia of Indigeneity," 18.

[74] Ibid.

[75] Ibid., 13.

[76] Ibid., 17.

[77] Ibid., 17.

[78] Mark Rifkin, *Beyond Settler Time: Temporal Sovereignty and Indigenous Self-Determination* (Durham: Duke University Press, 2017), 13.

[79] Ibid., 8.

[80] Taylor, *Secular Age*, 8.

[81] Asad, *Formations*, 217.

[82] Ibid., 8.

[83] Amanda Glasbeek, ed., *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* (Toronto: Canadian Scholars' Press, 2006), 3.

[84] Lara Karaian, "Policing 'Sexting': Responsibilization, Respectability and Sexual Subjectivity in Child Protection/Crime Prevention Responses to Teenagers' Digital Sexual Expression," *Theoretical Criminology* 18, no. 3 (September 2014): 283, https://doi.org/10.1177/1362480613504331.

[85] Ibid., 284.

[86] Ibid., 290.

[87] Mariana Valverde, "Introduction to the Age of Light, Soap, and Water," in *Moral Regulation and Governance in Canada: History, Context, and Critical Issues*, ed. Amanda Glasbeek (Toronto: Canadian Scholars' Press, 2006), 117–41.

[88] Ibid., 131.

[89] *Bedford*, 2010, para. 114.

[90] Ibid., 227.

[91] Karaian, "Policing," 291.

[92] Ibid., 292.

[93] Lara Karaian and Katherine Van Meyl, "Reframing Risqué/Risky: Queer Temporalities, Teenage Sexting, and Freedom of Expression," *Laws* 4, no. 1 (January 2015): 24, https://doi.org/10.3390/laws4010018.

[94] Ibid.

[95] Karaian, "Policing," 292.

[96] Ibid.

[97] Karaian and Van Meyl, "Reframing," 27.

[98] Judith Halberstam, "What's That Smell? Queer Temporalities and Subcultural Lives," *International Journal of Cultural Studies* 6, no. 3 (September 2003): 313–33, https://doi.org/10.1177/13678779030063005.

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[100] Ibid.

[101] Halberstam as quoted in Karaian and Van Meyl, "Reframing," 27.

[102] Karaian and Van Meyl, "Reframing," 30.

[103] Ibid., 31.

[104] Ibid.

[105] Ibid.

[106] Emily Lockhart, "Representations of Sexting and Sexual Violence on Legal Dramas: Implications for Teenagers' Sexual Citizenship," in *Youth, Technology, Governance, Experience: Adults Understanding Young People*, ed. Liam Grealy, Catherine Driscoll, and Anna Hickey-Moody (London: Routledge, 2018), 128.

[107] Ibid., 127.

[108] Ibid., 125.

[109] Ibid.

[110] Ibid., 123.

[111] Ibid., 126.

[112] Ibid.

[113] JJ, "We Speak for Ourselves: Anti-Colonial and Self-Determined Responses to Young People Involved in the Sex Trade," in *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada*, ed. Emily van der Meulen, Elya M. Durisin, and Victoria Love (Vancouver: UBC Press, 2013), 79.

[114] Ibid.

[115] Karaian and Van Meyl, "Reframing," 20.

[116] Lockhart, "Representations," 126.

[117] National Inquiry, *Reclaiming Power and Place*, 55.

[118] Ibid., 267.

[119] Ibid., 367.

[120] Ashley Hayward and Jamie Cidro, "Indigenous Birth as Ceremony and Human Right," *Health and Human Rights Journal* 23 no. 1 (June 2021): 213-224.

[121] Rifkin, *Beyond*, 40.

[122] Ibid., 41.

[123] Ibid., 4.

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[125] Gayatri Chakravorty Spivak, *Death of a Discipline* (New York: Columbia University Press, 2003), 4–8.

[126] Agathangelou et al., "Intimate Investments," 126.

[127] Karaian, "Policing," 284.

[128] Lockhart, "Representations," 124.

[129] Asad, *Formations*, 226.

[130] Ibid., 72.

[131] Taylor, *Secular Age*, 28.

[132] Saba Mahmood, *The Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005), 8.

[133] Karaian, "Policing," 290.

[134] Asad, *Formations*, 3.

[135] Wesley, "Reimagining," 3.

[136] Ibid., 48.

[137] Ibid., 37.

[138] Ibid., 36.

[139] Joyce Green, *Making Space for Indigenous Feminism* (Black Point, NS: Fernwood Publishing, 2007), 97.

[140] Simpson, *As We Have Always Done*, 37.

[141] Anna M. Agathangelou, *The Global Political Economy of Sex: Desire, Violence, and Insecurity in Mediterranean States* (New York: Palgrave Macmillan, 2004), 98.

[142] I use geographically purposely to indicate that there is a question of geopolitics here, in that, it references the way in which colonial materiality seeps into the academia. Thus, the disciplinary practices are not separated from the historical and ongoing practices of colonial zoning, for instance, the reserve system in Canada which preconditions the politics of feminist knowledge production and the division of intellectual labour.

[143] Asad, *Formations*, 5.

[144] Ibid., 3.

[145] M. Jacqui Alexander, *Pedagogies of Crossing: Meditations on Feminism, Sexual Politics, Memory, and the Sacred* (Durham: Duke University Press, 2005), 287–323.

[146] Weber, "Science as Vocation," 5.

[147] Ibid., 17.

[148] Ibid., 20.

[149] Kerry Porth, "Sex, Lies, and Committee Hearings: Challenging Prostitution Propaganda," in *Red Light Labour: Sex Work, Regulation, Agency, and Resistance*, ed. Elya M. Durisin, Emily van der Meulen, and Chris Bruckert (Vancouver: UBC Press, 2018), 317–28.

[150] Al Jazeera English, "Power & Power: Canada's Lost Women," YouTube video, 25:00, June 11, 2015, https://www.youtube.com/watch?v=hoD6XpENeR4.

[151] Perrier as quoted by Porth, "Sex, Lies," 322.

[152] Ibid.

[153] Ibid., 320–21.

[154] Ibid., 323.

[155] See Emanuel Chukwudi Eze, *Race and the Enlightenment: A Reader* (Cambridge, MA: Blackwell, 1997),

[156] Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument," *CR: The New Centennial Review* 3, no. 3 (Fall 2003): 300, http://doi.org/10.1353/ncr.2004.0015.

[157] Ibid.

[158] Anna M. Agathangelou, "Imperial (Re)assemblages and Reconstructions: Intimate Terrors and Ontological Possibilities," *InTensions Journal* 3 (Fall 2009): 4, http://www.yorku.ca/intent/issue3/articles/pdfs/AnnaMAgathangelouArticle.pdf.

[159] Ibid., 7.

[160] Asad, *Formations*, 81–82.

[161] Vanessa Andreotti, *Actionable Postcolonial Theory in Education* (New York: Palgrave Macmillan, 2011),

[162] Agathangelou et al., "Sexual Divestments," 160.

[163] Agathangelou, Bassichis, and Spira, "Intimate Investments," 135.

[164] Ibid., 137.

[165] Ibid., 137–38

[166] Agathangelou, Bassichis, and Spira, "Intimate Investments," 129.

[167] Ibid., 122

[168] Anna M. Agathangelou and L.H.M. Ling, *Transforming World Politics: From Empire to Multiple Worlds* (London: Routledge, 2009), 2.

[169] Ibid., 3.

[170] Agathangelou et al., "Sexual Divestments," 41.

[171] Alexander, *Pedagogies*.

[172] Ibid., 106.

[173] Ibid., 107.

[174] Ibid., 102.

[175] Frances Henry et al. *The Equity Myth: Racialization and Indigeneity at Canadian Universities* (Vancouver: UBC Press, 2017).

[176] See, for instance, van der Meulen, Emily, ed., *Gender, Law and Justice* (Winnipeg: Fernwood Press, 2016); Elya M. Durisin, Emily van der Meulen, and Chris Bruckert, eds., *Red Light Labour: Sex Work Regulation, Agency, and Resistance* (Vancouver: UBC Press, 2018); Emily van der Meulen, Elya M. Durisin, and Victoria Love, eds., *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver: UBC Press, 2013); Amanda Glasbeek, ed., *Moral Regulation and Governance in Canada: History, Context, and Critical Issues* (Toronto: Canadian Scholars' Press, 2006); Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court*, 1913–34 (UBC Press, 2009); Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: University of Toronto Press, 2008).

[177] Spivak, *Death*, 8.

[178] Asad, *Formations*, 23.

[179] Alexander, *Pedagogies*, 7.

[180] Ibid.

[181] Simpson, *As We Have Always Done*, 155.

[182] Ibid., 156.

[183] Alexander, *Pedagogies*, 15.

[184] Ibid., 92.

[185]Agathangelou et al., "Sexual Divestments," 160.

[186] Ibid., 160.

[187] Ibid., 144

[188] Ibid., 150.

[189] Ibid., 159.

Conclusion

> Whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated?
>
> —Linda Tuhiwai Smith, *Decolonizing Research Methodologies*

Let me bring this dissertation to a close by reinscribing the spirit of skepticism, only this time, on the truth claims that scholars of sex and morality make about feminist social and political formations and power. I return, then, to Linda Tuhiwai Smith (Ngāti Awa and Ngāti Porou), who notes that "academic writing is a form of selecting, arranging, and presenting knowledge" and, as such, is a practice that "privileges texts, views about the history of an idea, what issues count as significant."[1] As stated in chapter 5, I have concerns over the limits and boundaries inscribed by moral regulation theories of the sexual, and I question what radical anti-colonial futures disenchanted methodological interventions can propose. Institutional segregations of knowledge and the colonial hierarchies that feminist academics reconstitute by investing in disenchantment, I argue, enable the continued asymmetrical divisions of academic labour concentrated on policing "disciplinary legitimacy," the practice of which M. Jacqui Alexander, Anna M. Agathangelou, and others have rightly pointed out cannot be separated from the global political economy and racialized and class divisions.[2] Thus, one of the central tensions raised in this dissertation concerns accounting for secularity and mapping its (re)inscriptions within an imperial feminist sexual matrix of power. At the same time, I seek to excavate epistemological ruptures and discursive breaks that ostensibly evade sexual categories and constitutions of non-secular formations of life within the colonial encounter.

In chapter 1, I illustrated how critical feminist legal studies of sexual morality apprehend Indigenous epistemologies and racialize difference though a legal-centric colonial epistemic structure. I suggested that this approach is highly political and informed by colonialist conceptual grammars of the Enlightenment period, and thus bound by a secular moralism that preconditions feminist modes of thought and action as expressed in the case of *Canada v. Bedford*. From this, I called into question the role of feminist legal proceduralism in adjudicating the fundamental principles of sexual justice in Canada. This was achieved by highlighting how Indigenous "prostitutes" are called upon to give legitimacy to a Cartesian sex worker subject who, under the rubric of Lockean colonial possession, is rendered free to privatize and monetize sex under neo-liberal coloniality. In this way, *Bedford* politicizes and normalizes a secular humanist Enlightenment ethos wherein *rational* humanist sex worker agents conceive of and extend their knowledge of the domain of the sexual as universal, and who alone own their secularized sexual labour and the materialist products generated by it. The universalization of secular humanism takes place within the contested terrain of Indigenous humanity, insofar as the success of *Bedford* is conditional on the exclusion and de-mediation of Indigenous conceptions of sex and Indigenous political worldviews.

In chapter 2, I argued that sex work ethnographies that respond to discourses of sexual morality are a political device that constructs its objects through temporal power. It is, then, an epistemological and methodological device that functions as the intellectual justification of colonial domination in how it both imagines and constructs its object of study while at the same time violently rejecting and displacing it. Moreover, from the vantage point of Gayatri Chakravorty Spivak's reflections on epistemic violence, the Indigenous native informant functions merely to provide data that legitimizes imperial feminism; they are a neatly accessible object of invention

and investigation serving only to punctuate the universality of a liberal feminist pro-sex ideology. In this way, ethnography evacuates its objects of study (Indigenous peoples) from the dialogue between author and audience, reducing the native informant to referents of anthropological discourse. As referent, the native informant signifies temporal presence (author/reader) and absence (informant/object) that denies coevalness—that is, the denial of the condition of shared time. Likewise, the epistemic power of ethnography's methodology rearticulates spatiotemporal epistemic boundaries, wherein the Indigenous Other is necessarily constructed as existing in a state of ontological "lack" recuperated by the ethnographer, who seeks to transform this "lack" when translated through the familiar structure of ethnographic debate. This chapter, then, points out how moral regulation studies lends itself to the constitution of temporal violence through the secularization of space and time.

In chapter 3, I argued that moral regulation feminism is preoccupied with the politicization of a universal sex worker humanism. Here I was critical of feminist genealogical methods that trace social and sexual histories in attempts to account for the genesis of the sex worker's humanity. It is in this chapter that I likewise began to tease out the prevalence of disenchantment in these feminist studies of sex and morality. This is important to the study of sexual empire because, as I attempted to show, in the schema of a coloniality, Indigenous humanisms are reduced to playing the role of the symbolic Other to the (sexual) Norm, while secular-liberal humanity plays the key role in representing the Norm as the structuring code of humanity, reifying a regime of disenchanted feminist truth. Through this, I sought to complicate why it is problematic for feminists to affix sex worker human rights to the commodification of sex. Doing so requires the naturalization of epistemic violence and the erasure of the colonial conditions under which notions of value and desire are generated. I maintained that sex and desire are politically produced within

the global political economy. Desire in this context is the process of "whitening" Indigenous sexual economies as a strategy of expropriation and violence by capital. As a stand-in for whiteness, sex worker humanism pertains to one's ability to be a proper neo-liberal, neo-colonial subject who, as defined by a feminist ruling class, satiates one's sexual and other emotional pleasures anytime, anywhere.

In chapter 4, I highlighted epistemic unities between moral regulation material feminism and moral regulation Foucauldian feminism. I argued that both are bound by secular-liberal providences that determine the conditions of possibility of sex worker freedom. For example, both are united in how they are bound by dialectical reasoning and liberal progressive imaginary. Both retain the assumption of socially prescribed forms of behaviour as necessarily constituting the sole conditions of the emergences of the self as such, and as being necessary to its realization, with Foucauldian feminism conceptualizing liberation from norms on a model of doing and undoing. Foucauldian feminism thus conceptualizes sex workers as reactive agents within structures of normative power who can only realize the potential for freedom through a dialectic struggle of subversion or resignification of norms. This, I maintained, alludes to a progressive teleology of feminist moral regulation theory. I also argue that Foucauldian feminism does not go far enough to transcend violent humanist constructions because it also retains its biocentric teleology. Thus, in destroying only the Western bourgeoisie's conceptions of gender and sexuality via the contestation of normative power, Foucauldian feminists leave intact the colonial *genre of human* on which secular humanism is predicated. Simply put, Foucauldianism does not create a different mode of historicization or a different code for what it means to be human because Foucault evades meaningful engagements with the gendered and sexual provenances of racial assemblages. Moreover, in remaining faithful to Foucault's theories of biopolitics and governmentality, moral

regulation feminist methodologies and theorizations of the sexual occlude European imperialism, which is the scaffolding by which feminist knowledge, theory, and notions of being are brought to life.

In the final chapter, I queered sexual morality and examine the political implications of institutionalizing imperial feminist knowledge constructions. I argued that inherent to feminist studies of sex and morality is a rationalist skepticism that defines what constitutes "inside" and "outside" material bodies by coding legitimate/illegitimate states of mind that call people to political actions. This has practical consequences for knowledge produced by Indigenous scholars because it takes the enchanted to be "irrational" expressions of sacred (and private) contemplation that is conceived of as radically opposed to the political authority of the secularized feminist intellectualization of sex. I examined conflicting hermeneutical frames to the sexual, denoting how Indigenous enchanted orientations of the social and the sexual exceed white queer investments in disenchanted sexual experience. I thus illuminated how for some sexualities to enter "humanity" and "citizenship" they must simultaneously police racialized and colonized sexualities through an intellectual labour of disciplinary boundary making and gatekeeping. Chapter 5 thus returns to a larger aim of this project, which is to think through question of sexual empire. I argued that feminist boundary making is a process of empire-building in exchange for a thinly veiled promise of feminist membership into dominant world orders. This serves to alert feminists to the limitations of engagements with sex and morality when such engagements remain entirely secularized. Moreover, in linking disciplinary practices to the academic-industrial complex, I opened space for thinking about how formations of knowledge intersect with state and corporate interest in the service of neo-liberal globalization's chains of power and labour. I encouraged feminist scholars, then, to acknowledge how our formations of knowledge implicate feminist intellectualization in

the political economy of racialized colonialism that attaches its praxis to a Eurocentric identity of whiteness.

Throughout this dissertation I have maintained that thinking about sex and morality in terms of secularity and the colonial is important because it further expands our understanding of the disciplinary practices that make sex, gender, and feminist corporeal realities possible. What I am encouraging Euro-Canadian feminist intellectualists to do, then, is interrogate their relationship to sex and imperialism, and their methodological fidelities that drive their understandings and marking of the world. What I refer to as *imperial feminist epistemology* denotes how moral regulation is imbricated in a global knowledge systems of Europe's intellectual enterprise and its categories for interpreting social and political life. Thus, I situate moral regulation feminist origins within the socio-historical contexts and power political fields of the gendered imperialism that excludes Black, Indigenous, and other racialized subjects from modern, liberal conceptions of the universal individual, while simultaneously constituting them of gendered imperialism via the contested terrain of their humanity and conceptions of space and time. I have attempted to show how moral regulation feminist attention to sex trade realties involves the conceptual dependence on secular-colonial philosophies of the organization of life that connotes a conception of Being "that overrepresents itself."[3]

As I have argued, the problem for moral regulations scholars is that Indigenous relational ontologies cannot simply be reduced to either the universal or the particular; rather, they are overlapping and co-constituting of moral regulation feminism's false dichotomies and universality of sex worker humanism. However, limited within the intellectual structures of Western philosophical thought and its conceptual systems of interpretation, my contention is that moral regulation feminist theories of sexual subjectivity and liberation leave no room for alternative

forms of life that elude secularity's violent embrace. What seems absent from descriptions of the sexual is a critical understanding of Western feminist configurations of the human as synonymous with rational radically liberal subjects, which renders those who do not conform to this characterization as an illustration of anti-sex and anti-feminist modes of action. Such characterizations create an imperial feminist echo chamber that actively omits the critical insights of non-European scholars and populations about how to transcend the matrices of sexual domination.

Notes

[1] Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed. (London, Zed Books, 2012), 37.

[2] M. Jacqui Alexander, *Pedagogies of Crossing: Meditations on Feminism, Sexual Politics, Memory, and the Sacred* (Durham: Duke University Press, 2005).

[3] Sylvia Wynter, "Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument," *CR: The New Centennial Review* 3, no. 3 (Fall 2003): 260, http://doi.org/10.1353/ncr.2004.0015.

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