

**MORAL PANIC AND EMBODIED THREAT: THE DISCOURSE ON CRIMINAL
DEPORTATION AND YOUTH EXPERIENCES OF VIOLENCE IN CANADA**

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ABSTRACT

Bill C-43: *Faster Removal of Foreign Criminals Act* enacts changes to deportation policy that can be expected to intensify the threat of deportation for racialized youth, their families and communities members, and to exacerbate existing social divisions in Canada. This paper argues that these changes to Canadian deportation policy advance to new heights the criminalization and alienation of Blackness while maintaining a national mythology of a benevolent and humanitarian nation. This paper conducts a critical discourse analysis of the major House of Commons political debates on Bill C-43, which adapts and applies the moral panic framework and folk devil figure from Hall and others (1978), revealing the ways in which they are employed within the Canadian discourse on deportation. The debate is analyzed in light of an extensive literature review that explores the history of criminalization of immigrants and prior deportation legislation in Canada. This analysis reveals how prominent tropes of the benevolent and multicultural Canadian state, and the demonized figure of the criminal immigrant are invoked across party lines to reignite a moral panic around immigrant criminality. By bringing together activist and academic anti-racist and anti-oppressive theory, the paper opens new pathways to understanding the complex socio-historical factors that operate within and emerge from these debates. It puts this discussion in conversation with an interdisciplinary archive including diasporic thought and critical prison studies, which usefully analyze the interconnectedness of racism, incarceration, and displacement, an analysis which I extend to deportation. In addition, critical border studies are mobilized to locate the criminalization of immigrants in the context of the restriction of Canadian borders. Building on the work of McKittrick (2006) on Black geographies, the paper coins the concept of “alienation” to describe the psychic and physical displacement experienced by racialized subjects in Canada, through social, cultural and political dispossession, incarceration, and finally deportation. Grounded in the socio-historical context of colonization, conquest and racist immigration policy, this work destabilizes the national mythology that displaces and criminalizes Blackness in Canada by tracing the roots of systemic violence in the Canadian nation state and unsettling it as the basis of permanent removal of racialized subjects from national borders.

FOREWORD

This major research paper is submitted in partial fulfillment of the requirements for the Master in Environmental Studies degree from York University. It is the final submission as part of a plan of study which has explored issues of physical and systemic violence through the perspective of critical community development. It considers the ways in which violence is framed, and how these frames impact our understanding of violence and the interventions we create and launch. My research considers the role of Canadian criminal deportation policy through a lens of youth experiences of violence, perpetrated and systemic, building on literature on the role of systemic violence in discourses on youth experiences of violence in Canada.

This paper has contributed to my learning objective to explore critical theory on race, including feminist theory, Black feminist theory and diasporic thought and has provided a deeper understanding of the ways in which colonialism and racism influence environments of violence in Canada. The research for this paper is rooted in my work on the *Youth and Community Development in Canada and Jamaica: A Transnational Approach to Youth Violence* project through the Centre for Research on Latin America and the Caribbean (CERLAC) through which I have developed an understanding of community development research and applications in the context of Black youth experiences of violence in Canada and the Caribbean.

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INTRODUCTION

There is a mythology that Canada is a benevolent multicultural nation, despite its history of violent colonization of indigenous peoples and oppression of racialized settlers, those who were enslaved, and those who were brought as indentured workers. This persistent mythology of Canada contrasts with the alienation and displacement that many racialized “others” experience within its borders. While economically productive immigrants are valued – at least for their labour – and fostered for inclusion in the neoliberal multicultural society, those who are economically disenfranchised remain on its outside and are treated as responsible for their own exclusion. This major paper argues that the criminalization of Blackness is one site within which this displacement occurs. It illustrates this with Bill C-43: *Faster Removal of Foreign Criminals Act*, first introduced in 2012, and passed into law in 2013. The main motivation behind this bill was to accelerate the deportation of foreign-born individuals who have been charged or convicted of crimes, based on length of sentencing. It brings a double-punishment to non-citizens and removes access for many to appeal their permanent removal from Canada. In response, this analysis argues that the anti-immigrant sentiment that undergirds the bill is reflective of anti-Black racism and a white settler mythology that each uphold Canadian nationalism.

The paper analyzes the official House of Commons debates on Bill C-43 illuminated by the theoretical framework of the moral panic that was formulated by Cohen (1972) and elaborated upon by Hall et al (1978) in the context of 1970’s Britain. Hall et al’s work focused on the birth of the folk devil of the ‘Black mugger’ which was prefigured by unequal social change and high inflation during class conflict in the Thatcher era, and resulted in law and order actions that targeted immigration and crime. Following this theoretical framework, I categorize

and analyze the political discourse pervading debates regarding Bill C-43 according to two predominant themes: generosity of the nation state, and criminalization and demonization of immigrants. Drawing on Black geographies (McKittrick, 2006; 2011), diasporic thought (Oparah/Sudbury, 2002; 2004; Davis, 2012) and critical border studies (Hyndman and Mountz, 2007; Mountz, 2004), this paper examines the ways in which the Canadian state repeats and completes the criminalization and alienation of Blackness in the form of criminal deportations, while maintaining its national mythology of a generous and peaceful nation (McKittrick, 2006).

In analyzing the debates surrounding Bill C-43, I have drawn on and developed several concepts forged by anti-racist and anti-oppressive scholars. I propose the concept of “alienation” to describe the symbolic dislocation experienced by racialized residents in Canada, who are perpetually framed as being from elsewhere. Alienation also accounts for the ensuing physical removal from society of Black bodies in particular to sites of incarceration and subsequently to other countries. The concept is indebted to the work of McKittrick (2006) who critically examines the racist and sexist separation of Blackness from physical and imagined geographies in her book *Demonic Grounds*. Thus, imposed displacement, enslavement, indentured labour and incarceration have each been used to disrupt the linkages between Blackness, space and place through forced migration, domination, exploitation and confinement even while Blackness has undeniably shaped Canada’s physical and imagined geographies.

I rely on Gilmore’s (2007) definition of racism as “the state-sanctioned and/or extralegal production and exploitation of group differentiated vulnerability to premature death” (p. 247). Gilmore (2007) adds: “Prison expansion is a new iteration of this theme” (p. 247). In addition, I examine racism and domination as closely entwined with manifestations of systemic violence. I employ Farmer et al’s (2006) definition of structural or systemic violence:

The term “structural violence” is one way of describing social arrangements that put individuals and populations in harm's way. The arrangements are structural because they are embedded in the political and economic organization of our social world; they are violent because they cause injury to people (typically, not those responsible for perpetuating such inequalities). (Farmer et al, 2006)

These frameworks help us make sense of the moral panic over youth homicide in Toronto in recent years, whose persistently high rates have raised concerns about an apparent crisis in the city's Black communities. This in turn inspired the project *Youth and Community Development in Canada and Jamaica: A Transnational Approach to Youth Violence* which brought together researchers from five Canadian universities, the University of the West Indies and community organizations to examine Black youth experiences of violence, prevention, and intervention in Canada and Jamaica. While conducting the literature review for the project, I found that youth have repeatedly highlighted the harmful effects of systemic inequalities or systemic violence and have called for policy changes that address these as the roots and source of the violence they experience in their lives (Abebe & Fortier, 2008; Davis, 2012). In response, my work reframes the transnational discussion of Black youth and violence by examining the impact of Canadian policies, specifically criminal deportation, in the face of alienation and criminalization of young Black men in Canadian urban spaces.

Deportation from Canada is explored here as a form of systemic violence that should be included in the transnational discourse on youth violence, particularly between Canada and the Caribbean. Canadian deportation rates more than doubled between 1999 and 2012. According to Canadian Border Services Agency (CBSA) numbers secured through an Access to Information request by The Canadian Press, 12,848 people were deported in 2008, an increase of more than 50% since 1999 when 8,361 people were deported (Cohen, 2009). An Access to Information request submitted for this study on Bill C-43 revealed that deportation rates jumped again from

2008 to 2009 by more than 2,000 deportees and continued to climb until 2012 when they reached a high of 18,927 deportations. Despite a drop in 2013, the 15,418 deportees still represents an 84.4% increase in deportations from 1999. Although the proportion of criminal removals has not kept pace with the increases overall, falling from 15% in 2004 to 13% in 2013, criminal removals have risen by 7.9% between deportation totals in 2004 and in 2013. For nearly a decade, Jamaica remained one of the top three receiver countries for deportations from Canada, along with the United States and Mexico, representing an average of 6.1% of total criminal deportations between 2004 and 2011. Jamaican deportations dropped in 2012 and 2013 (3.8% and 4.7% respectively) accounting for the fourth highest number of deportations in those years, behind the United States, Mexico and Hungary. These high numbers have been linked to the criminalization of Blackness and the connection of Jamaican culture to violence (Barnes, 2009).

Criminal deportations are closely interrelated with processes within the Canadian criminal justice system. In fact, the Canadian correctional system has been identified as a key site of systemic violence against marginalized Canadians and non-citizens across the country (Ware, Ruzsa & Dias, forthcoming). This was confirmed by a government study published in 2013 by the Office of the Correctional Investigator (OCI): *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries* (OCI, 2013b). The publication cites the last major report on race within corrections in Canada, the 1994-1995 *Commission on Systemic Racism in the Ontario Criminal Justice System*, which “found evidence of systemic racism within each of the components of the criminal justice system and made a number of recommendations to improve its accountability” (OCI, 2013b, p. 3). According to an annual report from the OCI, Black inmates comprise the fastest increasing sub-population within the federal correctional system in 2011-2012. Over the past decade, the number of Black inmates

has increased by almost 90%, and in 2013 they comprised 9.5% of the general prison population while accounting for only 3% of the Canadian population (OCI, 2013a). Furthermore, Black inmates are disproportionately represented in maximum security and segregation units (OCI, 2013a). The Black prison population in Canada is young, with more than 50% of inmates 30 years and younger, and only 8% over 50, compared to only 31% under 30 in the general population, and 20% over 50 (OCI, 2013a). Although almost 25% of inmates are foreign-born, 47% of Black inmates are foreign-born, with the majority coming from Jamaica (17%) and Haiti (5%) (OCI, 2013a; OCI, 2013b). According to the study, there are also significant numbers of inmates from Barbados, Ghana, Grenada, Guyana, Somalia and Sudan (OCI, 2013b, p. 9). In 2011/2012, 4% of Black inmates were women (55) and 86% were men (1285). The study reports that the population of incarcerated Black women is increasing quickly, with most (53%) incarcerated for Schedule II (drug) offences. In interviews with incarcerated Black women, “many indicated that they willingly chose to carry drugs across international borders, primarily as an attempt to rise above poverty” (OCI, 2013b, p. 10). A number of these inmates shared that they had been coerced into committing offenses, facing violent threats targeting their families. Many will face deportation upon their release from prison (OCI, 2013b). Other research has found that Black inmates are charged more often with misconduct in situations requiring subjective judgments from correctional officers, and charged less often when the charge requires factual evidence from the officers (OCI, 2013b). Black inmates also face more use of force incidents than the general population (OCI, 2013b). Despite the disproportionate Black population in federal prisons and the descriptions of ongoing experiences of prejudice and racism, the government’s study employs the euphemistic language of diversity within corrections. Although the 2012-2013 Annual report of the OCI recommends a National Diversity

Awareness Training plan for Correctional Services Canada and the creation of an Ethnicity Liaison Officer position at every institution to build community linkages and ensure provision of “culturally appropriate program development and delivery” (OCI, 2013a), it fails to address documented evidence of systemic racism in the criminal justice system. While making recommendations for improved conditions, these reports from the OCI illustrate the systemic violence experienced by racialized and marginalized Canadians and non-citizens in Canada.

Similarly, the literature suggests that violent crime among racialized youth is a symptom of Canada’s failure to address the roots of both Canadian-born and immigrant youth violence. Racialized youth, especially young Black men, are often criminalized by public discourse as aggressive “outsiders” in Canada, regardless of their origins and despite studies that demonstrate that immigrant youth show lower rates of criminality than Canadian-born youth, and that rates of delinquency increase with time spent in Canada (Wortley, 2003; Hagan et al, 2008). Disregarding recommendations from academics and the grassroots, governments in Canada have continued to take a “law and order” approach to youth violence. The implementation of Bill C-43: *Faster Removal of Foreign Criminals Act* threatens to exacerbate existing social divisions in Canada and disproportionately impact racialized youth who already face racial profiling and increased surveillance.

The specific case of Clinton Gayle, a 25-year old Black man from Jamaica, who was charged in 1994 with the first-degree murder of young white police officer, Constable Todd Baylis is germane to this study in several ways (Barnes, 2009). Firstly, it illustrates the theoretical construct of the moral panic, and creation of the folk devil that I employ in this study. Secondly, the case is a key site within which meanings of Blackness and criminality have been constructed in Canada. The spectre, Clinton Gayle, has been summoned repeatedly by both the

government and law enforcement to justify the government's "tough on crime" response, first in 1995 with Bill C-44, the "danger to the public" clause, and again in 2013 with Bill C-43: *Faster Removal of Foreign Criminals Act*. Thirdly, the case of Clinton Gayle demonstrates the linking of Blackness, crime, and immigration. This paper explores how it was exploited to garner support for legislative changes to allow the removal of those deemed a "danger to the public", and how it has again been mobilized by the Canadian government to reignite a moral panic around immigrant violence in justification of a bill that will expedite the removal of "foreign criminals" from Canada.

The criminalization of Blackness in Canada was brought to the front page across the nation in 1994 when Clinton Gayle, facing an outstanding deportation order, shot and killed Constable Todd Baylis and wounded his partner Constable Leone (Barnes, 2009). This shooting followed on the heels of the "Just Desserts" crime, an armed robbery involving Jamaican-born men, in which a 23-year old white woman, Georgina "Vivi" Leimonis, was killed. These incidents converged as key episodes in the new moral panic about immigrant crime that had surfaced at the time (Barnes, 2009). The media storm that erupted following the Baylis shooting focused on the fact that Clinton Gayle had been ordered deported based on prior convictions, but had not yet been removed from Canada. The media repeatedly insisted that, had Gayle been deported, Constable Baylis would still be alive. This cry was taken up by the family of the victim, the police and the Canadian public, and fuelled changes to the immigration system in 1995 that would allow deportation of individuals deemed a "danger to the public" without appeal (Barnes, 2009). This case has returned, two decades later, to justify Bill C-43: *Faster Removal of Foreign Criminals Act*.

According to the media coverage of Clinton Gayle's trial, Gayle was born in Jamaica and

immigrated to Canada with his mother at age eight (Thompson, 1994a). His father was a superintendent at the time in the Jamaica Constabulary Force. Both his father's occupation and his absence in Gayle's life were noted by the *Toronto Star* (Mascoll, 1996a). The Baylis shooting occurred two years after Gayle had been ordered deported on other charges. His appeal had been rejected and he was scheduled by Immigration Canada to obtain travel documents at the Jamaican consulate on August 24, 1993 (Thompson, 1994b). However, Gayle was not notified of this appointment and consequently failed to appear (Thompson, 1994b). This was followed by a number of administrative errors, attributed to an overloaded system. According to Ian Glen, the Associate Deputy Minister of Immigration at the time, there was no evidence that Gayle had attempted to avoid removal (Thompson, 1994b). Nevertheless, while visiting a Toronto residential building carrying a gun, extra ammunition and crack cocaine, Gayle encountered Constable Baylis and his partner, Constable Leone. In the pursuit, Gayle shot Baylis at point-blank range and wounded his partner. Gayle was also shot. Because the event occurred only months after the "Just Desserts" shooting, it instantly fed into a moral panic over immigrant crime that was already rapidly spreading, and focused especially on Black Jamaicans. Blame was immediately leveled at Immigration Canada, both for letting Gayle fall through the cracks and for taking a "too soft approach" to immigration in general (see York, 1994; Borovoy, 1994). The Immigration Minister at the time, Sergio Marchi, accepted some responsibility but also argued that gun control and societal problems in Canada should be addressed in the aftermath of such a case (Thompson, 1994a).

The court case hinged on who shot first, pitting Gayle's testimony against that of Constable Leone. While Gayle argued that the police shot first and he responded in self-defense, Leone stated that Gayle opened fire first. Gayle was convicted of murder by a jury composed of

“nine whites, two East Indians and one Asian” and sentenced to life, with 25 years without parole (Mascoll, 1996a). The Crown had challenged and struck the only two Black members of the jury, and Gayle ultimately accused the court of racism: “I don’t think it was fair for the prosecutor to have no black on the jury panel” (qtd in Tyler, 2001).

Media coverage of the shooting and the trial sensationalized the case with headlines referring to Gayle as a “cop-killer” (Mascoll, 1996a; Gombu, 1996), and identifying his immigrant status as a “fugitive” (Mascoll, 1996b). However, in an essay in the *Toronto Star*, African-Caribbean poet, writer and lawyer Marlene Nourbese Philip (1994) questioned the media’s failure to contextualize the Baylis shooting with two other killings of police officers earlier that year, in which the accused were white men. She suggested that anti-Blackness and anti-immigrant sentiment motivated the lack of balanced reporting:

To link crime to immigration as has been done over the last several weeks in Toronto is a false and dangerous ploy; it ill serves the memory of those who lost their lives in unfortunate circumstances and sows a seed bed of racism from which one can harvest only yet more hate. More than anything else, such linkages serve to remind those of us with black skins – lest we forget – that being immigrant is an immutable quality. (Philip, 1994, p. A17)

Building on analyses such as Philip’s, this study seeks to disrupt discourses of anti-Blackness and anti-immigration that criminalize and alienate racialized bodies from Canada. Contradicting a view of the benevolent nation, my findings highlight how these discourses have served as a basis to defend the hardening of Canadian borders and its immigration system.

I have opened by providing some context to the environment of anti-Blackness and recurring moral panics around immigrant crime in Canada. In the subsection *Theoretical Framework*, I further flesh out my theoretical framework, which puts concepts of moral panic and folk devils in conversation with more recent work on neoliberalism (Hall & O’Shea, 2013), multicultural neoliberalism (Melamed, 2011), as well as the dangerous individual (Foucault,

Baudot & Couchman, 1978) or ‘terrible other’ (Gilmore, 2007). Each of these has informed my analysis of parliamentary debate on Bill C-43: *Faster Removal of Foreign Criminals*. The *Methods* subsection provides an overview of critical discourse analysis and my rationale for applying it in this particular study. The second chapter, *Context*, focuses primarily on Canadian literature on immigration and the criminalization of immigrants in Canada, and the deportation legislation that preceded Bill C-43: *Faster Removal of Foreign Criminals Act*. The chapter continues with an exploration of the content of Bill C-43 and existing literature on concerns and research on the Bill. Finally, I consider the implications of the Bill for racialized youth, especially Black youth, in Canada, based on the limited existing research. This extensive literature review sets the groundwork for my third chapter, *Debating Removal*, which documents my analysis of all major parliamentary debate on Bill C-43: *Faster Removal of Foreign Criminals*. The major themes that emerge are the nationalist trope of the benevolent and multicultural Canadian nation state, and the criminalization of immigrants.

This paper is inspired by a concern about the implications of Bill C-43, particularly for racialized non-citizen youth and youth with connections to non-citizens in their families and communities. By locating this discussion of violence within a historical context of colonization and conquest, I seek to unsettle the racist assumptions that criminalize and displace Blackness in Canada. I share the hope expressed by Razack (2002), who contends that “white settler societies can transcend their bloody beginnings and contemporary inequalities by remembering and confronting the racial hierarchies that structure our lives” (p. 5). I would like to preface my work herein with the statement that it is my belief that we may honour those lost to violence by working to change the systems that produce it.

Theoretical Framework

In this study, I adapt Hall et al's (1978) moral panic framework to conduct a discourse analysis of Bill C-43: *Faster Removal of Foreign Criminals Act* within the political and media spheres. As with Hall et al's 'Black mugger', this moral panic was accompanied by a folk devil, who, I argue, has been recycled as the "foreign criminal". This framework is useful in examining legal changes, policy responses and media representations that characterize and emerge from moral panic, as explored above with regard to the folk devil Clinton Gayle. It builds on the work of deviancy researcher, Cohen (1972), who popularized the use of the moral panic framework in 1972, defining it as:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereo-typical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the subject of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself. (p. 1)

In addition, my analysis of the political discourse on Bill C-43 follows Cohen in his definition of deviance. According to Cohen,(1972) when something is defined as deviant, we should ask:

'deviant to whom?' or 'deviant from what?'; when told that something is a social problem, it asks 'problematic to whom?'; when certain conditions or behaviour are described as dysfunctional, embarrassing, threatening or dangerous, it asks 'says who?' and 'why?' In other words, these concepts and descriptions are not assumed to have a taken-for-granted status. (p. 5)

Rather than focusing on the deviancy itself, as many criminologists, journalists and policy makers have done, I apply Cohen's suggestion to examine public response, agencies of social

control and acts of deviancy in relation to each other. Cohen recognized that the relationship between the deviant act and the response was not unidirectional: a public response could lead to the hypersensitivity of the populace to the offence, which might in turn lead to increased reporting by the media. This media attention would then lead to increased action and resources allocated to agents of control (Cohen, 1972). In their work on the construction of and response to “mugging” in Britain from 1973 to 1974, Hall et al (1978) built on Cohen’s (1972) definition of moral panic and folk devils:

When the official reaction to a person, groups of persons or series of events is *out of all proportion* to the actual threat offered, when ‘experts’, in the form of police chiefs, the judiciary, politicians, and editors perceive the threat in all but identical terms, and appear to talk ‘with one voice’ of rates, diagnoses, prognoses and solutions, when the media representations universally stress ‘sudden and dramatic’ increases (in numbers involved or events) and ‘novelty’, above and beyond that which a sober, realistic appraisal could sustain, then we believe it is appropriate to speak of the beginnings of a *moral panic*. (Hall et al, 1978, p. 16; emphasis in original)

While Hall et al (1978) acknowledge crime involving violent attacks and robbery, labeled as “mugging” in early 1970s Britain, they argue that the perception of the increasing crime rate, specifically rates of “mugging”, was largely influenced by the panic around mugging. Consequently, Hall et al (1978) do not use statistics to analyze mugging, maintaining that criminal statistics cannot be used to objectively gauge the levels of criminal activity for the purposes of analysis because crime statistics reflect only reported crime, which is influenced by public responses, prioritization by police, high rates of reporting by the frightened public and the legal structures in place at the time of recording (Hall et al, 1978). Recent changes to the Canadian immigration system which significantly affect sentencing, rates of migration, visa and citizenship policy and changes to the criminal code which include the introduction of mandatory minimum sentencing similarly make any straightforward comparison difficult, if not impossible (Omidvar, 2012; Fine, 2014). Therefore, while I have used statistics to set the context for this

paper above, I recognize that analyses of deportation statistics over time are challenging due to changes in immigration and criminal justice system policy and societal trends.

A further concept from Hall et al's (1978) work on moral panic describes the accompanying racialized figure of the mugger as a folk devil, defined as an "alter ego for Virtue":

The 'mugger' was such a Folk Devil; his form and shape accurately reflected the content of the fears and anxieties of those who first imagined, and then actually discovered him: young, black, bred in, or arising from the 'breakdown of social order' in the city; threatening the traditional peace of the streets, the security of movement of the ordinary respectable citizen; motivated by naked gain, a reward he would come by, if possible, without a day's honest toil; his crime, the outcome of a thousand occasions when adults and parents had failed to correct, civilize and tutor his wilder impulses; impelled by an even more frightening need for 'gratuitous violence', an inevitable result of the weakening of moral fibre in family and society, and the general collapse of respect for discipline and authority (p. 161-162).

Similarly, Bill C-43 derives its validation from the linking of immigration and crime including the invocation of the folk devil figure of the "criminal immigrant" regardless of statistics.

Especially useful in discussing the linking of immigration and crime (or the criminalization of migrants) is Hall et al's concept of the "signification spiral":

One kind of threat of challenge to society seems larger, more menacing, if it can be mapped together with other, apparently similar, phenomena - especially if, by connecting one relatively harmless activity with a more threatening one, the scale of the danger implicit is made to appear more widespread and diffused. (p 225-6)

Ultimately, Hall et al (1978) suggest that a moral panic is used to manufacture consent and support for "increasingly coercive measures on the part of the state, and lends its legitimacy to a "more than usual" exercise in control" (Hall et al, 1978, p. 221). A moral panic is

...one of the key ideological forms in which a historical crisis is 'experienced and fought out'....To put it crudely, the 'moral panic' appears to us to be one of the principal forms of ideological consciousness by means of which a 'silent majority' is won over to the support of increasingly coercive measures on the part of the state, and lends its legitimacy to a 'more than usual' exercise in control. (Hall et al, 1978, p. 221)

This paper examines the extent to which the framework of moral panic is applicable in the study of Bill C-43. I will argue that both the “signification spiral” and the linking of immigration and crime are evident in the government’s rhetoric justifying the expanded deportation measures in the Bill.

Another useful proposition from the academic literature on moral panics is that social support for expanded measures and increased sanctions are enhanced when the situation is perceived to be of dire consequences (Cohen, 1972). This response creates new actions because the existing structures and legislation in place are no longer seen as adequate. Cohen (1972) also addresses these responses, which are classified as “hard” or “soft” solutions where “hard” ones include tougher sentencing and disciplinary action, while “soft” ones include improved home life, addressing issues of citizenship and providing more positive channels for youth to express themselves (Cohen, 1972). Applying Hall et al’s (1978) theoretical framework of the moral panic and the folk devil to structure my analysis of the parliamentary debates around Bill C-43: *Faster Removal of Foreign Criminals Act* imparts insight that moves my analysis beyond the political as partisan. As I shall argue in my discussion of the debate, this analysis identifies the diverse ways in which all members participate in the construction of moral panic.

A second framework that this paper engages with is that of ‘neoliberal common sense’, based on a later discussion by Hall and O’Shea (2013). It works in concert with that of the moral panic to reveal the ways in which politicians regularly use the rhetoric of common sense to make the claim that their political positions and actions are supported by everyday people and families:

Their policies cannot be impractical, unreasonable or extreme, they imply, because they are solidly in the groove of popular thinking - ‘what everybody knows’, takes-for-granted and agrees with - the folk wisdom of the age. This claim by the politicians, if correct, confers on their policies popular legitimacy. (Hall & O’Shea, 2013, p. 8)

Common sense is defined as:

...A form of ‘everyday thinking’ which offers us frameworks of meaning with which to make sense of the world. It is a form of popular, easily-available knowledge which contains no complicated ideas, requires no sophisticated argument and does not depend on deep thought or wide reading. It works intuitively, without forethought or reflection. It is pragmatic and empirical, giving the illusion of arising directly from experience, reflecting only the realities of daily life and answering the needs of ‘the common people’ for practical guidance and advice. (Hall & O’Shea, 2013, p. 8-9)

However, the rhetoric of common sense as a political tool which mimics the language of “the common” often orients us towards solutions that fulfill neo-conservative and neoliberal agendas, such as the expulsion of ‘unproductive’ immigrants and the hardening of the borders to immigration (Hall & O’Shea, 2013, p. 9). Common sense is a composite from different philosophical trends, but is traditionally conservative, and according to Hall and O’Shea (2013), increasingly neoliberal as well. Rather than mirroring popular opinion, politicians are “not just invoking popular opinion but *shaping and influencing* it so they can harness it in their favour. By asserting that popular opinion *already agrees*, they hope to produce agreement *as an effect*. This is the circular strategy of the self-fulfilling prophecy” (Hall & O’Shea, 2012, p. 8, emphasis in original). Drawing on Gramsci, these researchers claim that common sense is always evolving and changing even though it is rooted in history. Like “common sense”, the concept of “fairness” is evoked to achieve popular support; the rhetoric of “fairness” is used across the political spectrum (Hall & O’Shea, 2013). While proposals for achieving fairness may differ, the call for fairness goes uncontested. In the British context, it has been used to shift sentiment about recipients of government benefits, suggesting that those receiving support are doing so unfairly on the backs of hardworking families (Hall & O’Shea, 2013). Similarly, within the context of the Bill C-43 debates, the concept is invoked: it is unfair to those who go through the immigration process, obey the law and are productive immigrants, when those do not are allowed to stay. In

this way, the concept of fairness can be used to induce tougher legislation against anyone taking advantage of the system (Hall & O'Shea, 2013).

Following the Baylis shooting, calls were made for hardening of immigration law while accusations were launched at the Minister of Immigration for being “tough” in talk but “soft” in action against those who ‘cheat the system’ (York, 1994). This resonates with Ahmed’s (2004) concept of the “soft touch nation”, drawn from rhetoric of the British National Front, a white-supremacist, far-right British political party:

To be a ‘soft touch nation’ is to be taken in by the bogus: to ‘take in’ is to be ‘taken in’. The demand is that the nation should seal itself from others, if it is to act on behalf of its citizens, rather than react to the claims of immigrants and other others. The implicit demand is for a nation that is less emotional, less open, less easily moved, one that is ‘hard’, or ‘tough’. (Ahmed, 2004, p. 2)

Such discourse is also evident in Canada where, despite the fact that all but indigenous people are settlers on this land, “others” are constructed “as a threat to the state and to those who belong - the “white subject as sovereign in the nation” (Ahmed, 2004, p. 2). As Philip (1994) described in the aftermath of the Baylis shooting,

...for those of us who are black, the word immigrant lasts infinitely longer than its paper life. Long after becoming citizens, we continue to carry the burden of being immigrants – with all the negative connotations of job-stealer, criminally inclined and diseased...At best, our darker skins become badges, advertising to the world that either we or our ancestors came here from somewhere else; at worst, that we don’t truly belong in Canada. (p. A17)

The theoretical construct of the “soft touch” is thus useful in discussing political discourse on immigration policy, in which rhetoric of “bogus” refugee claims and applications for permanent residency, and of the dangerous other at the border or already inside is prominent. These groups are presented as an imminent threat with access to Canadians and those deserving immigrants who make up the Canadian ‘multiculture’, a framing that is repeated within the debates around criminal deportation policy.

Another useful model that can help us shed light on the construction of this dangerous other is Foucault et al's (1978) concept of the dangerous individual. Foucault et al (1978) examined the shift over the 19th Century from a focus on the crime and penalty to the criminal:

Legal justice today has at least as much to do with criminals as with crimes. Or more precisely, while, for a long time, the criminal had been no more than the person to whom a crime could be attributed and who could therefore be punished, today, the crime tends to be no more than the event which signals the existence of a dangerous element – that is, more or less dangerous – in the social body. (p. 2)

According to Foucault et al (1978), this concentrated the attention away from punishment of the illegal act to the inherent danger presented by the individual and the need for the protection of society from the criminal:

But by bringing increasingly to the fore not only the criminal as author of the act, but also the dangerous individual as potential source of acts, does one not give society rights over the individual based on what he is? No longer, of course, based on what he is by statute (as was the case in the societies under the Ancien Regime), but based on what he is by nature, according to his constitution, character traits, or his pathological variables. (p. 17)

The folk devil and the dangerous individual take shape, in the case of Clinton Gayle, in the telling and re-telling of the Baylis murder and the mantra that had Gayle been deported, Baylis would be alive today. Having been leveraged by the state to create stricter deportation laws in 1995, this case emerged once more in the context of Bill C-43, as this paper will further explore (Barnes, 2009).

This paper also critically investigates criminal deportation in relation to multiculturalism, Canada's official state policy. The lines of the deserving and undeserving immigrant are redrawn within the diversity rhetoric of multiculturalism, upheld by the Canadian government, which focuses on the productive, law-abiding immigrant in contrast to those who are not deserving because of their criminality. Canadian multiculturalism is generally framed in a positive light, and is emphasized as a fundamental Canadian value in political discourse regarding citizenship,

immigration, and deportation. However, according to Melamed (2011), a neoliberal iteration of multiculturalism has emerged which fits the principles of multiculturalism into a neoliberal framework in which racism becomes obscured, and the structures of neoliberalism are promoted as the strategy for ending inequality. Canada adopted the concept of official multiculturalism following a history which denies the nation's colonial and racist foundation. This state-sanctioned multiculturalism recognizes diversity as a strength and has led to a unique national identity that differentiates Canada from the 'melting pot' of U.S. assimilation (James, 2009). The Standing Committee on Multiculturalism (1987) defined multicultural integration as "a process, clearly different from assimilation, by which groups, and/or individuals become able to participate fully in the political, economic, social and cultural life of the country" (qtd in James, 2009, p. 137). When introducing the policy in 1971, Pierre Trudeau articulated the concept of the neutrality of Canadian culture: "For although there are two official languages there is no official culture, nor does any ethnic group take precedence over another" (qtd in James, 2009, p. 137). With this statement, Trudeau set the stage for the next forty years of multicultural discourse in Canada. The mainstream dominant culture that is "always on display" has been deemed neutral, no longer a category of culture or identity, and thus "the multicultural gaze centres on the margins" (Kernerman, 2005, p. 103). Hence:

[m]ulticulturalism has come to represent the understanding that society's diversity is based mainly on the race, colour, ethnicity, language, citizenship, or immigrant status differences that exist among members of the population – in other words, it is based on the presence of the "visible other". (James, 2009, p. 131)

Official multiculturalism is seen by some to conceal racism in Canada by not explicitly identifying perceived race as the identifier in 'visible minority' while the term implicitly signifies race as it is used to identify non-white settlers (James, 2009). The UN Committee for the Elimination of Racial Discrimination (CERD) criticized Canada's use of the term 'visible

minority’, saying it is “problematic not because of malevolent intent but because of the unintended consequences of unconscious racist assumptions” (qtd in James, 2009, p. 162) that come from treating “‘whiteness’ [as] the standard, all others differing from that being visible” (Thornbury qtd in Edwards, 2011). Whiteness becomes conflated with the norm, and with the neutral ‘unculture’ of Canada. In attempting to facilitate equitable integration through the official policy of multiculturalism, we “reinforce, protect, and grant legitimacy to the existing hegemonic structure” of the Canadian nation-state (James, 2009).

In her work on state-sanctioned antiracisms in the United States, and global political and economic contexts, Melamed (2011) suggests that official state actions and policies serve to mask inequalities perpetuated by capitalism, using the language of multiculturalism and gender justice. Her construction of “neoliberal multiculturalism” is useful in naming the rhetoric and actions of the Canadian government that repeatedly hold up Canada’s diversity and “productive” multicultural citizens in contrast to the “terrible few” committing crimes (Gilmore, 2007). Such discourse serves to reinforce the government’s defense for the hardening of the border in both directions: limiting entry and deporting the unwanted. Melamed (2011) argues that principles of multiculturalism are currently being rearticulated within a neoliberal ideology in which the lines of privilege are redrawn: “new categories of privilege and stigma determined by ideological, economic, and cultural criteria overlay older, conventional racial categories such that traditionally recognized racial identities – black, Asian, white, or Arab-Muslim – can now occupy both sides of the privilege-stigma opposition” (p. 86). It creates deserving “multicultural world citizens” while furthering an economic system in which the minority world continues to generate its wealth and power on the backs of those in the majority world. Melamed (2011) contrasts this with liberal multiculturalism, which she defines as “an ascendant form of official

antiracism that seemed to provide greater (cultural) recognition and (representative) equality but continued to function as a nationalist antiracism that associated Americanism with the benefits of capitalism” (p. 85). The shift to a focus on the individual under neoliberalism allows systemic inequalities and their symptoms to be masked as individual factors (Melamed, 2011).

Melamed (2011) draws on Aihwa Ong’s (2006) concept of “differentiated citizenship”, which describes the way in which differential value is ascribed to various populations by government, resulting in a variance of citizenship rights and privileges (p. 89-92). Those disenfranchised by neoliberal multiculturalism are then blamed for “their own monoculturalism, deviance, inflexibility, criminality and other attributes” (Melamed, 2011, p. 87). Differential citizenship produced by this form of neoliberalism manifests “with subjects of value for neoliberal circuits able to exercise citizenship-like entitlements beyond national borders and unvalued subjects losing elements of citizenship in situ or as migrants, a certain moral calculus normalizes these everyday relations of difference and inequality” (Melamed, 2011, p. 87). Melamed argues that this has enabled racism in the United States to emerge through action masked as “nonracial or even antiracist” (p. 87).

In making sense of the implications for those targeted and establishing a lens through which to consider the discourse around Bill C-43: *Faster Removal of Foreign Criminals Act*, this paper further draws on the work of McKittrick (2011) which suggests that Black geographies inform the conceptualization of a Black sense of place beyond oppression and domination, and resistance thereof. McKittrick warns that “when racial violence is the central analytical query (in the humanities and social sciences), the dead and dying black/nonwhite body becomes the conceptual tool that will undoubtedly complete, and thus empirically prove, the brutalities of racism” (p. 953). McKittrick argues that the voices central to this analysis are also marginalized:

it seems eerily natural that those rendered less than human are also deemed too destroyed or too subjugated or too poor to write, imagine, want, or have a new lease on life... Within this framework we can apparently 'fix' (repair) the plight of the other by producing knowledge about the other that renders them less than human. No one moves. This is what is at stake in all of our intellectual pursuits... thinking otherwise demands attending to a whole new system of knowledge wherein the brutalities of racial violence are not descriptively rehearsed, but always already demand practical activities of resistance, encounter, and anti-colonial thinking. (p. 955)

McKittrick (2011) cites the work of Gilmore (2007), which documents the racist and subjugating system of California prisons, not by further marginalizing those most affected but by centering their ongoing resistance to these systems of power. This paper recognizes these tensions and strives to disrupt the racist and colonial systems with which it engages. Rather than focusing solely on damage-focused discourse, this research seeks to identify the ways in which systemic violence is and will be perpetrated through Bill C-43, while identifying the ongoing resistance to these systems of power: "Instead of pointing to those 'without' and citing injustice, we might imagine how we are intimately tied to broader conceptions of human and planetary life and which demonstrate our common and difficult histories of encounter" (McKittrick, 2011, p. 960). This study draws on prison literature (Baca, 1998) as well as activist and academic voices within diaspora studies (Sudbury now Oparah 2002; 2004) and Black geographies (McKittrick, 2011; 2006) and the study of the prison industrial complex (Gordon, 1999; Ware et al, forthcoming), bringing these works into conversation with critical border studies.

Methods

Methodology

Critical discourse analysis (CDA) is the methodology employed in this study. CDA has been applied to investigations of power and inequality, specifically to decode and deconstruct racism, and is therefore applicable to this study of the discourse regarding criminal deportation.

Discourse is broadly defined as “an analytical category describing the vast array of meaning-making resources available to everybody” (Wodak, 2011, p. 39). CDA does not have a single framework and ranges both theoretically and analytically (Van Dijk, 2001). This method allows the linking of what Van Dijk (2001) refers to as “micro and macro approaches” of analysis. The micro-level includes discourse, verbal communication and the use of language, while macro-level would consider issues of “power, dominance and inequality between social groups” (Van Dijk, 2001, p. 354). Van Dijk (2000) explains why it is important to conduct critical discourse analysis of political debates:

Not only is it necessary to describe what parliamentarians say in debates, and how they do so, but also why these political elites speak the way they do, and what functions such properties have in the overall system of racial inequality characterizing western European societies and their ideological underpinnings. (p. 93)

According to Wodak (2011),

discourse is socially *constitutive* as well as socially shaped: it constitutes situations, objects of knowledge and the social identities of relationships between people and groups of people. It is constitutive both in the sense that it helps to sustain and reproduce the social status quo, and in the sense that it contributes to transforming it. (p. 39-40)

In this way, discourse can create and change power dynamics (Wodak, 2011) including within situations of moral panic (Hall, 1978). Discrimination is revealed and reinforced through discourse where “the strategic use of many linguistic indicators to construct in- and out-groups is fundamental to political (and discriminatory) discourses in all kinds of settings” (Wodak, 2011, p. 46). This includes discourse that constructs a positive “us” and negative “them” duality which is used within anti-immigration discourses, such as was seen in the case of the Graz, Austria city council elections in which the BZÖ (Bündnis Zukunft Österreich) employed negative and racist stereotypes in their anti-immigration propaganda (Wodak, 2011).

As a theoretically broad approach to research, CDA frequently begins with a social issue (e.g. racism), and the methodology depends on the focus of the study itself. In this case, I am examining how themes of alienation and displacement, rooted both in colonialism and racism, are discussed and obfuscated in various sites of power, including through the vectors of House of Commons debate and legislative change, and accompanying media reports.

Political discourse is a key factor in the “enactment, reproduction and legitimization of power and domination” (Van Dijk, 2001, p. 360). In examining the political discourse produced during these debates, I draw on Van Dijk (2001) whose definitions of power employ Gramsci’s concept of hegemony in which “the power of dominant groups may be integrated in laws, rules, norms, habits, and even a quite general consensus, and thus take the form of what Gramsci called “hegemony”” (p. 355). I develop this understanding of power in conversation with Gilmore (2007) who defines it as:

a capacity composed of active and changing relationships enabling a person, group, or institution to compel others to do things they would not do on their own (such as be happy, or pay taxes, or go to war). Ordinarily, activists focus on taking power, as though the entire political setup were really a matter of “it” (structure) versus “us” (agency). But if the structure-agency opposition isn’t how things really work, then perhaps politics is more complicated, and therefore open to more hopeful action. People can and do make power... (p. 247-248)

Power and racism are inextricably linked and play a role in the motivation for policy changes as well as the expected outcomes of new legislation such as Bill C-43: *Faster Removal of Foreign Criminals Act*. CDA allows for an analysis of the political discourse around criminal deportation within the theoretical framework of Hall et al’s (1978) moral panic and folk devil construct and enables a critical examination of discourse that prioritizes power and inequality.

This study obtained data primarily from government sources, and was also informed by media sources. Parliamentary dialogue from the House of Commons in session is transcribed and

published in a *Hansard* document. The main source of raw data was drawn from the analysis of *Hansards* of the parliamentary debates on Bill C-43: *Faster Removal of Foreign Criminals Act* between September 24, 2012 and February 6, 2013. For the purpose of this study, *Hansards* from the Bill C-43: *Faster Removal of Foreign Criminals* debates were sourced from openparliament.ca, a volunteer-run non-profit website that strives to make Canadian federal data, drawn directly from the Parliament of Canada website, accessible. In total, six days of debate¹ in 515 pages of Hansard documents were analyzed.

In order to contextualize the removals of foreign criminals, I submitted an application for a previously completed Access to Information report and also submitted an original Access to Information request that details removals based on serious criminality from Canada. This original application requested details of removals from Canada by year from 2004 to the most recent date available (2013). The report includes criminal removals executed from Canada between 2004 and 2013 by year, by receiving country.

Data Analysis

The analysis of parliamentary debates drew on Caulfield and Bubela's (2007) methodology which was designed to reveal tone, key themes and central arguments that emerge within a specific parliamentary debate, in the case of this paper those debates that focus on Bill C-43: *Faster Removal of Foreign Criminals Act*. Drawing on the literature review and contextual research, major themes and issues were identified that have emerged in past discourse on reform dealing with deportation, and in general discourse on the "criminal immigrant" construct, in order to extract salient information and quotations on issues from the debates. Debates were coded and significant quotes were identified based on a series of themes and issues. Selection of

¹ February 6, 2013; January 30, 2013; January 29, 2013; October 4, 2013; October 3, 2013; September 24, 2013

themes and issues was based on the content of the literature review as well as the current social and political climate in Canada regarding immigration and Blackness. Especially salient to the selection of these themes was the media discourse on Bill C-44, the “danger to the public clause” which emerged from an atmosphere of anti-immigrant and anti-Black sentiment following the Just Desserts and Baylis shootings in 1995. The specific themes and issues I coded were: (1) generosity; (2) terrorism/terrorizing; (3) humanitarian and compassionate concerns; (4) human rights violations; (5) common sense; (6) criminality; (7) youth/children; (8) national security; (9) race/racialization; (10) Caribbean; and (11) Jamaica. Key themes and issues that emerged from the data itself included the benevolence and multiculturalism of the Canadian nation state and the criminalization of immigrants. The theme of terrorism or terrorizing emerged from my literature review of texts discussing the government’s introduction of Bill C-43: *Faster Removal of Foreign Criminals*, particularly regarding the terrorizing of the Canadian public. I was also interested to explore whether terrorism would be leveraged to further defend the bill. Literature on both Bill C-44, the “danger to the public” clause and Bill C-43: *Faster Removal of Foreign Criminals Act* revealed concerns about humanitarian and compassionate concerns, and human rights violations. I was curious to discover whether the debates engaged with the issue of national security, moving beyond the everyday protection of Canadians to a larger scale. The concept of common sense is often repeated within the political discourse to imply that there is support for the proposed changes while attempting to generate that support at the same time. Finally, based on past research, media discourse and activist writing, the new provisions and the criminalization of immigrants could be expected to disproportionately impact racialized youth, particularly those from the Caribbean and specifically from Jamaica, who are often the focus of

the discourse. It was important to identify the parties who raised these concerns and the contexts within which they were discussed.

This introduction has laid the groundwork for an examination of deportation legislation in Canada and the political discourse surrounding the new Bill C-43: *Faster Removal of Foreign Criminals Act*. Studies on the disproportionate racialized subpopulations currently incarcerated in Canada and rates of deportation described earlier set the current context of criminalization and displacement of racialized non-citizens within the Canadian landscape. The frameworks described in this introduction of the moral panic and the folk devil, and the accompanying sub-frameworks of neoliberal common sense, neoliberal multiculturalism, the dangerous individual and the soft-touch nation help to make sense of the interaction of power and domination within the political discourse employed around the legislative changes to deportation through the Bill C-43: *Faster Removal of Foreign Criminals Act*. My analysis of the parliamentary debates reveals a deep investment in the idea of a benevolent and humanitarian Canada that is shared across party lines. By positioning Canada as a generous and open nation, the ongoing alienation and criminalization of racialized people in Canada is mobilized to justify the exclusion of those who do not perform as good multicultural citizens. This paper strives to make sense of the way in which elements of power and domination function through specific rhetoric, vignettes and tropes to either support or refute the need for expanded deportation legislation in Canada. At stake in these political motions is not only the lives of those facing deportation, but the ongoing structural violence of displacement and alienation of racialized individuals, families and communities residing within Canada's borders.

CHAPTER 2: CONTEXT

The Canadian nation state is predicated on the legacy of colonization and ongoing conquest of Indigenous people and oppression of racialized settlers. Yet, denial of this history extends to Canada's highest political office, as exemplified by current Prime Minister Stephen Harper's claim that Canada has "no history of colonialism" (qtd in Ljunggren, 2009).

In fact, this white settler society, established by Europeans on non-European land, "continues to be structured by a racial hierarchy" (Razack, 2002, p. 1) based on the notion of the "New World" as a *terra nullius*, unmanaged and unused land prior to the arrival of Europeans. The founding and existence of Canada is thus inextricably linked to the racialized politics of land and space. These spatial politics manifest in the creation of the reservation system to which Aboriginal people were forced through violence and threats including revocation of status (Lawrence, 2011), and ongoing land contestations across Canada. The white settler discourse justified the treatment of Indigenous people by framing them as criminal and degenerate, and therefore without "bodily integrity" (Smith, 2005, p. 10). In this way, the government frames the reserve as a degenerate space of violence, a framing that is also applied to the racialized inner city (Smith, 2005; Razack, 2002; Haritaworn, 2012).

Although Canada's history includes 200 years of enslavement of both Indigenous and Black people, there is a mythology that Canada was a "safe haven" for escaped enslaved persons, and has never participated in slavery or racism, which denies the historical presence and experiences of Blackness in Canada (McKittrick, 2011). In his 1689 (Historica Canada, n.d.) approval of slavery in New France, Louis XIV suggested that the institution of slavery might prove unsustainable because the cold climate would be uninhabitable for enslaved Blacks (McKittrick, 2011). The Canadian climate was used again to deny even a possibility of Black

Canada, in the immigration discourse in a 1952 letter from the Minister of Citizenship and Immigration, Walter Harris, who suggested that:

It would be unrealistic to say that immigrants who have spent the greater part of their life in tropical or sub-tropical countries become readily adapted to the Canadian mode of life which, to no small extent, is determined by climatic conditions. It is a matter of record ... that natives of such countries are more apt to break down in health than immigrants from countries where the climate is more akin to that of Canada. It is equally true that, generally speaking, persons from tropical or sub-tropical countries find it more difficult to succeed in the highly competitive Canadian economy. (qtd in Pratt, 2005, p. 76)

While this was never a legitimate issue, it framed Black Canada as a geographic impossibility (McKittrick, 2011). McKittrick (2011) provides additional insight into the way in which the white settler state constructs Blackness: “the displacement of black subjects and histories is achieved by attaching categories such as race, ethnicity, nation, and home to the United States and the Caribbean. To belong as black in Canada is therefore to necessarily belong elsewhere” (McKittrick, 2011, p. 99). The displacement of Blackness is not metaphorical in the context of criminal removals. Criminalization and alienation of Blackness is used to justify criminal deportations, whereby Canada successfully removes certain Black bodies while clinging to what McKittrick (2011) describes as “its seemingly democratic and benevolent geographies” (p. 103), framing those deported as risks to the nation’s security and abusers of Canada’s generosity (see Government of Canada, 2012). Continuing in the vein of Gilmore (2007) and McKittrick (2011), I draw attention to the fact that “‘premature death’ necessarily disrupts the ‘cycle of life’, insisting that ‘facing the death of freedom’ is an unnatural preventable process that informs and thus brings to life what is otherwise considered to be absolute otherness” (McKittrick, 2011, p. 959; see Gilmore, 2007).

Historically, Canada has resisted its history of Indigenous nations and non-white settlement through attempts of forced and coerced assimilation into the dominant white European

culture (Srikanth, 2012), as exemplified by the violent conquest of Indigenous peoples whose resistance often meant bodily death (Smith, 2005; Lawrence, 2012). Official multiculturalism, however, emerged in response to tensions resulting from increased immigration and diversity, in the social context of the growing momentum of civil rights, women's rights, Black power and red power movements throughout the mid 20th century in North America (Srikanth, 2012). While on the surface, official multiculturalism is based on integration without assimilation into Canadian society, the policy obscured whiteness as the invisible Canadian norm while founding multiculturalism on the "visible other" (James, 2009, p. 137). Canada's perception of itself in relation to the other is repeated internationally where Canada frames itself as a humanitarian nation state in the face of evidence to the contrary. In her introduction to *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism*, Razack (2004) references rhetoric which reinforces the Canadian mythology of a benevolent nation in the face of contrary evidence such as the horrendous human rights abuses by Canadian peacekeepers in Somalia in the early 1990s which focused media attention on the brutal torture and killing of a 16 year-old Somali prisoner. In the face of this as well as the assault, abuse and killing of other Somalis by Canadian peacekeepers, Canada established itself as the victim for having trusted a small number of deviant peacekeepers. Racist language was separated from violence, and the racist violence wrought by these peacekeepers was separated from the more macro racial and colonial workings of Canadian actions at home and humanitarianism abroad. This rhetoric of Canadian benevolence and vulnerability is echoed in the debates on criminal deportation. Razack (2004) writes:

...the essence of racism, a dehumanizing of the Other, is accompanied by a profound belief in our own superiority, a superiority conveyed in the thousand ordinary phrases we use to express national character and belonging, and to expel so many Others from the nation. (p. 14)

When the multicultural nature of Canada and its so-called history of openness and humanitarianism are frequently cited in contemporary immigration discourse, it becomes necessary to locate policy debates such as those around Bill C-43 within the Canadian socio-historical context of appropriation of land and genocide, slavery, indentured labour, racialized immigration policy and official multiculturalism.

Immigration and Criminalization of Immigrants

An examination of the criminalization of immigrants requires a historical perspective on the Canadian immigration system. Prior to the 1950s, Canadian immigration policy was explicitly racist, based on a “national purity” myth of white European belonging (Pratt, 2005, p. 73). After 1945, the Cold War inspired a national security discourse and the explicit racism of Canadian immigration policies was replaced by a focus on criminality. This shift did not succeed in removing the racial bias in the immigration system, however, because historically racialized populations have also been criminalized (Pratt, 2005). Furthermore, the system continued to disproportionately impact racialized residents through institutionalized racism in the Canadian legal system (Pratt, 2005). Amendments to the *Immigration Act* throughout the 1950s and 1960s attempted to address the racism inherent in Canada’s immigration policies, resulting in the introduction of Immigration Appeals Boards (1952), limitations to Ministerial power (1962), removal of “preferred classes” and European bias in sponsorship regulations (1962), and the extension of due process to all (1962). The 1976 Act, which introduced a skills-based point system, was heralded by some as a democratizing and de-racializing change, while others recognized that such a system would inherently prioritize applicants from developed nations. Notably for this paper, changes ushered in by the 1967 White Paper, which attempted to address concerns of national security while maintaining rights of residents, led to the tripling of

deportation rates in the five years following its implementation (Pratt, 2005). Barnes (2009) suggests that justifications used for criminal deportation today are reminiscent of those used to defend deportation when it was used as “ethnic cleansing” by the Nazis or by the British who used the Australian penal colony for policing of morality and maintenance of social order. She argues: “The principle of racial distinction and exclusion has been enshrined in Canada’s philosophy of nation building and continues to form the premise on which current immigration practices are based” (Barnes, 2009, p. 436). Canadian immigration policy has continued to have a disproportionate impact on racialized non-citizens through criminal deportations (Barnes, 2009).

According to critical literature from Ware et al (forthcoming) on the prison industrial complex (PIC), a term coined within the Black Panther Party (see Mumia Abu-Jamal, 1996 interview in suzynycpvn, 2007), there is a need for research that socio-historically maps the links between slavery, immigration and incarceration. Ware et al (forthcoming) argue that prisons are “extensions of racist and genocidal policies and practices that seek to criminalize and imprison Indigenous and racialized people, and people with disabilities” (p. 2). They suggest that Canada is slowly shifting towards a U.S. model with the introduction of mandatory minimums for drug offences. Although the purpose of these laws is to weaken criminal organizations, those most often trapped by the law are the economically disenfranchised and racialized (Ware et al, forthcoming).

In the 40th Annual Report of the Office of the Correctional Investigator (OCI) which was tabled in November 2013, the Correctional Investigator stated that the majority of prison population growth in recent years has been mainly among “ethnically and culturally diverse offenders” (Government of Canada, 2013). According to this report, in the past decade the

number of white inmates has dropped by 3% while Aboriginal inmate populations increased by 46.4% and other “visible minority groups” increased by 75%. Almost one in four inmates are foreign-born. Black Canadians make up less than 3% of the country’s population, but account for 9.5% of federal inmates, an increase of 80% since 2003/2004 (Government of Canada, 2013). While the Correctional Investigator report notes that these numbers are shocking, it merely recommends diversity training and a more diverse prison workforce (Government of Canada, 2013). Provincial race-based incarceration data is not collected for any groups other than Aboriginal populations (Ware et al, forthcoming).

Historically, the Liberal and Conservative parties in Canada were relatively aligned on issues of incarceration and crime. In a 1938 Royal Commission report, it was suggested that, for the majority of individuals who are incarcerated, prison “leaves them worse members of society than when they entered them” (Greenspan & Doob, 2012). In the 1980s, both Liberal and Conservative parties advocated for “restraint” in sentencing; incarceration was seen as necessary but not as a strategy for rehabilitation and reintegration (Greenspan & Doob, 2012). From the 1960s to the 1990s, the parties agreed that prison had no effect on crime rates. According to Greenspan and Doob (2012), the entrance of Stephen Harper into office of the Prime Minister in 2006 created a shift towards a “tough on crime” agenda that brought in mandatory minimum sentencing, increases in sentencing length for some crimes and the restriction of the use of non-carceral sanctions, even though crime rates had been dropping for 15 years (Greenspan & Doob, 2012). According to these authors, one a prominent lawyer and the other a professor of criminology, ““tough on offenders’ bills seem popular, and they constitute an easy sell to the government’s conservative base” (Greenspan & Doob, 2012). The authors argue that this policy has violated the economic principles of the party as the cost of incarceration is significant: one

year of federal incarceration costs approximately \$117,000 each year while provincial incarceration costs approximately \$58,000. The authors argue that:

Between 2006 and 2011, when it achieved a majority, the Harper government introduced an incoherent torrent of sixty-one separate criminal justice bills, a virtual tsunami of punishment. While many of these bills never became law, they imposed a view of offenders that constitutes a fundamental break with the country's past. To focus solely on the fact that the government made some penalties harsher is to miss the point: it wants to change the way Canadians view wrongdoers. In the government's eyes, the world is simple: there are "bad" people (those who have broken the law), and there are "good" people (everyone else). (Greenspan & Doob, 2012)

The government has also increased the costs for applying for a pardon from \$50, to \$150 and then to \$631, arguing that the public should not bear the burden of pardon application costs (Greenspan & Doob, 2012). Referring to these changes to the pardons system, the authors argue that "'forever' rules are inherently blunt and unfair" (Greenspan & Doob, 2012).

A governmental penchant for 'forever rules' is also appearing within immigration policy at the intersection of the criminal "justice" system and immigration. Greenspan and Doob (2012) cite former solicitor general Jean-Pierre Goyer in 1971 in a statement to the House of Commons:

For too long a time now...our punishment-oriented society has cultivated the state of mind that demands that offenders, whatever their age and whatever the offence, be placed behind bars. Even nowadays, too many Canadians object to looking at offenders as members of our society, and seem to disregard the fact that the correctional process aims at making the offender a useful and law-abiding citizen, and not anymore an individual alienated from society and in conflict with it...We will undoubtedly have to keep protecting society against dangerous criminals, but we will also take into consideration the fact that most inmates do not belong to such a category...[An] inmate is always a citizen who, sooner or later, will return to a normal life in our society, and as such is basically entitled to have his human dignity, of course, but also his rights as a citizen respected by us to the largest possible extent. (qtd in Greenspan & Doob, 2012)

A potent critique of the prison industrial complex from Jimmy Santiago Baca, a writer and poet of Chicano and Apache descent and former prisoner of the San Quentin prison, describes prisons in the United States as a second country:

I realized that America is two countries: a country of the poor and deprived, and a country of those who had a chance to make something of their lives. Two societies, two ways of living, going on side by side every hour of every day. And in every aspect of life, from opportunities to manners and morals, the two societies stand in absolute opposition. Most Americans remain ignorant of this, of the fact that they live in a country that holds hostage behind bars another populous country of their fellow citizens. (Baca, 1998, p. 363)

Angela Davis, speaking on the prison industrial complex within the United States, reinforces this analysis suggesting that

Once the aura of magic is stripped away from the imprisonment solution, what is revealed is racism, class bias, and the parasitic seduction of capitalist profit. The prison industrial system materially and morally impoverishes its inhabitants and devours the social wealth needed to address the very problems that have led to spiraling numbers of prisoners. (qtd in Gordon, 1999, p. 147)

If the removal of racialized bodies into the prison system can be read as their removal into a second country (Baca, 1998), simultaneously reproducing racism while hiding it (Oparah/Sudbury, 2002), deportation is the *actual* removal of racialized bodies to a ‘third country’ (Peutz, 2006) reproducing racism while *displacing* it into the Caribbean and other parts of the majority world.

The criminalization and demonization of immigrants is compounded by the assumption, made by people across race lines,

that the actual people who go to prison are the same as those the abolitionist Ruth Morris called the “terrible few”. The terrible few” are a statistically insignificant and social unpredictable handful of the planet’s humans whose psychopathic actions are the stuff of folktales, tabloids (including the evening news and reality television), and emergency legislation. When it comes to crime and prisons, the few whose difference might horribly erupt stand in for the many whose difference is emblazoned on surfaces of skin, documents, and maps - color, credo, citizenship, communities, convictions. (Gilmore, 2007, p. 15-16)

This echoes Oparah’s (formerly known as Sudbury, 2002) work on the criminalization and incarceration of Black women:

The prison has traditionally served the purpose of separating those who have ‘offended’ whose behavior is qualitatively different from that of ‘normal’ people and must therefore be analyzed using different tools, hence the existence of criminology as a distinct discipline. (Sudbury, 2002, p. 71)

Through an examination of prisons within the construction of a Black sense of place, Oparah brings confinement into diaspora studies drawing on a historical perspective of enslavement and confinement. Time and space in prison are manipulated as a form of punishment (Oparah/Sudbury, 2004). Oparah (formerly known as Sudbury, 2004) draws on the collective memory of enslavement, aligning it with present day imprisonment. The framing of the prison as a racialized space creates a cycle of racialization of crime and criminalization of race (Jiwani, 2001; Oparah/Sudbury, 2004), and Oparah (formerly known as Sudbury, 2004) suggests that the prison should be seen as a “new diasporic site” (as described by Mecke Nagel): “the prison as diasporic site is the nexus connecting contemporary experiences of repression and resistance to collective memories of slavery and rebellion” (p. 160). While in Gilmore (2007), those who are criminalized and convicted are removed from society and caged, deportation physically removes individuals following incarceration as a form of “double punishment” (Peutz, 2006, p. 220).

A crisis has been developing at the intersection of race, criminalization and immigration in Canada. Jails and prisons have become racialized spaces housing and hiding what is symptomatic of pervasive systemic violence in North America. For those without citizenship, it is only the first step of their removal from Canadian society before their right to be in the country is stripped entirely. The literature clearly reveals that policies that support harsher punishment through imprisonment and through deportation are neither addressing the contributing societal factors of racism and inequality, nor acknowledging the responsibility to develop a humane and effective response.

Prior Deportation Legislation (C-44; C-11)

In 1995, Bill C-44, the “danger to the public” clause, was introduced amid a moral panic about imported criminality following two high-profile Toronto shootings (Barnes, 2009). Bill C-44 was popularly known as the “Just Desserts” bill in reference to the bakery in which an attempted robbery resulted in the death of a young white woman named Georgina “Vivi” Leimonis. Four young Black men, two Jamaican-born, were charged (Barnes, 2009). The second incident, which has been described in detail in the *Introduction*, was the shooting of white police officer Todd Baylis by Clinton Gayle, a Black Jamaican national previously ordered deported on a separate charge (Barnes, 2009). The media response to the “Just Desserts” shooting focused on Grant, one of the three charged. Prior to his acquittal, Grant was held in jail for almost six years. In an article written after Grant’s death, *Toronto Star* journalist Contenta (2007b) describes his experience:

He was crowded with other men in a cockroach-infested cell meant for one person, suffered attacks from prisoners and was prevented from having physical contact with his wife and children. Barely literate, he spent his imprisonment slowly reading the Bible and transcripts of his trial. Once released, he was diagnosed with post-traumatic stress disorder brought on by his jail experience. Grant hadn't exactly been a model immigrant before his acquittal for manslaughter. He accumulated a string of criminal charges and in 1992 was handed a deportation order after convictions for drugs and assault with a weapon. A landed immigrant, he appealed and won a temporary stay: if he didn't commit a crime in five years the order would be lifted. (Contenta, 2007b)

Years later, despite Grant’s acquittal in the Leimonis murder, and a clean record for more than the prescribed five years, the government pressed for deportation. In 2002, an adjudicator ruled that Grant had failed to notify the government of his address change while in the Don Jail, and in addition was a danger to the public (Contenta, 2007b). According to a *Toronto Star* article written after his death, “armed police, with an attack dog, threw him face down in the snow on

Lawrence Ave. W., and cuffed him. He was deported days later” (Contenta, 2007b). On October 29, 2007, Grant was murdered in the bus terminal in Kingston, Jamaica, five days before the birth of his son, O’Neil Jr. (Contenta, 2007b). Following the “Just Desserts” shooting, Grant had become a “poster boy” (Contenta, 2007b) for a “get tough” policing response by the government of “criminal immigrants” (Barnes, 2009; Pratt, 2005).

Following the “Just Desserts” and Baylis shootings, the push for tougher conditions for non-citizens convicted of crime resulted in the Bill C-44 amendment which enabled the deportation of permanent residents without right of appeal, or arrest, and indefinite detention when deemed by the Minister to be a “danger to the public” (Pratt, 2005). According to Dent (2002), this legislation created “a new classification of permanent resident” based on rights, as this group no longer has access to the process of appeal (p. 750). Criticism of the Bill was widespread. Pratt (2005) argued that the bill failed to legally define a “danger to the public,” allowing the Minister extensive discretionary powers, and did not account for variations in law enforcement and sentencing across the country (p. 435). Changes that accompanied Bill C-44 “represented a shift from the adjudicative to the political end of the spectrum” (Dent, 2002, p. 757). According to Barnes (2009), the significant increase in deportations of Jamaican nationals appeared to coincide more closely to the moral panic that erupted around the shootings than to the “danger to the public” changes themselves. Literature on Bill C-44 and its social context suggests that residents of African descent, particularly the African Jamaican community, were especially impacted at this time (Henry & Tator, 2002; Barnes, 2002). Ironically, the “Just Desserts” shooter, a Canadian citizen, was not subject to deportation; Clinton Gayle was already facing a deportation order and had lost the appeal. The delay in his deportation was a result of mismanagement of his case, not lenient deportation policy (Canadian Bar Association, 2012).

Nevertheless, following on the heels of the Bill C-44, the “danger to the public” clause, came Bill C-11, the new *Immigration and Refugee Protection Act* (Dent, 2002). Dent (2002), a law clerk with the Court of Appeal for Ontario, published an extensive examination of legislative changes of Bill C-44, the “danger to the public” clause, and Bill C-11, the new *Immigration and Refugee Protection Act*. Coming from a liberal discourse, Dent (2002) also found the bills problematic, although he did not acknowledge the problematic nature of international treaty standards such as the ICCPR and the Canadian Charter of Rights and Freedoms as grounded in genocidal notions of who deserves to live and die (Foucault et al, 1978). According to Dent (2002), Bill C-11 enabled the automatic withdrawal of appeal rights for individuals convicted of crimes that carry maximum sentences of 10 years or more, and are sentenced to serve 2 years or more in prison, without consideration of circumstances, time spent in Canada or likelihood of recidivism (Dent, 2002). Dent (2002) conducted a review of both Bill C-44 and Bill C-11 to consider whether they are in violation of the *Canadian Charter of Rights and Freedoms* and international law. Although Dent (2002) found Bill C-11 to be legal under the *Canadian Charter*, he suggests that Bill C-11 should be considered in contravention of international treaty standards as it fails to prioritize the right to individual liberty, and rights of family and the rights of the child. Excluding cases where “compelling reasons of national security” exist, any individual legally within the state must “be allowed to submit the reasons against his expulsion and to have his case reviewed, and to be represented before the competent authority or a person or persons especially designated by the competent authority” (ICCPR qtd in Dent, 2002, p. 774). The circumstances most often used in appeals to deportations include:

the seriousness of the offence; the possibility of rehabilitation; the impact of the crime on the victim; the remorsefulness of the applicant; the length of time spent in Canada and the degree of establishment; family in Canada and the dislocation that would be caused by deportation; efforts of applicant to establish him or herself in Canada, including

employment and education; the support available to the appellant from family and community; and the degree of hardship that would be caused to the appellant by his or her return to the country of nationality. (Dent, 2002, p. 754)

In addition, Dent (2002) suggests the Bill C-11 violates the right to be free from arbitrary interference in the family by the state, arbitrariness being defined as “contain[ing] elements of injustice, unpredictability or unreasonableness” (Dent, 2002, p. 775).

Bill C-11 (2002) was the first change to immigration legislation as a whole since 1976. In the lead up to the introduction of this bill, recommendations made to the government called for access to the appeals process, and consideration of length of residency. A legislative review began in 1996 with a 3-person panel that produced the “Not Just Numbers” report which argued that

public perception of immigrant criminality was out of proportion to actual statistics, and resisted calls for a reduction in due process to respond to these concerns. The report explicitly emphasized the importance of a right of review for landed immigrants facing removal, and recommended a statutory stay of deportation until a final decision is reached. (Dent, 2002, p. 758-759)

Dent (2002) cites a June 1998 Standing Committee on Citizenship and Immigration report titled Immigration Detention and Removal that recommended the government should provide certain protections for long-term permanent residents, especially if they arrived at a young age (Dent, 2002). The government agreed to consider this recommendation and, in 1999, critically examined the “danger to the public” clause in *Building on a Strong Foundation for the 21st Century* (white paper) which argued that “the deportation system for criminals should focus on transparent, objective factors, such as the nature of the offence, rather than more subjective factors, such as the likelihood of future dangerous behaviour” (Dent, 2002, p. 760). Nevertheless, Bill C-11: *Immigration and Refugee Protection Act* was introduced on February 21, 2001 in the House of Commons, stripping the right for non-citizens to appeal their removal if sentenced to

two years or more for a crime carrying the maximum sentence of 10 years or more. As explained above, Dent (2002) suggests that Bill C-11 would be held up in Canadian Supreme Court, but argues that it is in contravention of the UN *International Convention on the Rights of the Child* (CRC), on the grounds that C-11 fails to consider both interests of the individual and family and those of the State, but concludes:

...no Charter challenge to this legislation is likely to succeed unless the courts accept that Canada's international legal obligations apply no less in the field of immigration law. Barring this development, permanent residents will suffer the denial of their rights, and all Canadians will suffer the erosion of our reputation as a country committed to upholding human rights for everyone. (Dent, 2002, p. 784)

The discourse linking immigration and crime intensified following the “9/11” attacks on the World Trade Centre in September 2001 (Hyndman, 2012). Even though the perpetrators were in the United States legally, the attacks bolstered the criminalization of migrants – “migrants as a vector of insecurity” – even those who are brought in for their labour (Hyndman, 2012): “The production of fear creates crises in need of response: stricter migration controls, less porous borders, tighter visa restrictions on travelers and the exclusion of those who are perceived as threats” (Hyndman, 2012, p. 246).

Critical border studies have been active in examining the treatment of refugees and migrants entering and within Canada, including their removal. Although there is a paucity of critical border studies research on criminal removals specifically, the work of critical border studies has something to contribute to the scholarly discourse on criminal deportation. Hyndman and Mountz (2007) argue that “engaged research” must challenge “unfounded assumptions; prove that migration is not synonymous with terrorism and insecurity; and persuade the public of this” (Hyndman & Mountz, 2007, p. 89). They critique the actions of the Canadian government in restricting access for refugees to Canada: “With the implementation of policies that favor state

security over human security, governments are slowly eroding international commitments to protect by undermining the chances for potential refugees to reach sovereign territory and make claims” (Hyndman & Mountz, 2007, p. 77). Mountz (2011) critically examines the moral panic, detention and removal of Sri Lankan Tamil migrants seeking refuge by boats to the shores of Canada. She suggests that entry points to Canada are constantly being reduced while exclusions are concealed by a dearth of relevant empirical data (Mountz, 2011). Similar to criminal removals, criminalization of asylum seekers is used to justify exclusion, detention and removal (Mountz, 2011). Treatment of migrants is also connected to international ties. The Canadian government appears to be willing to deport individuals from countries, like Jamaica or Colombia, whose trade may be less valuable to Canada, despite protests from their governments (Contenta, 2007a). In cases of migrants arriving from China, “the acceptance of these claims would embarrass China, whom Canada and the US courted as trading partner” (Mountz, 2011, p. 327).

Critical border studies echo the concerns around the criminalization of migrants and the increasingly draconian policies of the Canadian government. This work on the treatment of asylum seekers in Canada reflects a more widespread approach by the government to harden its borders to immigrants, which includes the toughening of criminal deportation legislation. Even within a liberal discourse, the *Immigration and Refugee Protection Act* is criticized for contravention of international human rights. Moral panics have consistently served to enable the hardening of immigration legislation in Canada, whereby criminalization of asylum seekers and other immigrants has been used to justify the detention and removal of migrants.

Bill C-43: *Faster Removal of Foreign Criminals Act*

The most recent response in the Canadian government's "law and order" agenda is Bill C-43 which focuses primarily on criminal removals. In June 2012, then Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, introduced Bill C-43: *Faster Removal of Foreign Criminals Act*, announcing that the "Harper government is putting a stop to foreign criminals relying on endless appeals in order to delay their removal from Canada during which time they continue to terrorize innocent Canadians" (Kenney qtd in Government of Canada, 2012). According to the government, Bill C-43 focused on three key goals: (1) facilitate the removal of "dangerous foreign criminals" from Canada; (2) make entry for "those who may pose a risk to Canada" more difficult; and (3) remove barriers for "genuine visitors" in gaining entry to Canada (Government of Canada, 2012).

Jason Kenney served as Canada's Minister of Citizenship, Immigration and Multiculturalism from 2008 to 2013, the longest term of any minister in history (McDonald, 2014). His incendiary rhetoric was combined with high profile actions that targeted immigrants and refugees, such as the apprehension of passengers on board two boats of Tamils escaping Sri Lanka's civil war and their detention and interrogation over the following months, and massive cuts to refugee healthcare (McDonald, 2014). A devastatingly effective conservative Minister of Citizenship, Immigration and Multiculturalism, Kenney fostered a system that is "screening out the elderly, people with infirmities, and those who had shown up unasked, in favour of the young and the skilled" who would be able to work and "then blend seamlessly into Canadian society" as economically productive immigrants (McDonald, 2014). Impacts on Canada's reputation abroad have been attributed to his rhetoric and actions, with fewer than 10,000 people seeking asylum in Canada in 2013, less than half the number of recent years (McDonald, 2014). In a

2012 *Toronto Star* editorial, he was called “the most competent immigration minister the country has had in 20 years...knowledgeable, hard-working and he actually wants the job”; however, it goes on to say that he has put these characteristics to use in systematically dismantling the already limited protections and structures that support refugees and immigrants to come and to stay in Canada (Goar, 2012). One former Liberal leader is quoted under anonymity saying “With Jason, what you see is absolutely not what you get” (McDonald, 2014).

Government communications claim that changes to legislation under Bill C-43 “would ensure that foreign nationals who are inadmissible on the most serious grounds - security, human or international rights violations, or organized criminality - will no longer be able to delay their removal” through the appeals process, “meant for cases deserving of humanitarian and compassionate consideration” (Government of Canada, 2012). It is also intended to punish those who “try to cheat the system” (Government of Canada, 2012) and to allow temporary entry for low-risk individuals who were previously refused entry due to inadmissibility of family members related to non-security issues. Bill C-43 has, in fact, made changes to the *Immigration and Refugee Protection Act* that are not supported with evidence nor considered necessary to accomplish the claims made by Minister Kenney (Canadian Bar Association, 2012). The Canadian Bar Association (2012) suggests that the existing *Immigration and Refugee Protection Act* already adequately addressed these concerns, and that the Bill C-43 changes are extreme and unnecessary.

Like Bill C-44, the “danger to the public” clause, Bill C-43 was introduced amid a moral panic about racialized and immigrant violence (Worthington, 2012). In 2012, a high profile shooting occurred at the Eaton Center in which 23-year old Christopher Husbands shot and killed one person, the target, and injured six others. This story re-ignited the panic about violence

escaping the “ethnic enclaves” of the city as emerged following the accidental shooting of Jane Creba, a young White girl, at the Eaton Center in 2005 (Davis, 2012; see Worthington, 2012). Media coverage rendered criminalized Blackness hypervisible (McKittrick, 2011) through stories about “minority” violence, specifically the “disproportionate” violence perpetrated by and also on Jamaicans as victims. Some other reports made note of Husbands’ Guyanese origins (Pagliaro and Rush, 2012). The media played a role in exacerbating the perception that the violence in Toronto has cultural links (Worthington, 2012) and fostered the linking of violence to culture (see Thomas, 2011 for a discussion of culture-violence) and immigration. Media reports on violence and policing associated Black violence in Toronto with the Caribbean, not only through the frames used (Ezeonu, 2008) but also by reports of police practices, such as the frequent “carding” of young Black men, whereby, in one reported case, a Black Canadian man in Toronto was recorded as “Jamaican” and as “Caribbean in appearance” (Rankin and Winsa, 2013). Canadian Blackness continues to be discursively displaced and criminalized, thus motivating the excessive toughening of immigration law.

Bill C-43: Concerns and Research

Bill C-43 received Royal Assent in June 2013, and although there is little peer-reviewed research to-date on its implications, prominent Canadian organizations including the Canadian Bar Association (2012) and Amnesty International Canada (2012) have expressed serious concerns and called for the Bill to be withdrawn or substantially amended. Amnesty International Canada (2012) argued that the Bill threatens to contravene multiple binding international human rights treaties signed by Canada, potentially violating both international law and the Canadian Charter of Rights and Freedoms. While the Canadian Bar Association noted that the Bill addresses limitations on admissibility for temporary entrants, they considered the rest of the

“proposed amendments...excessive, harmful and unnecessary” (Canadian Bar Association, 2012, p. 1). In addition, the Canadian Bar Association expressed concerns including (1) the loss of appeal rights; (2) the obligation to attend and share information at a Canadian Security Intelligence Service (CSIS) interview; (3) the expanded authority of the Minister to deny entry; (4) the new limitations to humanitarian and compassionate relief; and (5) the new consequences for misrepresentation on applications (Canadian Bar Association, 2012).

The changes to appeal rights are significant for permanent residents of Canada. The Bill now allows deportation without appeal or consideration of circumstances on single convictions with at least a 6-month sentence for crimes with maximum sentencing of 10 years or more. Risk of recidivism, sentencing disparities between jurisdictions, and time spent in Canada are no longer considered (Canadian Bar Association, 2012). In addition, these changes make no distinction between conditional sentences, which are served in the community and are generally longer, and incarceration for equivalent convictions (Canadian Bar Association, 2012). Bill C-43 also removes access to the Immigration Appeals Division (IAD) for permanent residents charged with foreign offences, regardless of conviction. This fails to consider the effectiveness of foreign police and legal systems, and does not require a conviction to lead to deportation without appeal, only that the same offence, if committed in Canada, would carry a maximum sentence of ten years or more (Canadian Bar Association, 2012). Similar to the Canadian Bar Association (2012), Amnesty International Canada (2012) argues that restricting right to appeal and increasing the power of the Minister is discriminatory and in violation of the *International Covenant on Civil and Political rights* (ICCPR). According to the Human Rights Committee (HRC), denial of appeal must be based on “compelling reasons of national security.” It can be argued, however, that these new changes would include offences that by no means constitute

“compelling reasons of national security” (Amnesty International Canada, 2012, p. 11). The Canadian Bar Association (2012) points out that a young permanent resident of Canada could face deportation without appeal, if charged for attempting to enter a bar with fake identification. Consideration based on humanitarian and compassionate grounds for those deemed inadmissible have been eliminated for “serious” concerns which are so broadly defined, according to the Canadian Bar Association (2012), that they could conceivably include shoplifting under “organized criminality” under Bill C-43 (p. 4).

Several other provisions under the act have come under criticism. Bill C-43 was made effective retroactively for cases and convictions not yet referred to the IAD. Therefore, while trial judges must consider the consequences of sentencing for foreign offenders, their decisions could not have considered the potential of deportation or deportation without the right to an appeal, under the new law. In addition, foreign nationals making an immigration application are now required to attend a CSIS interview where they may be required to inform on other cases, possibly destabilizing and placing specific communities and networks at risk. Canadian citizens are protected from this kind of intelligence gathering under the *Canadian Charter of Rights and Freedoms*, and the Canadian Bar Association (2012) argues that “this fundamental protection is not and should not be limited to citizens” (p. 3). Under the bill, the Minister has increased authority to deny entry to applicants who would not be inadmissible on other grounds for up to three years per application based on the poorly defined “public policy grounds”. The Canadian Bar Association (2012) suggests that the IRPA already adequately addresses such concerns, and that this change potentially enables political decisions based on unnecessarily broad conditions. Finally, inadmissibility based on misrepresentation on applications has been extended from two to five years, and prevents application for permanent residence during that time. There is no

distinction between intentional misrepresentation and unintentional errors which could occur because of limited language skills, or the use of inadequate support provided by a third-party. This change would give every case the maximum punishment and would not allow for any consideration based on humanitarian and compassionate grounds (Canadian Bar Association, 2012). Given that Bill C-11 was already in contravention of the UN ICCPR for the removal of appeal according to Dent (2002), it is consistent that further limitations to rights of appeal have also been criticized for contravening international human rights.

This transnational lens includes concerns regarding Canada's responsibility to prosecute or extradite individuals suspected of crimes under universal jurisdiction, including terrorism charges. Historically, Canada removes or prevents entry of suspected criminals, which does not comply with the obligation to ensure these people are held accountable and justice is sought for serious international crimes (Amnesty International Canada, 2012). Bill C-43 would only further the practice of removal rather than extradition or prosecution (Amnesty International Canada, 2012). In addition, Amnesty International (2012) warned that Bill C-43 might fail to protect individuals at risk of torture or other human rights violations in the receiving country. The literature on deportations considers problems of global security and stresses on receiving countries (Barnes, 2009). According to research reported by Barnes (2009), Jamaican stakeholders held varying opinions about deportation as a receiver country. Some suggested that deportation would increase social problems like crime, unemployment, and drugs in Jamaica. Others viewed deportation to Jamaica from Canada as potentially positive, "suggesting that Jamaica could potentially benefit from the return of highly skilled persons or individuals with significant assets" (Barnes, 2009, p. 443). In general, respondents were concerned about Jamaica's national security, suggesting that criminals from abroad might bring "high levels of

viciousness and greater sophistication in criminal enterprise into the Jamaican society” (Barnes, 2009, p. 443). This concern was also raised by adult Haitian migrant respondents in Montreal (Drotbohm, 2009). Although some thought that deportation was positive, and would prevent negative perceptions of the Haitian community, the majority shared compassion for the deportees and concerns for Haiti as the receiving state (Drotbohm, 2009). Both studies identified concerns about the risk factors faced by deportees both in Jamaica and in Haiti, which included issues of their re-integration: stigmatization of deportees, limited employment opportunities and the trauma of the deportation process (Drotbohm, 2009; Barnes, 2009). In the context of a transnational discourse on deportation and security, the deportation of dangerous criminal offenders implies a clear benefit to the sending country. For the receiving countries, however, “the potentially negative repercussions could hardly be seen as enhancing global security” (Barnes, 2009, p. 444). Barnes (2009) argues that:

If global concerns about security are to be taken seriously, it seems counter-intuitive that the nations at the forefront of the charge to create a safer global community would deliberately engage in action that effectively shifts the burden of maintaining that security to countries that are least equipped to do so. (p. 444)

Ultimately, Barnes (2009) calls for a transnational approach “which will seek to enhance global security in a world that can no longer be contained within geographically defined borders” (p. 445). Amendments under Bill C-43 have the capability of criminalizing non-citizens who pose limited, if any, threats to global security. While a transnational approach should be considered in the cases of more serious crime, these changes exceed issues of security and expand criminalization which can be expected to disproportionately impact those already marginalized in Canadian society, their families and their communities. None of the recommendations made by either of Amnesty International Canada (2012) or the Canadian Bar Association (2012) were implemented within the legislation.

Bill C-43: Implications for Youth

This Bill is an example of systemic violence that has the potential to foster an increasingly hostile environment for non-citizens and their communities in Canada. Amnesty International Canada warns that Bill C-43 “fails to adequately safeguard rights related to the best interest of children” and could lead to permanent separation of families (Amnesty International Canada, 2012, p. 4). Based on existing youth violence research, there are significant concerns that Bill C-43 will contribute to the criminalization and increased risk of violence for racialized youth in Canada, and will have a disproportionate impact on those of African Caribbean descent.

In 2008, Ontario Premier Dalton McGuinty commissioned an extensive review and study on youth violence in Ontario. *The Roots of Youth Violence Report* (McMurtry & Curling, 2008) moved beyond symptoms and manifestations of youth violence to consider its root causes. The report suggests that Ontario has failed to address serious systemic inequality, and as a result racism is an escalating problem in the province (McMurtry & Curling, 2008). The report identified the following as “roots” of youth violence: poverty, racism, community design, issues in the education system, family issues, health, lack of a youth voice, lack of economic opportunity for youth, issues in the justice system, and concentration of root causes in some geographic areas. These “roots” give rise to risk factors for violence that disproportionately impact racialized youth, especially lower-income youth, who face the alienation of racism in Canada (Walcott et al, 2008). These youth also face the brunt of youth violence (McMurtry & Curling, 2008; Walcott et al, 2008). Factors that create “the immediate risk of involvement in serious violence” for youth include feelings of alienation and low self-esteem, lack of empathy, impulsivity; perceived feelings of oppression and unfair treatment; the belief that they “neither

belong to nor have stake in the broader society”; the belief that their voices are not being heard; and the lack of hope (McMurtry & Curling, 2008, p. 5-6).

Youth and Community Development in Canada and Jamaica: A Transnational Approach to Youth Violence is a 2011-2014 interdisciplinary research project that brings together academic and community partners in Canada and Jamaica as an intervention into the climate of violence to which Black youth are exposed (Davis, 2012). This project considers the potential for programs that foster a transnational understanding of the social, cultural and historical contexts facing Black youth (ages 16-26) in Canada and Jamaica (Davis, 2012). The project has worked to achieve outcomes including positive behavioural change for youth participants; contributions to the existing literature on youth violence and development; influence public policy; and boost public awareness. The ages of youth include both those who could be sentenced as young offenders, and those who would be sentenced as adults.

The first series of focus groups conducted by the project revealed Black youth’s “consistent prioritization of systemic violence (poverty in Jamaica and racism in Canada) over physical and gendered violence” (Davis, 2012, p. 332) which echoed the earlier findings of Walcott et al (2008). This supports Voronka’s (2010) critique of McMurtry and Curling’s (2008) *Review of the Roots of Youth Violence*, for pathologizing racialized youth and violence, arguing that the report reinforces the discursive link between racialized youth and violence by failing to identify systemic violence as violence faced by youth, thus perpetuating the construction of the violent young Black male. While this current interdisciplinary research project does not deny the relationship between social inequality and youth violence, identified by McMurtry and Curling (2008), it supports Voronka’s (2010) claim that the recognition of systemic violence is important to denaturalize the assumptions around the youth as the original site of violence. According to

Davis (2012), “youth in Toronto, like youth in Jamaica, insist[ed] on identifying physical violence only in relation to larger, more pervasive systemic violence” (p. 340). The highly spatialized representation of youth violence in Canada is reflected in McMurtry and Curling (2008), who suggest that poverty has “become racialized, and then ghettoized and associated with violence” (p. 3). Ultimately, McMurtry and Curling (2008) call for federal and provincial government action as a necessary step towards long term change in the lives of youth currently most placed at risk.

The actual level of violence, especially that experienced by young Black men, is difficult to gauge due to limited data on crime and race, and the dependence on court data as a source which is subject to changes in legislation (Wortley, 1999; Harrison et al, 2001). Wortley (1999) suggests in his article “Northern Taboo: Research on Race, Crime and Criminal Justice in Canada”, that Canada could benefit from data on race and crime collected and disseminated through “special studies” that would include context, and make note of the strengths and weaknesses of the data as well as suggestions for how it might be used in order to mitigate its potential to be used in problematic and racist ways. Available race-based data on youth violence suggest that racialized and Indigenous youth face disproportionate contact with the criminal justice system. Fitzgerald and Carrington (2011) found that disproportionate contact between law enforcement and “visible minority” non-violent youth could not be explained by risk factors, suggesting racial discrimination by law enforcement. Researchers have linked racialization and contact with the criminal justice system to the growth of a prison population with disproportionate numbers of racialized individuals (Wortley & Tanner, 2004). In addition, Wortley and Owusu-Bempah (2009) found that Black Canadians are more likely to perceive racial discrimination in the Canadian criminal justice system-compared to other racialized

Canadians. These perceptions became increasingly salient with increasing time spent in Canada, and were the strongest among Canadian-born Black and Chinese respondents (Wortley & Owusu-Bempah, 2009). The authors emphasize the importance of these findings, and warn that these perceptions could be risk factors for future crime and pose a risk to the “general public.” At their base, these perceptions are indicative of systemic oppression that should not be ignored.

Currently, the approach to youth justice has been the implementation of “get tough” law-and-order tactics combined with a rehabilitation strategy that individualizes youth crime, and “pathologize[s] the individuals instead of the social system” (Alvi, 2012, p. 79). Following the 2011 shooting of a young Black student in a Toronto high school, the Ontario and Federal governments took action to address what was perceived as a crisis of violent youth crime sweeping the city. This response included funding for an increased police force; a strengthened “guns and gangs” enforcement strategy; and the construction of the Roy McMurtry youth superjail, despite the Meffe Inquest Report which discouraged the housing of youth in such facilities (Abebe & Fortier, 2008). The federal government’s “Violent Crimes Act” ushered in minimum sentencing for young offenders, among other increases in sentencing. While these changes cost over \$100 million, only \$15 million was invested in the “Youth Challenge Fund” and the creation of the Ontario Roots of Youth Violence Secretariat that brought forth the *Roots of Youth Violence Report* (Abebe & Fortier, 2008). This demonstrates the ways in which government action repeatedly prioritizes actions that fail to address the actual roots of youth violence (Abebe & Fortier, 2008) or even contribute to the risk factors for youth experiences of violence. Jahnevich et al’s (2013) report on newcomer and minority offending, and victimization calls for Canadians to reconsider the use of such “reactive” criminal justice responses that fail to address the root causes of youth violence.

The Roots of Youth Violence Report identified racial profiling, Eurocentric school curricula, and escalating tension between racialized youth and the police as key issues:

It is apparent to us that all of the immediate risk factors for violence involving youth can easily arise from the diminished sense of worth that results from being subject to racism and from the often accurate inference of what that racism means for hopes of advancing, prospering and having a fair chance in our society. (McMurtry, Curling, 2008, p. 9)

The report suggests that the children of immigrant and refugee parents are likely to be more exposed to risk factors for violence, including poverty and racism. Nevertheless, studies have indicated that youth who are first and second generation actually demonstrates lower levels of official and unofficial delinquency, deviant behaviour and drug use (Wortley & Tanner, 2006; Wortley & Owusu-Bempah, 2009). Researchers have successfully challenged the theory that immigration has led to the importation of crime in relation to youth delinquency (Wortley, 2003; Hagan et al, 2008). They have found that while first generation immigrants show resiliency to crime, the likelihood of criminal involvement increases over time spent in Canada and that Canadian-born youth show the highest rates of delinquent behaviour (Hagan et al, 2008). This suggests that, while being born abroad and living in immigrant communities can actually provide some resiliency to criminalization, the conditions of living in Canada are such that they foster youth criminalization (Wortley, 2009).

Although there is a paucity of research on the impacts of deportation on young people in Canada, Drotbohm's (2009) study on generational conflicts in Montreal's Black Haitian community offers some insight into the potential impact and conflicting perspectives on deportation in that community. Respondents indicated that the issue of deportation raised concerns about first-generation youth and the spectre of "nationhood, citizenship and migrant's belonging in a transnational environment" (Drotbohm, 2009, p. 70). Youth reported that they are consistently identified as Haitian – as outsiders – regardless of their status or where they have

lived most of their lives. Drotbohm (2009) suggests this leads many to “develop the need in the course of their biography to identify profoundly with the country of their parents, as it is ascribed onto their bodies” (p. 79). These youth condemned the government for deporting a number of Haitian youth for gang-related activities and drug dealing in 2002, identifying these deportees as “rebels” who resisted the marginalization faced by Haitian youth in Canadian society (Drotbohm, 2009). Bill C-43 threatens to alienate and criminalize an increasing number of youth from immigrant communities by framing Blackness in Canada as recent and from elsewhere, and making hypervisible criminalized Blackness and imported crime,.

It should not be surprising then, that Bill C-43 represents a significant threat to youth in Canada, particularly non-citizen youth and youth who share close ties in their families and communities to non-citizens. Considering that Canadian deportations have historically had a disproportionate impact on African Caribbean individuals, particularly Jamaicans (Barnes, 2009), and that studies have suggested racial discrimination by law enforcement in Canada, it is inevitable that the changes brought in by Bill C-43 will disproportionately impact this population. Because lower-income African Caribbean diasporic youth are subject to systemic violence in Canada, and conditions which give rise to the root factors of youth violence (McMurtry and Curling, 2008), this Bill can be expected to intensify the systemic violence experienced by racialized non-citizen youth and their communities in Canada. Bill C-43 amendments will inevitably place non-citizens and their communities in positions of heightened precarity. Research has shown that racialized youth face racial profiling from law enforcement (Rankin and Winsa, 2013; Fitzgerald and Carrington, 2011), and the increased risk that will accompany lesser sentences under the Bill C-43 amendments can be expected to increase police contact and surveillance for non-citizen youth. Deportation orders implemented against young

people perpetuate the traumatic violence of forcible removal from home, family and community and force deportees to rebuild their lives in a country often unfamiliar and where they have no close ties (Barnes, 2009; Drotbohm, 2009).

We need to understand the implications of Canada's new deportation policy on youth, both those at risk of deportation and those from families and communities made precarious by the policies. However, damage-focused research has the potential to become another level of surveillance for already highly surveilled communities (Tuck, 2009). DeGenova (2002) expresses similar concerns about research with those with precarious status, where studies focused on "illegality" and "deportability", "can quite literally become a kind of surveillance, effectively complicit with if not altogether in the service of the state (p. 422). In Abebe and Fortier (2008), a youth-led report on the demands and plans to address the roots of violence, the authors note that previous consultations with youth and their communities did not generate much-needed action to disrupt systemic inequality, including action at the levels of education and employment. An approach that does not focus solely on documenting damage and victimization (Tuck, 2009), would more effectively reflect youth who are complex, contradictory, powerful, creative and whose value must be recognized and fostered in Canada.

The literature on violent crime in Canada indicates that the "law and order" approach typified by Bill C-43 is characteristic of the longer history of criminalization and displacement of Blackness in Canada. Such reactive legislation inflames the discussion and exacerbates the systemic violence to which youth are exposed. The threat and the reality of deportation with severe limitations to humanitarian and human rights considerations can be expected to increase tensions both within Canadian society and transnationally and place non-citizen youth, their families and communities in an increasingly precarious position.

Conclusion

In this chapter, I have synthesized an interdisciplinary set of research and theory, drawing together activist and scholarly work on systemic racism, immigration, deportation and youth experiences of violence in a way that follows the roots of the new Bill C-43: *Faster Removal of Foreign Criminals* legislation. Tracing Canada's history of colonialism and racist immigration policy reveals how racism has been obscured rather than eliminated in state policy through a national mythology of white belonging which displaces Black history and alienates Blackness within the borders of the nation state (McKittrick, 2011). Public and political discourse perpetuates the idea that Canada is humanitarian and generous, one of the most welcoming countries in the world to immigrants. The criminalization and alienation of racialized residents allows for the incarceration and removal of racialized non-citizens while maintaining this façade. As I argue in this paper, these benevolent geographies reached new heights with the debate around criminal deportations, which called for the actual removal of bodies thus alienated.

This review of the literature has shown continuities between historical regimes of slavery and prisons and current practices of criminal deportation. The removal of non-citizens is an extension of the prison system which disproportionately incarcerates “Indigenous and racialized people, and people with disabilities” (Ware et al, forthcoming). By reading critical prison literature together with scholarly work on migration, I have shown the way in which “tough on crime” strategies that have been ushered in especially in recent years, including the use of mandatory minimum sentencing (Ware et al, forthcoming), intersects with tougher laws around criminal removal to increase the disproportionate criminalization, alienation and displacement of racialized non-citizens, non-citizens with disabilities and their communities. At the same time,

the symptoms of this systemic violence are hidden away, first within the jail and the prison, and then through removal to another country.

The subset of literature on prior major legislative changes around criminal deportation in the 1990s laid out the context within which Bill C-43: *Faster Removal of Foreign Criminals* could occur. Bill C-44 (1995), the “danger to the public” clause, emerged during moral panic and heightened alarm about imported violence, specifically criminalizing Jamaicans. As I have argued, this is a prime example of the moral panic and folk devil construction as described first by Cohen (1972) and then by Hall et al (1978). While the panic helped to usher in problematic legislation in the form of Bill C-44 which allowed the Minister to order removal without appeal for those deemed a “danger to the public”, according to Barnes (2002) it was the panic itself which led to an increased in deportation of Jamaicans and not use of the legislation alone (note that in this discourse, Blackness and Jamaican are linked, despite the fact that Jamaica is multiracial). A review of critical border studies revealed that they echo similar concerns regarding the criminalization of immigrants and refugees. Fear of imported crime is nothing new in Canada; for while Canada welcomes the economically productive immigrant it simultaneously legislates to exclude or to remove those who are perceived to pose a threat to Canada (Hyndman, 2012). This chapter has also projected forward, drawing on the limited literature on criminal deportation in Canada to suggest that more extreme criminal deportation policy will disproportionately impact specific communities. As described in the review, this legislation will increase the threat already posed by police through racial profiling and a disproportionately racialized prison system in Canada with the threat of a double punishment of removal following incarceration. Ultimately, these literatures provide a unique and comprehensive exploration of the socio-historical context from which new deportation legislation is emerging, most recently in

the form of Bill C-43: *Faster Removal of Foreign Criminals Act*. This review indicates that the Bill threatens to disproportionately impact young racialized non-citizens and non-citizens with disabilities, and in turn their families and communities.

In the next chapter, I will present my analysis of the political discourse within all major House of Commons debates surrounding Bill C-43: *Faster Removal of Foreign Criminals Act*. Although parliamentary debate by design often becomes polarized (Caulfield & Bubela, 2007), my analysis of these debates reveal that the major parties, the Conservative Party of Canada (CPC) and the Liberal Party especially, mobilize similar tropes but to different degrees, and to very different ends. As we shall see next, the current government relies on a discourse of criminalization of immigrants within the trope of the benevolent nation state, which has been thoroughly explored in this literature review.

CHAPTER 3: DEBATING REMOVAL

The main parliamentary debates concerning Bill C-43: *Faster Removal of Foreign Criminals* took place in the House of Commons between September 24, 2012 and February 6, 2013. My analysis of these debates reveals the main themes and arguments that emerged regarding the Bill. I have coded these debates to reveal the ways in which the politicians construct race and citizenship status; how they construct and deploy the figure of the criminal immigrant, particularly in contrast to the model immigrant (constructed as economically productive and law-abiding), who is held responsible for punishment and rehabilitation of non-citizens. My analysis finds that, while the Conservative Party of Canada (CPC) and opposition parties, the New Democratic, Liberal and Bloc Quebecois parties oppose each other regarding Bill C-43, their rhetoric and views are not necessarily as divergent. As the CPC had a majority government, the ruling party was aware that they had the power to pass the Bill, regardless of the position of the opposition parties. The frustration of the opposition parties appears to escalate as their amendments and proposals are repeatedly voted down or rejected. Ultimately, the final parliamentary vote on the Bill passed with 149 votes “yes” from the CPC, and 130 votes “no” from the Liberals, Bloc and NDP MPs.

I have drawn on the coding methods used by Caulfield and Bubela (2007) in their work analysing Canadian parliamentary debate on somatic cell nuclear transfer, to code all major parliamentary debate on Bill C-43 and to identify key themes in the discourse. My selection of themes relied on the content of the literature review and was informed by connections that were drawn between the current social and political context and that of the anti-immigrant and anti-Black attitudes which ushered in Bill C-44, the “danger to the public” clause. These themes and issues were: (1) generosity; (2) terrorism/terrorizing; (3) humanitarian and compassionate

concerns; (4) human rights violations; (5) common sense; (6) criminality; (7) youth/children; (8) national security; (9) race/racialization; (10) Caribbean; and (11) Jamaica. The coding identified key themes in the immigration discourse that would reveal the main focus of a potential moral panic around “foreign criminals” and reveal the framing of race within this discourse.

Ultimately, I have focused on two of these themes because they emerged as the most prominent in the debates, and I found the dynamics in the way each party mobilized rhetoric around these themes the most rich for analysis. I organized my analysis into two main areas of focus: the framing of Canada as a benevolent multicultural nation state; and the criminalization and demonization of immigrants.

Based on the analysis, I found that the framing of Canada as a humanitarian and benevolent nation was prominent throughout the debates. In contradiction to Canada’s history of colonial violence, its racist immigration system and its problematic humanitarian record, the mythology of the generous Canadian state was repeated by all parties, regardless of their position on the bill. Opposing arguments claimed Bill C-43 would tarnish Canada’s reputation based on a long-honoured tradition of generosity, while advocates of the bill argued that Canada had become a ‘soft touch’ nation that is being taken advantage of for its excessive generosity (Ahmed, 2004).

The criminality and criminalization of immigrants was a key concern for both sides as well. The majority CPC government emphasized a small number of extreme cases of deviance which reinforce a folk devil construction of the racialized, criminal immigrant. It appears from the debate that the party was attempting to reignite a moral panic which previously had ushered in the Bill C-44, the “danger to the public” clause, deportation policy.

In keeping with the framework of the moral panic and the folk devil introduced by Cohen (1972) and elaborated upon by Hall et al (1978), the “criminal immigrant” has been identified as a threat to Canadian society that requires immediate and “tough” action by the government in the form of Bill C-43: *Faster Removal of Foreign Criminals Act*. While the criminalization of immigrants is not new in popular or political discourse, the issue emerged as central to the government’s push for this new legislation. The government appeared to resurrect the moral panic on imported crime that surrounded the 1995 Bill C-44, the “danger to the public” clause in the aftermath of the “Just Desserts” and Baylis shootings of 1994. Cohen’s (1972) framework is especially applicable to the analysis of the debates, wherein politicians repeatedly draw on “experts” to confirm the threat and the need for immediate action. The allocation of “expertise” appears to be focused on agents of control and on victims, both experts based on first-hand experience. Those who speak out against the bill are questioned for their lack of authority, or are accused of siding with the criminals and therefore disregarded. The “foreign criminal” is a clear folk devil figure in this discourse. This folk devil is contrasted against the multicultural, economically productive immigrant, reflecting how “the poor and propertyless are always in some sense on ‘the wrong side of the law’” (Hall et al, 1978, p. 190). The moral panic is thus ignited in order to gain consent and support for increased means of state intervention and control.

Immigration & A Benevolent Canada

As argued earlier, Canada has historically prided itself on its humanitarianism and generous immigration system (Razack, 2004; McKittrick, 2006). This pride is threaded throughout the debate on Bill C-43: *Faster Removal of Foreign Criminals Act*. Unsurprisingly the ongoing colonization and conquest of indigenous peoples in Canada, the alienation and oppression of racialized residents, and the history of racist and security-focused immigration

policies are not invoked here. This rhetoric of generosity and humanitarianism is expressed by all parties, regardless of their position on the bill. While the CPC argues that Canada has been exceedingly generous and needs to become more rigorous in order to protect Canadians and the nation state, the opposition parties focus on the ways in which the bill will contravene this long history of generosity. None of the parties engage with the problematic history of Canada's immigration system or the ongoing colonization on which it is predicated.

This repetition of the Canadian mythology proves to be non-partisan within this discourse; the only difference between the CPC and opposition parties is the manner in which this mythology is deployed within the debate. According to the NDP, “[t]he Conservatives are flouting the humanitarian tradition that has distinguished Canada for decades, choosing instead to undermine the principle of basic human rights.” (Sadia Groguhé, NDP, February 6, 2013 at 4:10 PM). The rhetoric of the NDP presents the “traditional” perception of Canada as humanitarian and welcoming, emphasizing a Canadian pride in the immigration system, and accuses the CPC of disregarding what it sees as quintessential Canadian values: “Canadians are rightly proud of our fair and compassionate system and they oppose the government’s move toward a cold, mean spirited, ideological, inflexible and extreme position on immigration” (Don Davies, NDP, October 4, 2012 at 11:40 AM). Similarly, Elaine Michaud states:

...being tough on criminals does not mean you have to be callous and cold-blooded. We have social values here in Canada that demand that we show compassion for others and that we give consideration to the extraordinary circumstance that may well affect the actions and choices that some people make, no matter how ill-advised they may be.
(Elaine Michaud, NDP, October 4, 2012 at 1:40 PM)

Another NDP MP similarly suggests that the CPC is moving Canada towards a “politics of fear” (Ève Pécelet, NDP, October 3, 2012 at 4:10 PM).

The CPC also frequently describes Canadian generosity and history of positive immigration policy. They insist that:

Canada's immigration system is rightly regarded to be among the most open and generous in the world. Immigration has always been a sustaining feature of Canada's history, and continues to play an important role in building our country. (Devinder Shory, CPC, January 29, 2013 at 1:35 PM)

Nevertheless, the CPC argues that Canada's generosity has been taken advantage of by "foreigners" who must be held accountable for their actions through tougher controls and enforcement. This discourse echoes what Ahmed (2004), in a British context, has referred to as a "soft touch nation", where "to 'take in' is to be 'taken in'" (p. 2). The "soft touch" nation is seen as feminine, and the "implicit demand is for a nation that is less emotional, less open, less easily moved, or that is 'hard,' or 'tough'" (Ahmed, 2004, p. 2). This framing is repeated within CPC rhetoric that suggests that Canada is inviting abuse by being so open and generous, by demonstrating such a "soft touch" (Ahmed, 2004). The CPC suggests that Canada is being taken advantage of and must prioritize the protection and livelihood of its citizens first before that of its immigrants. The threat originates with those "others" who are depicted as the "foreign criminal".

CPC MP Rick Dykstra suggests that Canada needs enforcement to ensure that it welcomes and protects immigrants, but not criminal immigrants:

Canada is not a haven for criminals; we are a haven for those true refugees who seek a new life. We are a haven for foreign skilled workers who have the ability to improve the economy here in Canada, both for themselves and their new country. We are going to make sure that the enforcements laid out in this piece of legislation are in fact finally put to rest and implemented. (Rick Dykstra, CPC, Seember 24, 2012 at 12:25 PM)

Hyndman (2012) describes the dynamics of Canadian immigration when she contends that "migrants are welcomed in, or at least their labour is" (p. 245). References to the 'productive immigrant' appear repeatedly in this discourse, differentiating these useful and desirable immigrants who will contribute to the economy from the "foreign criminal", thus implicitly

reinforcing the idea that “in a class society, based on the needs of capital and the protection of private property, the poor and propertyless are always in some sense on ‘the wrong side of the law’, whether they actually transgress it or not” (Hall et al, 1978, p. 190). In this way, immigrants who are not identified as economically productive are linked with “‘the wrong side of the law’” and thus associated with the folk devil construct of the “foreign criminal” (Hall et al, 1978). MPs of all parties who migrated to Canada frequently identify themselves as immigrants when they speak, examples of the successful, productive immigrant with first-hand experience, as a strategy to bolster their arguments:

Canadians have a long tradition of being welcoming. Our country is one of immigrants. I myself am one. However, in order to maintain that generosity, Canadians must have confidence and integrity in our system. They want to know that we are letting in honest, law-abiding visitors and immigrants while keeping out dangerous foreign criminals and others who pose a risk to the country.” (Chungsen Leung, CPC, January 29, 2013 at 3:40 PM).

The CPC repeatedly identifies specific conversations with immigrants in their constituencies who support the main thrust of the Bill C-43 which does not tolerate “abuse” of Canada’s generous system. Those referenced are generally described as “model immigrants” who have followed the rules and are productive citizens. This figuration of productive, multicultural citizens and residents contrasts with the “terrible few” committing crimes (Gilmore, 2007). However, according to Jason Kenney, then Minister of Citizenship, Immigration and Multiculturalism, Canadian generosity extends even so far as to reach the most serious criminals as Canada fulfills its basic responsibilities under existing UN human rights conventions:

We are so generous, some would say generous to a fault, in our country that even many of these people have had access to our asylum system and that all of them benefit from what is called a pre-removal risk assessment prior to being removed. Everyone, even the most objectionable terrorists and organized criminals, gets some form of independent legal assessment on whether or not they would face risk if returned to the country of their nationality. That is how we discharge our responsibility under the convention against

torture, the 1951 refugee convention and, indeed, the Charter of Rights. (Jason Kenney, CPC, February 6, 2013 at 3:25 PM)

Melamed's (2011) concept of neoliberal multiculturalism is useful in understanding this rhetoric where an "ethic of multiculturalism" is employed in support of 'neoliberal progress' (Melamed, 2011, p. 83). As a "form of official antiracism" this line of rhetoric further isolates the migrant who might be economically disenfranchised (read unproductive, not productive enough) by individualizing the causes of social and economic marginalization through the neoliberal lens: "Neoliberalism scripts its beneficiaries as worthy multicultural global citizens and its losers as doomed by their own monoculturalism, deviance, inflexibility, criminally and other attributes" (Melamed, 2011, p. 87). Thus racism becomes masked by neoliberal multicultural progress, progress used as evidence of a 'post-race' society. Kenney leverages this rhetoric by aligning the goals of the Bill with the views of Canada's "multicultural citizens":

That is what I hear from new Canadians all around the country, that they and all Canadians, whether born here or newly arrived, treasure our country's historic posture of openness to the hard work and talents of newcomers, including refugees from persecution. At the same time, Canadians, especially those who came to this country from abroad, have no patience with those who would violate our laws or abuse our country's generosity. That is why we brought forward Bill C-43, the faster removal of foreign criminals act, which seeks to make several amendments to the Immigration and Refugee Protection Act. (Jason Kenney, CPC, September 24, 2012 at 1:30 PM).

Members of the CPC cite discussions they have had with immigrants in their communities who support the bill and at times call it too lenient. They argue that individuals who have gone through the system fairly expect the same of others. A key target of the bill is access to appeals that allow those convicted of criminal acts to remain in the country for long periods of time after receiving their first removal order. Those who make use of the appeals process are immediately framed as 'gaming the system' within the debate:

No one is suggesting that we take away people's rights or ability to appeal, but they should not appeal endlessly for seven to ten years, time and time again, when the

evidence is clear and it is simply the immigration industry prolonging the process (Laurie Haw, CPC, October 4, 2012 at 4:40 PM).

While the CPC argues that Canada's allegedly overly generous system has invited fraud and abuse, the official opposition warns the House of the potential impact of the proposed legislation on Canada's reputation. The CPC repeatedly asserts that the bill applies to only a very small percentage of immigrants who commit serious criminal acts, while they acknowledge that the vast majority are law abiding, productive citizens. According to the CPC, it is unfair for law-abiding Canadians and residents to be victimized by 'fraudsters' and 'criminals'. This rhetoric of victimization and vulnerability alongside the unquestioned benevolence of the Canadian nation state echoes the rhetoric described earlier by Razack (2004) in the context of the Somalia Affair which is mobilized to justify the removal of others, in this case criminal immigrants.

The invocation of "common sense" by the CPC is in line with Hall and O'Shea's (2013) description of socially conservative, "neoliberal common sense" cited above that here, too, is employed within the frame of "fairness":

These are not partisan issues. These are common sense issues. Without a doubt, these tough but fair measures are welcome and long needed. They improve the integrity of the immigration system without compromising its generosity... Listen to Canadians and help us ensure the speedy passage into law. Today is a day we can stop Canadians from being victimized by dangerous foreign criminals who have avoided deportation and remain in the country due to a system that provides them with endless appeals. (John Weston, CPC, January 29, 2013 at 12:55 PM).

While "common sense" implies that it is already general public opinion, the rhetoric in actuality allows those in power who use it to affect popular opinion by suggesting it is already common sense (Hall & O'Shea, 2013). Here the CPC is attempting to shape popular opinion, which may not necessarily agree.

Within the debates, all parties proclaim the tradition of generosity and humanitarianism within the Canadian immigration system. While the opposition warns that the policies contained

in Bill C-43 would damage Canada's reputation, the CPC insists that Canada requires stricter regulations to ensure the system is not subjected to abuse. Few suggest that the Canadian reputation is already damaged, and none engage with the problematic history of the immigration system. The demonization of certain immigrants emerges within the discourse of a benevolent nation: in a positive-self, negative-other construction where Canada, and more specifically the government, serves as the positive self and the criminal immigrant as the negative other (see Reisigl & Wodak, 2001).

Criminalization

As demonstrated in the context chapter, the construction of race, specifically of Blackness, in Canada is one of denial, erasure and removal. There is a history of denial that Canada has participated in racism, including slavery, using the veil of the nation as a benevolent receiver of immigrants and refugees, and humanitarian champion around the world. The work of McKittrick (2011, 2006) and Oparah (formerly known as Sudbury, 2002), discussed above, challenges this national mythology that is used to defend the removal of certain bodies to receiving countries. This mythology also emerged from the debate about the criminalization and alienation of racialized residents in Canada, which is used to enable and justify the implementation of excessively strict deportation policy.

The rhetoric in the debates around Bill C-43 prioritizes the criminal and his potential future criminality beyond the illegal activity for which he is being punished. Imposing deportation in addition to incarceration constitutes a double punishment (Peutz, 2006), with the second punishment based solely on sentencing. In order to gain support for the Bill, government has attempted to reignite a moral panic around imported violence similar to that which helped to usher in Bill C-44, the "danger to the public" clause. This discourse inflames attitudes towards

migrant populations and allows for draconian legislation to be passed. In this case, however, the government is drawing on events that were part of the moral panic of the early 1990s which resulted in the passing of Bill C-44. Thus, the crimes being used to ignite fear and support have already been used to toughen criminal deportation legislation, and are being recycled to do so again.

The Criminal Threat

As discussed earlier, Foucault et al (1978) examine the shift from punishment based on a crime to the criminal in 19th and 20th century penal systems which pathologized criminality as inherent in the criminal: “from the crime to the criminal; from the act as it was actually committed to the danger potentially inherent in the individual; from the modulated punishment of the guilty party to the absolute protection of others” (Foucault et al, 1978, p. 13). The rhetoric around criminal deportation policy resonates with this shift from punishment based on the crime to punishment based on the perpetrator. These individuals must be removed, it is argued, based on their actions and the threat that they pose to Canadians. According to the majority government, the longer they remain in the country, the longer they are able to victimize Canadians. While the definition of a serious criminal is subject to debate, this discussion does not challenge the concept of criminalization based on potential risk. A major point of contention between the CPC and opposition parties within the debates on Bill C-43 is the definition of “serious criminal” both within the legislation and the rhetoric of the debate itself. The CPC rely on the strictly legislative definition drawn from the Immigration and Refugee Protection Act, under which, according to Kenney, serious criminality is any crime that has led to a penal sentence of at least six months. The opposition counters that basing serious criminality on sentencing length is not necessarily an indication of the violent nature or level of security threat

posed by the offence and by the convicted. While the first punishment, the incarceration or conditional sentence, is based on the crime and the criminal as described by Foucault et al (1978), the use of deportation as a punishment has become qualitatively different under Bill C-11 and now under Bill C-43, whereas previously, deportees not deemed a “danger to the public” could access an appeal. Under this legislation the criminality of the individual, and therefore eligibility for swift removal with no right to an appeal, is based on sentence length alone. Deportation is framed as an extended form of punishment and as a measure of protection for Canadian society. This uninhibited use of deportation, based on 6-month sentences for crimes with 10-year maximums, constructs and therefore justifies every removal as a “dangerous individual”. By virtue of removal, regardless of their crime, they become framed as the “dangerous individual” (Foucault et al, 1978).

The CPC inserts a sense of urgency into the debate. In order to bolster their case for the changes in Bill C-43, specifically the change from two-year minimum to six-month minimum sentences, the CPC provides multiple examples of crimes that would qualify under this new legislation. The opposition parties argue that the CPC selects the most heinous or extreme examples, such as sexual assault and manslaughter, while the CPC accuses the NDP of making false claims about the lesser crimes that will fall under the 6-month minimum.

When we talk about serious crimes, those are the examples that we are referring to. To take up examples that do not even border on the edge of serious criminality is really inexcusable. What that does is it gives the impression that there is something that is not right with the bill, when in fact when you look at the content, each and every clause of the bill, it speaks very significantly and very specifically to what a serious crime is and how an individual, from permanent residency, is forced to at least live through the responsibility of the act they committed. (Rick Dykstra, CPC, January 29, 2013 at 11:15 AM)

Analysis of this quote reveals two issues: first, a permanent resident is held responsible by serving time first, and then receives an additional punishment above and beyond what a

Canadian would face, by being deported. The act of deportation is referred to as “a sentence that is more severe than the original ones” (Élaine Michaud, NDP, October 4, 2012 at 1:30 PM).

Secondly, the Bill ties deportation to sentencing alone rather than to the crime, automatically constructing those deported as “dangerous individuals” and thus even retroactively justifying their removals.

With the focus on sentencing, the CPC repeatedly maintain that the bill will target only serious offenders:

We are very careful in focusing on maintaining the six-month bar that already exists in IRPA. If someone goes to a bar and has a bad night and gets into a fight, that person would not be affected by this. People who are convicted of shoplifting are not going to be deported. Those who have a minor fraud count of cheque cutting or a minor traffic offence are not going to get a penal sentence of six months or more. These are for people involved in things like drug trafficking, sexual assault, possession of a dangerous weapon, multiple assaults. These are the cases we are talking about. These are serious crimes according to the law and according to our courts, and they should have serious consequences. (Jason Kenney, CPC, September 24, 2012 at 1:55 PM)

Green party MP Elizabeth May argues, however, that the bill can be expected to lead to the removal of people whose crimes are not violent or are not threatening to national security. May draws on the testimony of lawyer Andras Schreck, Vice President of the Ontario Criminal Lawyers’ Association, who proposes that the bill has the potential to impact those who are convicted of less serious offences. According to some of the reports submitted on the bill and to witnesses’ quotes from the committee, the bill could lead to deportation for repeat shoplifters, or someone involved in a bar fight (leading to aggravated assault).

The NDP also express concern from the beginning about the definition of criminality. While they support the principle of deporting certain non-citizens who commit serious crime in Canada, they call for further study of the bill: how might it look once implemented, are the proper crimes included and less serious ones properly excluded? MP Elaine Michaud of the NDP

raises the issue that repeat offenders who are being charged with crimes considered less serious might lose access to appeal. The NDP points out that those who make a mistake and get caught under the act will have no chance of re-entering Canadian society. In addition, the opposition cites the fact that the bill does not make a distinction between conditional sentencing served in the community and incarceration.

Significantly, the opposition brings up the implications of the Bill C-10: *Safe Streets and Communities Act* which ushered in new mandatory minimum sentencing in 2013. This new mandatory minimum sentencing was implemented for the stated purpose of impacting “organized crime” (Ware et al, forthcoming). However, research into the impact of the war on drugs in the United States reveals that women are especially impacted by the tough on crime approach that relies on mandatory minimum sentencing. In the United States the female prison population has risen from 12,300 in 1980 to 182,271 in 2002 (Mauer et al., 1999, and Lapidus et al. 2004 cited in Ware et al, forthcoming). Opposition MPs warn that mandatory minimum sentencing may expose some individuals to deportation without the right of appeal, and therefore with no second chances. However, there is no discussion throughout the debates of the fact that mandatory minimum sentencing has disproportionately impacted racialized populations, especially racialized women, in the United States and could be expected to do the same in Canada (Ware et al, Forthcoming).

The construction of the foreign criminal throughout the political discourse, including the emphasis on extreme example cases of violent, repeat offenders, labels any immigrant facing criminal deportation as a dangerous “other”. As I shall examine next, this “dangerous individual” (Foucault et al, 1978) in the debate manifests as an archetypal folk devil figure within a moral panic as described by Cohen (1972) and elaborated upon by Hall et al (1978).

Reigniting the Moral Panic

The use of extreme examples of criminality by the CPC is part of an attempt to manufacture consent for the bill (Hall et al, 1978). However, the extreme examples presented by the CPC are not recent or current: Jackie Tran is repeatedly used as an example, although Tran fought his deportation for 6 years, and was finally deported in 2010 (CBC News, 2010). In addition, the CPC refer to the shooting death of Todd Baylis in 1994, one of two prominent shootings that sparked a moral panic around imported violence, which resulted in Bill C-44, the “danger to the public” clause, introducing deportation without appeal of individuals deemed a danger to the public by the Minister. According to Barnes (2009), the two high profile interracial crimes, the Just Desserts robbery and shooting and the shooting death of Constable Baylis at the hand of Clinton Gayle, focused the public’s fear on imported criminality and particularly on fear of Jamaican crime (Wortley, 2003; Pratt, 2005). Having analysed all of the debates around Bill C-43, I conclude that the current majority government attempts to reignite this moral panic which demonized immigrants, and specifically Jamaican immigrants twenty years ago (Barnes, 2002).

In support of Bill C-43, the 1995 discourse of Bill C-44, the “danger to the public” clause, is repeated in the frequent reference to the case of Clinton Gayle, whose case has been described earlier in this paper. This case, along with another shooting the same year, also involving young Black men of Jamaican origin in the Just Desserts Toronto bakery, fostered a moral panic about imported criminality. As discussed earlier, this ultimately helped to lead to the passing of Bill C-44 which allowed individuals to be deported without the right to appeal when “the Minister is of the opinion that the person constitutes a danger to the public in Canada” (Barnes, 2009, p. 434).

No Place Like Home

The criminalization and alienation of racialized immigrants become constituted within this political discourse. As I have discussed in the context of the moral panic framework, Bill C-43 is validated not by the perpetration immigrant crime, but by the discursive linking of immigration and criminality. This debate is yet another site where the criminalization and alienation of Black people in Canada were repeated and used to manufacture consent for criminal removals from Canada. The theme of alienation of non-citizens is prominent within the Bill C-43 debates. MPs from the CPC take an unequivocal position on the necessity and power of citizenship, while the NDP and the Liberal party call for a middle ground on how we define a “foreigner” in Canada. Liberal MP Kevin Lamoureux engages repeatedly on the issue of citizenship. According to Lamoureux, the Liberal party does not

believe that if people land in Canada they have to become citizens or they are not good citizens of our land. The current government believes that if people land in Canada and have been here for three years, they had better be getting their citizenship or they plant a seed of doubt in terms of why they would not be getting their citizenship, that they are not as good as the rest of us for not getting their citizenship. (Kevin Lamoureux, Liberal, February 6, 2013 at 4:25 PM).

Lamoureux argues that Minister Kenney could deal with the issues that Bill C-43 purports to address by committing more resources for the citizenship process. He maintains that Canada’s permanent residents should not be labeled “foreigners,” as the term, as well as the bill itself, carries an “anti-immigrant” connotation, and calls for a distinction to be made:

There is a great deal of concern for those individuals who come to Canada at a very early age, at one, two, three years of age. They arrive here as infants and they become a part of our system. They take part in our nursery programs and attend our educational facilities. They might not have been born in Canada, but for all intents and purposes they know no other land but Canada. There is absolutely no exemption whatsoever for these individuals to be given any form of discretionary or compassionate review in regard to what this legislation is going to be implementing...France and other countries have recognized there is a difference when a two-year-old comes to a country as an

immigrant. Why does the government not recognize that there is a difference between a two-year-old and a 35-year-old arriving as immigrants?” (Lamoureux, Liberal, Jan 29, 2013 at 11:25 AM).

While Lamoureux challenges the denial of rights to non-citizens, he does not engage with the ways in which certain bodies are ascribed as from elsewhere (McKittrick, 2011).

The NDP also critiques this use of language, arguing that the title of Bill C-43, *Faster Removal of Foreign Criminals* labels all non-citizens in Canada as “foreigners”:

Someone who has been here for 20 years, does not take citizenship and screws up would be treated to same as someone who has been here for just one month. There is no discretion in the bill to differentiate these two individuals. I would be very uncomfortable treating these two people in the same fashion....I do not think most Canadians would call somebody who has been here for 20 years a foreigner. It immediately sets a distinction between somebody who belongs in the country and somebody who does not. (Jamie Nicholls, NDP September 24th, 2012 5:15 PM).

This echoes the “immutable quality” of being a racialized immigrant, where one’s status as from elsewhere is permanently ascribed on one’s body, as described by Philip (1994) following the 1994 shootings in Toronto of Georgina “Vivi” Leimonis and Constable Todd Baylis. However, the debate discourse focuses strictly on alienation based on citizenship and rights, and not the continued alienation and criminalization experienced by both racialized immigrants and racialized settlers who have been in Canada for generations.

The Racialization and Criminalization of Immigration

A key issue in these debates around Bill C-43: *Faster Removal of Foreign Criminals Act* is the conflation of immigration and criminality which emerges both from the language used in the bill as well as within the rhetoric and tropes mobilized to support its passing. This reflects the use of a “signification spiral”, described previously in this paper where an apparent threat becomes linked to an often innocuous phenomenon which exaggerates the apparent scale of the threat. Opposition parties argue that CPC rhetoric emphasizes extreme cases, and in this way

criminalizes immigrants as a whole. Although they explicitly reject this critique, CPC arguments frequently employ notions of the “soft-touch nation” (Ahmed, 2004) and the “folk devil” case of Clinton Gayle.

According to NDP MP Alain Giguère, the CPC rhetoric “points fingers at immigrants and paints them all as criminals” (Alain Giguère, NDP, October 4, 2012 at 3:30 PM). The opposition parties repeatedly critique the CPC for reinforcing this false perception:

The danger with the minister's comments is that people end up forming associations in their minds. If people only ever hear about extreme cases and base their judgment on those cases, they begin to associate temporary residents or refugees with criminals. It is that aspect of the government's attitude that I find shocking. (Marc-André Morin, January 29, 2013 at 1:55 PM)

Although the CPC reintroduces the Clinton Gayle and Jackie Tran cases, reinforcing the “criminal immigrant” folk devil and moral panic around this figure, they repeat that the majority of immigrants to Canada are law-abiding, ‘productive’ members of society and that this bill will target only a small minority of serious criminals:

At any given time we have about 700,000 to 800,000 permanent residents, so about one-tenth of a per cent actually commit serious crimes. Therefore, to suggest that the bill has a general application to all or most permanent residents is perverse. To the contrary, it focuses only on the tiny minority who commit serious crimes. (Jason Kenney, CPC, February 6, 2013 at 3:25 PM)

This tiny minority is made up of the “terrible ones” described in Gilmore (2007).

Opposition members argue that the rhetoric of Bill C-43 connotes that Canada has a serious problem with imported crime and thus criminalizes non-citizens in Canada in the absence of any evidence that immigrants commit any more violent crime than Canadian citizens (StatsCan, 2013). Nevertheless, despite their critiques of the CPC’s use of “foreign” and “foreign criminal”, at least one Liberal party MP repeatedly raises the issue of foreign nationals in Canada without status. They criticize the CPC for not having more information on this group, specifically on the

proportion of this group who is inevitably committing criminal acts. Prioritizing non-citizens with status and emphasizing the need for surveillance of those without status simply continues the discourse that criminalizes immigration. Despite Liberal opposition to the bill itself, the criminalization of immigrants can be detected within Liberal discourse.

In contrast, Bloc MP André Bellavance acknowledges that there is a real risk of the criminalization of immigrants through the bill:

The notions of criminality and immigration are often confused, as is the case in this bill, which talks about criminality in relation to immigration. So, whether in reference to criminality or immigration, the Conservatives are trying to prove to certain people that there is a danger. Some refugees arrive by boat and, suddenly, we are led to believe that we are being invaded by a host of refugees arriving from all over. And they are not just refugees - that is not how they are referred to - they are criminals. That is what the government wants people to believe. This makes it easier for the government to tell Canadians not to worry because it will send the criminals back. (André Bellavance, Bloc, October 4, 2012 at 11:25 AM)

Similarly, while the NDP voices support for the deportation of serious criminals and terrorists, and the prevention of abuse of appeals, they argue that these the legislative changes will criminalize immigrants, stripping their rights:

Another thing that disturbs me in this bill—and in the government’s policy in general—is the image of immigrants they have created. The bills are trumpeted as if immigrants were a great threat to the country or as if all immigrants were potential criminals, when almost all immigrants to Canada are people who are seeking a better life and a better future and who, like all other Canadians, want to live in a safe environment. (Djaouida Sellah, NDP, October 4, 2012 at 4PM)

These critiques from the NDP of criminalization in the discourse threads through the months of debate on Bill C-43. Months after Sellah’s statement above, MP Sadia Groguhé of the NDP accuses the CPC of employing the fear of the folk devil in concert with fear of a “soft touch nation” (Ahmed, 2004) against Bill C-43 critiques:

The Conservatives' statements have done everything to paint refugees and permanent residents as dangerous people, potential terrorists or people who come here only to take advantage of the system. These days, anyone who is not a full-scale citizen will not be

recognized and will be considered by the Conservatives to be a foreigner with no room for error...All along, the Conservatives have used extraordinarily rare exceptions to justify their bill, forgetting the majority of applicants, forgetting the people who will be directly affected by Bill C-43. When we expressed concerns about the impact of the bill, the government accused us of being soft on fraudsters. (Sadia Groguhé, NDP, January 30, 2013 at 5:25 PM)

While the activist scholarship reviewed above could easily predict the anti-Black effects of the Bill, there is a notable absence of discussion around which immigrant groups would be most heavily impacted within the House debates. André Bellavance of the Bloc, however, hints that immigrants “of certain communities” are more welcome than others:

...our reputation has been tarnished since this government took power, because of its propensity—and specifically the propensity of the Minister of Citizenship, Immigration and Multiculturalism—to make choices about the kind of immigrants who are welcome in Canada. It is fine if you have money or if you are a member of certain communities, but as soon as we start talking about refugees, things start to get more difficult. (André Bellavance, Bloc, October 4, 2012 at 11:35 AM)

Nevertheless, the only reference to issues of race or racial profiling comes from MP Sadia Groguhé, NDP, who claims that:

When a witness stated that because the police in the country engage in racial profiling, Bill C-43 would disproportionately affect visible minorities, the expert was accused of siding with criminals. Our work in committee was constantly marred by these kinds of demagogic and poisonous comments. (Sadia Groguhé, NDP, January 30, 2013 at 5:25 PM)

This reveals that the denial of racism in Canada is so entrenched that to question the differential impact of such policies immediately labels an individual as a criminal sympathizer. While not explicitly identifying race, NDP MP Hoang Mai notes that there is a need for integration, and “We have to minimize the stigmas attached to certain immigrant groups” intimating that some groups of immigrants experience more marginalization in Canadian society than others (Hoang Mai, NDP, October 4, 2012 at 10:40 AM). The MPs in the House do agree that the Bill is meant to send a message to immigrant communities, although opposition suggests it is a message of

fear and alienation, while CPC MP Devinder Shory insists that the message is that Canada will not tolerate serious crime from non-citizens within its borders:

As a result, serious foreign criminals are often able to delay deportation from Canada for many months, even years on end. In all this time, while their victims suffer, they are free to walk on the street. What is worse is that many of these convicted criminals have gone on to re-offend while they are in Canada, endangering Canadians and making a mockery of our laws. (Devinder Shory, CPC, January 29, 2013 at 1:35 PM)

This is a clear example of the focus on the criminal rather than the crime, a discourse in which our focus has shifted from the offence to the potential inherent danger within the convicted (Foucault et al, 1978).

The House debate on Bill C-43 explicitly touches on race and racial profiling only once. Nevertheless, references to the Clinton Gayle case resurrect the climate surrounding the implementation of Bill C-44, the “danger to the public” clause. By drawing attention to Jamaica, these references confirm the stereotype that has alienated African Jamaicans within Canadian society, based on prejudiced and racist assumptions of violence. The Minister of Immigration pointedly makes reference to Clinton Gayle and his country of origin:

...He [Gayle] ought to have been removed. However, here is the point. If Bill C-43 had been in place back in 1991-1992, the paddy wagon would have gone to the prison on the last day of Mr. Gayle's custodial sentence, put him in the back and taken him to Lester B. Pearson Airport and put him on a plane back to Jamaica. He would never have been allowed to get out on our streets in the first place and Todd Baylis would be alive today...Yes, he ought to have been removed in 1992, but he never should have been able to delay his deportation in the first place. That is the point. That is why the Canadian Association of Police supports Bill C-43. It is why the Canadian Association of Chiefs of Police endorses the faster removal of foreign criminals act. (Jason Kenney, February 6, 2013 at 3:25 PM)

In committee, the president of the Canadian Police Association argued that the murder of Todd Baylis could have been prevented: “What makes this case so particularly tragic and why I am here before you today is that this case was entirely preventable, if only the provisions within Bill C-43 were in effect then” (Stamatakis quoted by Ted Opitz, CPC, January 29, 2013 at 12:15

PM). The opposition responded to the use of the Gayle case by arguing that the failure to remove Gayle was not a result of inadequate deportation laws at that time, but rather a failure of law enforcement to follow through on his deportation. They argue that to make a difference in cases such as these, it would be more useful to better fund those who enforce the law and our borders.

The use of this case highlights a few points of concern. First, although the shooting could have been prevented in different ways, it is being used to support the creation of a harsher system of deportation. Second, it highlights the discourse that politicians use around the appeals process. They talk about the appeals process as a “loophole”, “stalling” tactic or “delaying mechanism” for criminal immigrants rather than a process in place to ensure that the rights of the individual are taken into full consideration in the event of something as extreme as a criminal deportation.

In response to the opposition parties’ argument that the rhetoric around the bill ultimately alienates and demonizes permanent residents who have been convicted of a crime through the use of the term “foreign criminal”, Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney responds:

Under the Immigration and Refugee Protection Act, and Canadian law more broadly, we refer to people who are not Canadian citizens as foreign nationals. Therefore, to say that a foreign national who has been convicted in a Canadian court for having committed a serious crime is a foreign criminal is a normal statement of legal fact. It is a reflection of the legal appellation of a foreign national. (Jason Kenney, CPC January 29, 2013 at 12:50 PM)

In addition, he attacks the opposition, conflating their concern about basic rights for non-citizens to sympathizing with those who commit serious crimes:

To the Liberals, sexually assaulting a senior apparently is not a serious crime. That is explicitly their position on the bill, that it is not a serious crime and that a foreign national who has raped a senior citizen should be able to delay his deportation. We respectfully disagree. We suggest that the moment the penal sentence is done, in this case that of Mr. Guzman, the person should be taken in a paddy wagon from prison to the plane and removed from Canada because they have lost the right to be here. (Jason Kenney, CPC, February 6, 2013 at 3:25 PM).

This exemplifies the CPC's use of extreme examples to justify the removal of those targeted by the bill. Opposition critiques suggest that the CPC uses rhetoric to generate fear: fear of "criminal" non-citizens and fear in non-citizens. According to NDP MP, Ève Pécelet

The Conservatives' definition of "serious criminality" is down the drain. We are talking about fear. They use fear. We often hear the Minister of Public Safety and the Minister of Citizenship, Immigration and Multiculturalism tell people that the NDP is going to release criminals and that their safety will be compromised if the NDP becomes the government. That is not true. In addition, immigrants, who contribute to the economy, are being treated as though they were not even Canadians...People feel marginalized. People feel attacked. They do not even feel at home anymore. (Ève Pécelet, NDP, October 3, 2012 at 4:20 PM)

On the other hand, the CPC repeatedly suggests that there is serious danger in allowing "foreign criminals" to remain in Canada:

The delay of this bill's implementation would result in the victimization of Canadians by foreign criminals who would be able to delay for years their deportation from Canada. We have presented in debate dozens of examples, reprinting probably hundreds of other examples, of inadmissible, convicted, serious foreign criminals who have gone on to commit serious offences while delaying their removal. We will not allow criminals like them to continue creating new victims in Canada, which is why we call upon the House to adopt this bill expeditiously, a bill that was outlined in our party's election platform. (Jason Kenney, CPC, January 30, 2013 at 3:50 PM).

One NDP MP suggests that the bill, among others introduced by the CPC, fosters distrust and fear while the CPC postures as the protector of Canadians:

These bills are making our society one that trusts almost nothing and no one. They leave the very disagreeable impression that on every street corner lurks a criminal refugee who is the worst person ever born, but luckily, here is the great Captain Canada, also known as the Minister of Immigration. He will ensure that our society can live without fear, because he will be able to send that bad person back where he came from, no matter what will happen to him there. (Françoise Boivin, NDP, October 4, 2012 at 11:55 AM)

While the opposition calls for Canada to take responsibility for those who have made a mistake, especially those who have grown up in Canada, and been socialized in Canada, they also still maintain the "it is just a few bad apples" (Jamie Nicholls, NDP, September 24, 2012 at

5:15 PM) rhetoric, individualizing crime rather than engaging with the social inequalities plaguing Canada and injustice within the Canadian legal system. Nicholls also suggests that immigration is a positive force and the government should be investing in immigration services that support new members of society and help to increase employability. However, this is as close as the discussion in debate gets to suggesting there is a need to address systemic inequality in relation to crime in Canada. Specifically, the CPC took a strong stance on protecting Canadians from victimization at the hands of “foreign criminals”. In contrast, the opposition parties - while voicing the importance of deporting serious criminals - focused on the ways in which immigrant communities would be victimized by the bill.

Advocates sometimes steer into the pathologization of ‘crime’ when trying to shift away from a discourse of criminality and punishment. There is a significant concern that the new legislation will have a disproportionate impact on those dealing with mental illness, especially youth. Similar to the discourse on youth violence, opposition parties link immigration and crime with the caveat of mental health issues, which echoes the discourse, critiqued by Voronka (2010), that emerged from the *Roots of Youth Violence* report discussed in the literature review. They suggest that immigrants and refugees often have faced trauma and severe conditions abroad and may need access to treatment and rehabilitation here in Canada. It is also suggested that youth, through sentencing, access a system that can provide support and rehabilitation. However, none of this identifies the conditions of systemic inequality and violence that exist for these individuals within Canada, or the fact that mental health services can become another level of surveillance and regulation (Voronka, 2010).

As we know, unfortunately, people fleeing from countries in the grips of war all too often arrive in Canada bearing the severe physical and psychological consequences of the trauma they have gone through in their country of origin. Unfortunately, when those people do not receive treatment, they often end up committing crimes. Whether they are

citizens or not, they need help and treatment. Given the resources they need, they can frequently be rehabilitated. That will not be true of all foreign criminals who are going to be caught, but it will be true of a number of them, especially if they are suffering from a mental illness as the result of the trauma they have gone through at home...Furthermore, Michael Bossin, an immigration and refugee lawyer in Ottawa, has said that young offenders commit a crime that gets them into a system that gets them treatment, medication and a rehabilitation program. They have family support, they have community support, and they are in no way a threat to anyone anymore...Unfortunately, the amendments to the Immigration and Refugee Protection Act may well affect a large number of permanent and temporary residents with mental health disorders, who could be helped with treatment. (Élaine Michaud, NDP, October 4, 2012 at 1:30 PM)

This shift towards pathologization is seen in the attempts made by the official opposition to make a case for the importance of appeals. They suggest that refugees and immigrants may be dealing with mental health issues and be in need of support and treatment. Criminalization, they argue, will not allow them access to rehabilitation and could lead to re-victimization abroad. However, they fail to approach the mental health defense with a critical stance on the pathologization of those who are also criminalized within this debate.

In conclusion, the debates about Bill C-43 served to reignite moral panic and manufacture a “common sense” response in order to garner support for Bill C-43. As many have argued, the new legislation is excessive and therefore requires this approach to gain favour not only politically but also within popular opinion. In addition, my analysis shows that by attempting to spark moral panic around immigrant violence, this discourse serves to further the criminalization, alienation and displacement of racialized non-citizens from Canadian society. In major parliamentary debates of Bill C-43: *Faster Removal of Foreign Criminals*, the CPC deploys extreme examples and inflammatory rhetoric about immigrant criminality. Although analysis of the debates revealed two clear sides in support of and opposition to the Bill, the political discourse on criminal deportation also revealed the ways in which the frame of the benevolent

multicultural Canadian state is shared across party lines. I have identified the theme of Canadian generosity as a prominent trope that is repeatedly mobilized by all parties. While the CPC warns that Canadian generosity must be reigned in, the Liberal and NDP parties argue that changes like those found in the Bill go against a longstanding tradition of Canadian benevolence, and will tarnish its international reputation. In this way, these parties reinforce the mythology of a benevolent and humanitarian Canada, denying historical and ongoing colonialism and racism within its borders.

The discourse of neoliberal multiculturalism mobilized by the CPC delineates between the good multicultural citizen who is deserving of Canadian generosity, and the criminal outsider whose marginalization is self-inflicted. The good multicultural citizen is performed within the debate by MPs who identify themselves as immigrants, and as constituents who support the “fairness” of the Bill. The “others”, abusers of Canadian generosity, provide the figure of the “foreign criminal” folk devil. The two decade-old case of Clinton Gayle is resurrected, and the 25-year old Black, Jamaican Clinton Gayle becomes the “foreign criminal” folk devil personified. It is against this figure that the government argues the borders must be hardened and Canadian citizens must be protected. Removal becomes not only a further punishment but an act to protect vulnerable Canadians from the future threat posed by these “foreign criminals”, an iteration of Foucault’s dangerous individual.

This confirms earlier critiques of Bill C-43 and the CPC rhetoric around the bill that it contributes to the prevalent perception that conflates immigration and criminality and has fostered the demonization of certain immigrants as “folk devils” (Hall et al, 1978). In Oparah’s (formerly known as Sudbury, 2004) work on theorizing confinement within diaspora studies, the folk devil of the Black criminal is produced and reproduced through the prison industrial

complex: “the existence of the prison, disproportionately populated by black people, and represented in popular culture as a black space, marks all black people with the “badge” of the criminal” (Oparah/Sudbury, 2004, p. 157). Through disproportionate incarceration, racism becomes embodied in the makeup of the Canadian prison population, contributing to the further criminalization of racialized residents and to the displacement of these same individuals through deportation. As my analysis of the debates further illustrates, the punishment and total removal of Black bodies from Canada for reasons of “serious criminality” not only criminalizes them (Oparah/Sudbury, 2004) but also reinforces their longstanding construction as outsiders on a permanent basis.

CONCLUSION

Bill C-43: *Faster Removal of Foreign Criminals Act* is only one of the multiple “tough on crime” legislative changes introduced by the majority CPC government since 2006. Grounded in a Canadian mythology that denies a history of colonialism, slavery and exploitation of Black, Indigenous and racialized people, the criminalization of immigrants finds fertile ground in Canada. Whereas immigrants are already alienated and displaced within the nation, and frequently removed from their communities to carceral facilities, Bill C-43 threatens to extend judicial sanctions to include the double- and forever punishment of physical removal to a country of origin (framed always as “where you’re from”).

This analysis has revealed the way in which the current government has politicized the immigration system and used inflammatory rhetoric and statements that lack statistical and theoretical foundations to convince the public that measures within Bill C-43 are reasonable, necessary and effective. I have argued that political discourse regarding Bill C-43 has reignited a moral panic around the “foreign criminal” folk devil in order to achieve support for the Bill. However, these measures are not designed to address underlying issues of systemic inequality and violence. Consequently, judicial legislation is purely punitive and indeed becomes part of the systemic violence which serves to victimize minority groups disproportionately. By failing to recognize the role of racism inherent in this type of legislation, government policies intensify the very conditions that contribute to systemic violence, particularly among racialized youth who already experience marginalization and precariousness based on the racial hierarchies that structure life in Canada.

Bill C-43 is reflective of the current climate in Canada wherein the government is taking a “law and order” approach to crime, while hardening, as Ahmed, (2004) might put it, its borders

to restrict immigration and asylum seekers. This paper has analyzed and challenged Bill C-43 and its rhetoric in the hopes that recognition of Canada's roots in colonial and systemic violence will begin to unravel the mythology of a generous and benevolent Canada through which legislation such as Bill C-43 is justified. Bill C-43 has been critiqued for its humanitarian and human rights shortfalls, will place non-citizens within Canada in a position of heightened insecurity, and can be expected to disproportionately impact racialized youth, their families and communities.

The literature on violent crime in Canada indicates that the "law and order" approach typified by Bill C-43 is characteristic of Canada's continued criminalization and displacement of Blackness in Canada. Such reactive legislation inflames the discussion and exacerbates the systemic violence to which youth are exposed. Drawing on frameworks from Cohen (1972), Hall et al (1978) and Foucault et al (1978), I have moved beyond the focus on deviancy itself to critically examine the way in which political discourse is used to manufacture social consent for toughening of law and order legislation, such as Bill C-43. Inspired by the work of Peutz (2006), I have explored the theoretical possibilities of bringing prison literature into conversation with migration studies and extended the analysis to include Black geographies and diaspora studies. I have proposed the concept of "alienation" to not only describe the sense of dislocation experienced by racialized subjects in Canada, but as a concept that can be extended to account for the forced removal of racialized non-citizens, first to sites of confinement, and then finally beyond Canadian borders, where they have been framed as belonging all along. As a result of my analysis of the major debates on Bill C-43: *Faster Removal of Foreign Criminals*, we may expand Oparah's (formerly known as Sudbury) insights on spaces of confinement as diasporic spaces to expose the way in which Bill C-43 extends these spaces from Canadian correction

centres to beyond its borders (Sudbury, 2004). By drawing these connections, I have explored new pathways to understanding the complexities of socio-historical factors that operate within the debate on criminal deportation in Canada.

The threat and the reality of criminal deportation policy that restricts access to appeals can be expected to increase tensions both within Canadian society and transnationally and place non-citizen youth, their families and communities in an increasingly insecure position. The new empirical and conceptual work presented in this paper has been a response to calls from youth to start not with perpetrated violence, but with systemic violence. By drawing new connections between activist and academic work, and between disciplines, I have suggested a new way to make sense of the multifaceted issue of criminal deportation. Finally, I return to Razack (2002) with the hope that we may have the courage not to hide behind the Canadian myth of benevolence and humanitarianism, but to face our own positions within the history of a nation which has built itself through colonialism and racial oppression. It is only through confronting these realities that we may begin to understand the ways in which systemic violence continues to manifest itself both within and beyond our borders.

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