

Affecting the Frame: Risk, Vulnerability, and Sex Worker
Subjectivities

by

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Abstract

The recent changes in Canadian sex work legislation have brought significant attention to the issues of decriminalization. With the implementation of Bill C-36 (*Protection of Communities and Exploited Persons Act*) the legislative response to the *Bedford* decision, the government has re-criminalized sex work. Shifting the attention of the criminal justice system away from those who sell sex to those who purchase sex creates a dynamic that reconstitutes sex workers as vulnerable subjects. How then do sex work advocates and abolitionists play on this notion of vulnerability and its relationship to criminality and risk? Using data collected from the *Bedford* decision and Bill C-36 House of Commons and Senate hearings, I explore the ways risk and affect serve to reorient our understanding of the risky sex worker subject from that of a societal nuisance to a vulnerable victim or legitimate worker—positions which ultimately reify the grievability of sex workers' lives.

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Chapter 1: The Liminal Space Between Offender and Victim: A Case for Exploring Sex Worker Identity Politics

Prostitution laws, as part of the process of governance and identity formation, have historically served to construct a myriad of competing sex worker subjectivities. Sex work has traditionally been seen as a double transgression for women—a contravention of both social and legal codes of acceptable female conduct. In our contemporary political climate, the socio-legal approach towards sex work centres on the tensions between empowering sex workers to protect themselves through decriminalization, or saving sex workers from themselves (Brock 2000; Brock 2009). Many activists and academics move beyond these binary conceptions of sex work and argue in favour of a decriminalized regime that respects the sexual expression of consenting adults, even if there is a financial transaction involved (Bell 1994; Bernstein 2007a; Agustín 2007). Regardless of these tensions, sex work¹ debates intersect with criminal (and constitutional) law under the rubrics of criminalization, victimization, and protection. But while the law—as an instrument of regulation—claims to protect sex workers from violence, sex work advocates² argue that the restrictive nature of laws that govern sex work jeopardizes the lives of those who sell sexual services.

¹ It is useful here to operationalize the distinction between prostitution and sex work. When I refer to prostitution, I am doing so deliberately in order to convey that the activities related to the sale of services are discursively constituted through the nexus of criminal justice and legal intervention. Prostitution is a term used to refer to the act of selling sexual services that the criminal justice system has defined behaviour needed to be regulation. When I refer to the term sex work I am employing a conceptual tool that subverts the former definition. Here, the sale of sexual services is seen as a form of legitimate labour that should be decriminalized. It should be clear that I am not using these terms interchangeably. Rather, I am deploying them in a strategic way to problematize the ubiquitous use of the term prostitution to mean all forms of sexual exploitation.

² I use the terms advocate and harm reductionists to convey individuals and organizations that support sex work and its decriminalization. While the distinction between the two is subtle, I use these terms interchangeably because those who advocate on behalf of sex workers do so through the language of harm reduction. Almost all advocates claim that decriminalizing sex work will improve the workplace

We see this in the last ten years of sex work legislation in Canada, particularly in the landmark case of *Bedford v Canada*,³ which held that laws restricting sex workers from protecting themselves (i.e. hiring body guards, working indoors, and screening clients) violate the fundamental right to life liberty and security of the person, guaranteed by section 7 of the Charter of Rights and Freedoms. The decision, which has largely accepted a harm reduction approach to sex work, has been overlooked in favour of a governmental response that re-criminalizes sex workers and place their lives in similarly dangerous circumstances. The legislative response of Bill C-36 (*Protection of Communities and Exploited Persons Act*)⁴ is based on the Nordic model of prostitution regulation, which focuses the penal attention of law onto the purchasers of sex, aiming to criminalize those who create and sustain the demand for sexual labour.⁵ The community building function of the legislation serves to constitute sex workers as both nuisance that offends the sensibilities of the white Canadian imaginary and as victims that must be saved from their exploiters. Bill C-36, which ascended into law in November 2014, primarily criminalizes the purchasers of sex rather than those who sell their sexual services.⁶ This shift towards a new understanding of how sex work should be treated

conditions of sex workers while also giving them the necessary tools to adequately protect themselves. Though some harm reductionists may not fully endorse sex work, these individuals and organization argue that the laws that prevent sex workers from protecting themselves actually does more to harm them than it does in regulating sex work as a societal nuisance.

³ Canada (Attorney General) v Bedford [2013] SCC 72. [Canada v Bedford]

⁴ Bill C-36, An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General of Canada v Bedford and to make consequential amendments to other Acts, 2nd sess., 42nd parliament, 2014 (assented to November 6), S.C. 2014, c. 25.

⁵ Bill C-36 is also known as the *Protection of Communities and Exploited Persons Act* (PCEPA). I will refer to the legislation as Bill C-36 because I am situating this project in a temporal moment that reflects an ongoing contestation of the bill in its most raw form. This project is not a commentary on the enforcement of Bill C-36, rather an exploration of how Bill C-36 claim to reform policy and how this may actually play out in the future.

⁶ An excerpt from Bill C-36: “This enactment amends the *Criminal Code* to, among other things, (a) create an offence that prohibits purchasing sexual services or communicating in any place for that purpose;(b) create an offence that prohibits receiving a material benefit that derived from the commission

attempts to address the concerns of the Supreme Court of Canada, acknowledging that sex workers are in fact vulnerable to violence and worthy of protection. But in doing so, the state has discursively constituted sex workers as victims, not offenders. This project opens a space for examining the identity politics and ongoing reconstructions of sex workers in contemporary prostitution debates in Canada. I am particularly interested in the ways competing notions of sex work are taken up and how this (re)constitutes the sex worker identity in an effort to advance the goal of de/criminalization.

The *Bedford* (2010; 2013) decisions acknowledge that risks are apparent within the sex trade but are exacerbated by the previously enforced *Criminal Code* provisions. Abolitionists combat these narratives, negotiating the sex worker victim identity through an affective understanding of vulnerability, passivity, and the externalization of criminal culpability. Sex work advocates, on the other hand, embrace a responsabilized neoliberal subject position, asking the government to decriminalize mechanisms that enhance sex worker safety and their ability to protect themselves from violence. Using the *Bedford* decision, and specifically testimony given during the Bill C-36 House of Commons and Senate committee hearings,⁷ I will explore the ways characteristics of risk are not only used to demarcate the perceived dangers of the sex trade, but how they attach themselves to individual subjectivities and are mobilized to achieve certain (bio)political ends. In

of an offence referred to in paragraph (a);(c) create an offence that prohibits the advertisement of sexual services offered for sale and to authorize the courts to order the seizure of materials containing such advertisements and their removal from the Internet; (d) modernize the offence that prohibits the procurement of persons for the purpose of prostitution; (e) create an offence that prohibits communicating — for the purpose of selling sexual services — in a public place, or in any place open to public view, that is or is next to a school ground, playground or daycare centre; (f) ensure consistency between prostitution offences and the existing human trafficking offences; and (g) specify that, for the purposes of certain offences, a weapon includes any thing used, designed to be use or intended for use in binding or tying up a person against their will.

⁷ The House of Commons Committee on Justice and Human Rights (JUST) and the Senate Committee on Legal and Constitutional Affairs, respectively.

other words, while risk is applied to groups to predict future actions, it maps itself onto the individual, ultimately negotiating their mobility, social and cultural capital. In the case of sex workers, their ability to occupy an identity position that is compatible with that of victimhood is hinged on narratives of risk and vulnerability, which may only be possible through certain strategic manoeuvres.

Thus, this project is largely focused on how sex worker advocates and abolitionists make socio-legal and cultural claims on behalf of sex workers and how these claims negotiate the subjectivities of those involved in the sex trade. I am particularly interested in the ways in which these narratives are assembled, deconstructed, and even legitimized in the realm of (criminal) law and politics. I want to explore how competing narratives interact with one another, and particularly, how sex work advocates and abolitionists play on the sex worker identity in different ways—both in a seemingly similar effort to achieve more rights for sex workers (whatever this may look like).

Bedford and Bill C-36

In December of 2013, the Supreme Court of Canada deemed the criminalization of certain activities related to the act of prostitution—i.e. the mechanisms through which sex workers protect themselves—unconstitutional and struck down these provisions entrenched in the *Criminal Code*. In reaction to the ruling, Conservative Justice Minister Peter Mackay led the government to enact Bill C-36 to ensure that sex work would not be decriminalized. As a result, Bill C-36 was passed without much involvement from

academics and policy analysts in an effort to re-criminalize sex work and to uphold an ongoing tradition of condemning the sale of sexual labour.

The mandate of Bill C-36 attempts to address the Supreme Court's decision that sex workers are in fact made more vulnerable to violence via restrictive and disproportionately broad prostitution laws. The Supreme Court held that while the mandate of the state was to eliminate the "nuisance" of sex work, such a rationale for intrusive and extremely restrictive laws could not justify exposing sex workers to violence, health risks, and over-policing. This seemingly new identity, however, is negotiated by the fact that many of the provisions within the bill actively target sex workers, and make their ability to choose how to protect themselves just as difficult as it was before *Bedford*.

With a shift towards a seemingly different approach to sex work—one that is tough on johns and "soft" on sex workers—there exists a certain slippage in the identities that have historically been romanticized in the sex trade. Through the identity making function of law, and appeal to legal mechanisms of reform, we see a clear tactic to legitimize the state's history of criminalizing sex work, while emphasizing pity, empathy, and vulnerability towards "victims" of the sex trade.⁸ This new approach, which constructs all sex workers as passive victims, is an attempt to reorient the penal arm of the criminal justice system away from sex workers, and instead, focus its gaze onto "deserving" criminals who exploit, what many sex worker abolitionists refer to as, "prostituted women." As a counter narrative, many sex work advocates stress notions of agency, asserting that given the necessary tools to protect themselves, sex workers can

⁸ This type of language is all too common in sex work debates. Being a victim of the sex trade implies that one lacks the necessary agency to resist the system that oppresses them.

actually embody many of the state's neoliberal ideologies around techniques of self-responsibilization and governance.

Mapping the Divergences in Sex Work Literature

The literature surrounding sex work regulation and governance has taken a form that resembles the diverse experiences at the grassroots level. Discussions related to whether sex work remains a legitimate form of economic sustenance has been particularly central in most feminist debates. In fact, most of the scholarly debates centre on the (il)legitimacy of sex work as a form of respectable versus exploitative labour (Bernstein 2007). The scholarly research tends to reflect public sentiments towards prostitution, and in this sense, reflects many of the normative arguments related to sex work.

On the one hand, there are many scholars who support the sale of sexual labour and have theorized sexual services as a form economic autonomy, sexual expression, and subversion to heteronormative conception of sexuality. Scholars such as Elizabeth Bernstein (2007) and Laura Agustín (2007) have taken a liberal approach in theorizing sex work, claiming that in most postindustrial societies, female labour remains significantly underpaid in comparison to male counterparts. As Bernstein (2007) suggests, the sale of sexual labour is not only a sexually liberating experience, it can also provide a means of economic support that may be financially beneficial for many women

who do not have access to formal education, job training or other resources.⁹ She writes, “Given the gendered disparities of postindustrial economic life, the relatively high pay of the sex industry (compared to other service sector jobs) provides a compelling reason for some women from middle-class backgrounds to engage in sexual labour” (Bernstein 2007, 475). It should be stressed that sex work is experienced and performed differently for women and men of diverse socioeconomic backgrounds, gender identities, and sexualities (Bell 1994). Sex work can provide income for many who may not possess the social and cultural capital to enter into the “legitimate” workforce. Ronald Weitzer (2009, 215) challenges many of the essentialist views held by abolitionists, arguing, “This paradigm holds that there is nothing inherent in sex work that would prevent it from being organized in terms of mutual gain to both parties—just as in other economic transactions.” The complexities vary and the performance of sex work takes on a variety of forms. It can take place in massage parlours, escort services, webcam shows, or phone sex services that engage in the sale of sexual performances or utterances that may elicit sexual gratification on the part of the client.

These forms of sexual labour are multifaceted and look different across the variously unique identities that choose to conduct business within the sex trade. In fact, van der Muelen, Durisin and Love (2013) argue that a concretizing and homogenized understanding of sex work is virtually impossible and only serves to simplify and sometimes erase the complex experiences of those within the sex trade, particularly those who do not conform to mainstream understandings of cis-gendered sex worker identities. The wide range of experiences within the sex trade make political interventions much

⁹ This of course, must be juxtaposed with the assertion that the sex trade itself can be hierarchical in the sense that those who do not possess erotic, or sexual capital (Hakim 2010) may find it more difficult to earn versus those who are seen as sexually desirable.

more complicated since different geopolitical locations offer different rationales for sex work. In Canada, survival sex work is a means of maintaining the basic requirements for living. Vancouver's Downtown East Side (DTES) is most notable for its immensely impoverished sex work community that are primarily entangled in street-level solicitation. The sex workers who live and work in this area are mostly comprised of a disproportionate number of Aboriginal women, many of whom have been systematically "pushed"¹⁰ into the sex trade through a historical legacy of colonialism and land expropriation, sometimes contributing to higher rates of intergenerational and substance abuse (Benoit, Carroll, and Chaudhry 2003; Culhane 2003). In contradistinction, sex workers in the Maritime Provinces approach sex work very differently. For many, the scarce economic opportunities for women in the Atlantic region has created a climate in which many women actively conduct a cost-benefit analysis of entering the sex trade, "often [making] careful decisions between the economic choices available to them—such as minimum wage work or welfare and between indoor or street based sex work and social assistance" (Jeffrey and MacDonald 2011, 18). The experiences of sex workers remain starkly different across the nation and cannot be explained by one theoretical or experiential model. The survival sex trade looks very different not only in relation to forms of labour in the "legitimate economy," but also with other forms of sex work, including indoor and escort based services (Bruckert and Parent 2006).

This complexity is systematically erased from abolitionist accounts of the sex trade, which often focus on the "inherently" exploitative and predatory nature of economies based on sexual labour. We see this with the radically conservative approach

¹⁰ I have used the term "pushed" to invoke two crucial meanings: 1) some sex workers have fewer life chances than others—based on race, class, gender and (dis)ability; 2) the term pushed allows room for agency, since the term "forced" strips sex workers of any decision making when entering the sex trade.

to sexual labour, which holds that the sale of sexual services transgresses certain moral boundaries while offending the sensibilities of women through a demeaning objectification and commodification of the female body. Many of these abolitionists, inspired by the works of Andrea Dworkin (1987; 1997) and Catharine MacKinnon (1989), suggest that any form of sexualization of the female body is inherently exploitative. Like rape, Dworkin attributes the power dynamics of patriarchy as creating an inherent power differential in which the sale of sex can never constitute any form of agency. For her, prostitution “negate[s] self-determination and choice for women” (Dworkin 1987, 143). From this understanding, many argue that sex work is inherently exploitative and problematic (e.g. Barry 1996). They suggest that the intrinsically disproportionate power imbalances in society disadvantage women from the outset of the sexual transaction. In other words, “When men use women in prostitution, they are expressing a pure hatred for the female body” (Dworkin 1997, 145). This standpoint mirrors the narratives mobilized within the Bill C-36 hearings, which position the purchasers of sex as abusers, exploiters, and perverts. This not only serves to construct the clients of sex workers as illegitimate consumers in an illicit economy of exploitation, it also serves to reconstitute them as embodiments of a grandiose patriarchal project.

From these perspectives, sex work is contested under the rubric of liberalism. It seeks to advocate on behalf of, and against, the notion that sex work can be conceptualized as a legitimate form of labour. Under this framework, the contention remains that while other forms of gendered labour can be seen as reproducing patriarchy, sex work remains an economic opportunity that exploits the imbalances of power and

resists capitalism's growing gender inequalities in the labour force.¹¹

But these critical questions are often displaced for more pragmatic ones, intent on exposing the violent and dangerous nature of street-based work—a site of inquiry that continues to fuel much of the criminological research on the sex trade. From an empirical standpoint, studies suggest that while sex work can be dangerous, street sex work is significantly more risky than indoor sex work (Lowman 2000; Weitzer 2005). We see this play out in the discourses surrounding the need for a regulatory regime that facilitates the improved working conditions of sex workers, primarily by removing the *Criminal Code* provisions that criminalize sex workers for ensuring mechanisms of self-protection.

Beyond the domestic analyses of sex work exists bodies of literature that specifically address the complexities of the international sex trade and its relation to global markets of sexual commerce. Within these discourses, the sex trade becomes implicated with the trafficking of women, “defined as transportation of persons by means of coercion, deception or force into exploitative and slavery-like conditions [and] is commonly associated with sexual-slavery and organized crime” (Andrijasevic 2007, 25). The narratives that emerge amongst scholars and advocates for ending the forced migration of women into the sex trade reflect those similar to prohibitionists that advocate for increasing the reach of the criminal justice system. These arguments function most effectively along lines of affective narratives that constitute males as

¹¹ This debate truly embodies a disproportionate volume of the literature, which seemingly raises questions surrounding non-normative identities, including racialized and queer subjectivities. Especially of concern to Canadian scholars has been the overrepresentation of Aboriginal women in the sex trade. Not surprising, the narratives of these women have been significantly underrepresented in mainstream media and legal narratives. The *Bedford* decision saw some interveners that represented the interests of Aboriginal women; however, the experiential knowledges of Aboriginal women have been systematically silenced and continue to be underrepresented in the discussions related to Bill C-36.

inherently exploitative and women as immanent victims. Questions of agency are often positioned as irrefutably static, i.e. women who engage in prostitution have no choice but to do so. The tension drawn out in the literature, as well as the sex work debates, encompasses a departure from sex work, and instead, focuses on the state's efforts to curb human trafficking.

The distinction that should be made from the onset is that sex workers and human trafficking victims are not one in the same. The sex worker identity does not ever include those who are forcibly trafficked into the sex trade; rather the term worker elicits a voluntary choice, albeit a choice that *may* be constrained. As this project will uncover, narratives deployed by prohibitionists tend to fall under the rubric of trafficking prevention, though trafficking is a form of exploitation already prohibited under the *Criminal Code* and its enforcement extends far beyond the sex trade.

Framing the Frame: A Methodology for Affecting Sex Work

As a way of mapping these ongoing debates, my project rests primarily on two major legal and political events in the course of reforming prostitution legislation. The first is the *Bedford v Canada* decision and its subsequent appeal heard by the Supreme Court in 2013. The Supreme Court upheld the initial trial decision by Justice Susan Himel, arguing that a system of laws that do not necessarily prohibit sex work, but rather criminalize the mechanisms that facilitate sex worker safety, is seemingly counterintuitive and fundamentally unconstitutional. The decision to strike down the *Criminal Code* provisions that restrict the practice of safer sex work stresses the

importance of harm reduction and the need to reform regulating sex work as a public nuisance.

The second data set is drawn from a compilation of testimonies by activists, organizers, and scholars during the Bill C-36 House of Commons and Senate hearings. Between July 7th–10th, 2014, the House of Commons Committee on Justice and Human Rights (JUST) discussed the potential implications of Bill C-36 in a publicly televised Parliamentary hearing. As a methodological starting point, I will use these Parliamentary meetings as a case study for analyzing the emerging discursive constructions of sex workers in Canada. Over the course of 4 days, the JUST committee discussed the potential benefits and barriers of Bill C-36, the possible political implications, fiscal obligations, and called upon a myriad of expert witnesses to testify on the pragmatic efficacies of the legislation. The data sets here rely primarily on the transcripts of the JUST committee meetings, analyzing the identity (re)constructions within the hearings and exposing some of the underlying affective motivations behind some of these political engagements.

Similarly, between September 9th–11th, 2014, the Standing Senate Committee on Legal and Constitutional Affairs also conducted a publicly televised discussion of Bill C-36, debating many of the same issues heard in the JUST hearings. Here, the Canadian Senate called witnesses to testify to the potential effects of passing Bill C-36 into law, their opinions on enforcement and regulation, and to discuss any amendments needed prior to the bill's ascension into law. The data I have collected comes in the form of transcripts (and video recordings) from both of these hearings.

The structure of these Parliamentary debates falls along a standard format. First, witnesses are placed on panels of three or four and given five minutes for their respective opening statements. This is an uninterrupted moment for witnesses to testify to their own experiences or on behalf of an organization that has a vested interest in the de/criminalization of sex work and its related activities. After each witness situates their arguments in relation to Bill C-36 the floor is open for questions where Members of Parliament are permitted to cross-examine witnesses and facilitate a question and answer period with various witnesses.¹²

The House of Commons Standing Committee on Human Rights and Justice called a total of 77 witnesses to testify, of which 50 testified to the benefits of passing Bill C-36, while 27 testified against the criminalization of johns, sex workers, and other actors involved in the sex trade. The Senate Committee on Legal and Constitutional Affairs called many of the same witnesses to testify and heard testimony from former and current sex workers, survivors of sexual assault, legal and sociological experts, police chiefs, and evangelical groups. The contributions put forth ranged from the experiential knowledge of those who have manoeuvred through the sex trade, to commentary on the potential effects of enforcement and criminalization of sex workers and their clients. The Parliamentary committee hearings provide a robust site of analysis in that they represent the formal communications with the legal and Parliamentary systems, while also providing a framework for understanding how these narratives are packaged for public and political audiences.

¹² Cross-examination here does not reflect that of litigation. Rather, here testifiers are generally asked to elaborate on statements made in their earlier testimony and asked to comment on the potential effects of Bill C-36.

I have chosen to use transcripts for two main reasons. First, they offer a documented exchange of the ways in which those involved in the sex work movements frame their experiential and professional accounts of the sex trade in a legal and political setting that is constituted by and through principles of liberal democracy. From the very onset, it is my contention that those speaking in the legal and political arenas are limited to what they can say and how they can articulate it. This is because liberal democracy privileges certain accounts while unable to recognize others. Second, the transcripts offer a temporal element that demarcates a shift between juridical discourses stemming from *Bedford* to the legislative response of Bill C-36.

Drawing on the work of Judith Butler (2009) in *Frames of War*, I am not only concerned with how these identities are “framed,” but I am also interested in techniques of “framing the frames”—a methodology that exposes the ontologies of certain subjectivities while simultaneously disentangling the imbedded power relations. The frame, as Butler suggests, is part of the heterogeneous processes that constitute how certain subjects are made recognizable and how others are made invisible. When we unpack how certain subjects are framed we can begin to interrogate the ways in which the frame itself is assembled, ultimately laying the groundwork of an interrogation of those who are actively constructing the frame.

Such a project uncovers the underlying power that situates those in a position to create or appropriate certain identities and draws on broader questions of exposing and challenging the static nature of identity formations. Here, Butler explores the ontology of the subject and its relationship to vulnerability, precariousness, and mortality. When we frame certain subjects, there is always a concealed and contested field of power that

operates within. Butler's method allows us to untangle these power relations and expose the strategic "con" or "ruse" imbedded within the frame. It becomes particularly useful when analyzing Parliamentary debates that construct and negotiate identities in a strategic way as a means to a political end—one that has the potential to legitimize a new regulatory framework that resembles the unconstitutional legal objectives struck down in *Bedford*. Butler's claim is that affect serves as a mechanism for representing some as worthy of protection, while others remain expendable. The con requires a strategic navigation around what Carol Smart (2002, 42) refers to as a hetero-masculine criminal justice system in which, "[The] construction of Woman is confirmed by a common sense which is fed by routine phallogocentric orthodoxy." The legal and criminal justice systems are only willing to hear certain claims, particularly those of a gendered nature, in a way that is compatible with the existing heteronormative frameworks.

The experiences of those who fall outside the scope of worthy victims must actively frame their experiences in a way that is systematically aligned with previously established conceptions (or imaginaries) of victimization, self-responsibilization, and vulnerability (Mulla 2014). This is particularly common with instances of rape, where victims are required to "tell their story" in a way that exemplifies that they refused sexual advances and ensured they exhausted reasonable self-safety mechanisms. Often times, moving testimony from victims attempt to illicit emotional responses, such as pity, which can be understood as forms of subverting the "risky" prostitute subjectivity.

Affect, or the assemblage of emotions and visceral responses that organize subjectivities through an alternative mechanism of social alignment, serves to add a secondary language from which subjectivities are oriented within the court. According to

Sara Ahmed (2004a; 2010; 2012) emotions serve as a relational power dynamic that situates people and objects in relation to one another. In this sense, certain affects allow people to feel closer to others. Empathy and pity often orient our relationalities towards, or with, others. When sex workers employ traumatic narratives, it brings us closer to their victimization. It allows us to feel a sense of community—whether real or imagined—in that moment.

Faced with this unraveling of emotion, we can ask how the vulnerability of sex workers—as a deployment of affective narrative—serves to “frame” certain subjects as worthy of state protection (Carline 2012), while others are constituted on the lower rungs of the hierarchies of worthiness (Jiwani 2011). Related directly to the issue of prostitution in Canada, we can see how particular bodies are deemed worthy of rescue while other experiences—particularly those of indigenous women (Razack 2002)—are systematically marginalized.

Drawing linkages to risk, affect serves as a heterogeneous point of mediation that reconstitutes the subject as somehow external to the risks inherent within the sex trade, but at the same time, vulnerable to victimization and worthy of intervention. This is a particularly new theorization in that it situates the affective dynamics of pity and emotionally charged narratives of suffering in relation to a once criminalized group. Using Butler’s method of framing the frame, we can begin to expose how certain subjectivities are constituted as too risky for the courts. In this sense, sex workers who occupy a subject position where their perceived risks outweigh their perceived (and constructed) vulnerabilities are not ideal victims. In essence, we must ask how a historically demonized, trivialized, and otherwise criminalized population can stand

before the courts and make a legal claim that they are in fact victims. To state the obvious, the fact that sex workers experience violence should be enough to grant access to victimhood, but their involvement in a criminal enterprise often precludes their ability to be recognized as deserving of equal rights. Doing so requires a shift from traditional legal questions that focus on a strict rights-based framework, towards an inquiry into how identities are packaged and made palatable for the courts (see Moore and Rennie 2006; Merry 2009; Spade 2011; Lamble 2013). Such an analysis is required in order to enhance our understandings of the ways affect, risk, and subjectivity intersect to negotiate certain identities and provide the necessary politics to achieve the required ends by many organizations involved in the de/criminalization movements.

Risky Business: Framing Risks, Sex work, and the Criminal Justice System

Throughout this project I will put forth the assertion that the “language of risk” (O'Malley 2000) plays a central role in the framing of sex work legislation in Canada. On the one hand, sex work advocates claim that the state is making the selling of sexual labour a more risky enterprise by restricting sex workers access to certain safety measures, i.e. screening clients and working in safe spaces. On the other hand, the state has appropriated a narrative of risk that constitutes the sex trade as an inherently risky industry (Scoular 2010).

For Robert Castel (1991), *the subject* is missing in a risk analysis through an intricate web of aggregates and models of prediction. The subject is abstracted from her own sense of self and she merely becomes transformed into a statistical probability of

riskiness based on an actuarial assessment of aggregated data. Those involved in reforming sex work policy operationalize risk in two ways. The first resembles that of a traditional risk analysis. For example, the Canadian HIV/AIDS Legal Network has conducted studies that suggest criminalizing sex work will ultimately make it harder for sex workers to negotiate the terms of the engagement, and statistically speaking, will create more pressures to engage in unsafe sexual practice (Canadian HIV/AIDS Legal Network 2012). These statistics speak to a generalized practice of sex work, one that does not apply to all individuals and is influenced based on other risk factors—i.e. socio-economic status, age, sexuality, gender expression and race.¹³

These narratives also intersect with a second kind of risk analysis, one that focuses on the individual subject as a metric of the potential riskiness of victimization. Here abolitionists argue that all sex work is exploitative and that women involved in the sex trade cannot freely choose to sell sexual services because they are rendered powerless in any sexual transaction. Advocates challenge this assumption by arguing that individuals choose to negotiate the sex trade in ways that subvert the inherently exploitative characterization of the sex trade. While sex work advocates claim that the tools will allow women in the sex trade to protect themselves (based on an actuarial assumptions) it takes into consideration that doing so is an individual choice. When abolitionists argue that freedom within the sex trade is non-existent, they are doing so at the level of the individual, claiming that each subject lacks agency in the structure that subjugates them. This is accomplished through what I would call an affective relationship between risk and vulnerability.

¹³ Some sex workers, particularly those who solicit on the street, are more likely to be victimized than those who have the ability to screen client, negotiate terms, and hire bodyguards/drivers.

The risked subject, whose involvement in the sex trade is from its onset a precarious enterprise, does not have the capacity to choose. But while her victimization is often seen as illegitimate because of her active participation in a risky endeavour, abolitionists actually destabilize this narrative by arguing that sex workers are victimized *because* they are placed in an intrinsically vulnerable situation and because those external to them (i.e. pimps, johns, and traffickers) are manipulative and vindictive. The characterization of these subjectivities, in relation to the pro-sex work arguments, challenges risk logics in a way that mobilizes an understanding of personal and individual trauma as a caveat for challenging harm reduction logics. In other words, when abolitionists invoke affective and emotional accounts of vulnerability and victimization, they challenge the notion that harm can be prevented.

Traditionally, scholars like Castel (1991, 288) suggest that risk merely becomes an external quality of the subject, and as a result, there “is no longer a relation of immediacy with the subject *because there is no longer a subject*” (italics in original).¹⁴ But I argue that in order to counter the narrative that harm in sex work can be negotiated, risk must be (re)constituted at the level of the subject. Sex workers are at risk because they are involved in a risky enterprise. Their victimization, however, is not their responsibility because they do not have the capacity to choose a lifestyle of degradation and inhumanity. I use these terms because it reflects the types of narratives abolitionists deploy in a strategic effort to convince politicians, judges, and the general public, of the destructive capacity of prostitution. No longer is sex work to be seen as a nuisance that

¹⁴ This notion that the subject has disappeared in relation to an object of risk analysis will be taken up in later chapters. For now, it is critical that we establish the criminal justice system as a mechanism not only concerned with addressing crimes as they occur, but also, evaluating the potential for future criminal activities as well as the likelihood of victimization.

must be managed, it is seen as a systemic and inherently violent institution that must be destroyed. Thus, the notion of risky subjects is not just taken up in an actuarial analysis, but the risky (or risked) subject becomes the centre of risk discourse.

In the case of *Bedford*, the Supreme Court of Canada (in agreement with the initial 2010 decision by Justice Himel) put forth that the existing *Criminal Code* provisions, which criminalized the activities related to sex work, actually exacerbate the risks that already exist within trade. This came in contradistinction to the state's position that sex workers actively choose to involve themselves in an "inherently" risky enterprise—a position that absolves the state of any necessity to provide sex workers with adequate protections.

But the ways in which advocates also negotiate individual subjectivity is telling of how the criminal justice system valorizes and romanticizes risk discourses. At its core, the narrative of the pro-sex work advocates seek to obscure and downplay some of the very risky and complex identities, and in turn, focuses on cases in which individuals do have the capacity to protect themselves, ultimately playing on neoliberal conceptions of self-responsibilization. Some of the most marginalized identity categories with deeply historical reasons for entering the sex trade are often cast to the margins of the discussions in favour of a victim identity that closely resembles that of a self-responsibilized neoliberal subject (Cruikshank 1993).

While this project centres on the shifting socio-legal climate of prostitution in Canada, its theoretical contributions and engagements are constitutive of a larger project on the ways risk and affect negotiate subjectivities. In (re)assembling these conceptual tools, I hope to disrupt traditional notions of risk that romanticize aggregated objects of

analyses, and instead, put forth an understanding of risk as a constitutive part of the subject. That is, the risks we take, as part of a broader system of value judgments, inform the ways subjectivities are constituted—particularly through criminal justice discourses (Donohue and Moore 2009). No longer is it adequate to assess risk as a categorical imposition or appendage onto the populace. It must be conceptualized as a constitutive part of our identities, and in turn, as a particular form of capital or baggage that affects the manoeuvrability of subjects through time and space. Thus, this project seeks to contribute a new understanding of how risk, affect, and identity politics intersect with law to negotiate criminal and victim subjectivities.

Understanding the Sex Trade through Vulnerability and Inherent Risk

Many critical scholars (e.g. Ericson and Haggerty 1997; Hannah-Moffat 1999; Rose, O'Malley, and Valverde 2006; Moore 2007) reject the notion that risk is amoral, asserting that the categorical constructions of certain risk factors are inextricably linked to pre-existing agendas of governmentality. This is where my project opens the dialogue between risk, affect, and the “vulnerable” sex worker subject. In this framework, the tools sex workers need to protect themselves are actually reformulated by the criminal justice system and state’s ideological rhetoric as “risks.” Thus, the criminal justice system has cast its net even wider, creating a dynamic where certain attributes, such as unemployment or homelessness, increase the perceived riskiness of certain subjects (Hannah-Moffat 2005). Many criminal subjects, both within and outside the sex trade, are hierarchized in this way for purposes such as conditional release, parole, etc.

Those who take proactive steps in reducing their riskiness through techniques of managing the self are deemed worthy of recognition by the courts, while those who are socio-economically marginalized and racialized are often represented as less worthy of protection. Protection is of course part of a matrix of power relations and is more easily attained by some and harder to acquire for others. Sex workers who may be homeless, have substance addictions, or are economically disenfranchised may not possess the cultural, social, and economic capital to employ certain protective measures. By virtue of their vulnerability and exposure they are more visible to the public and unable to manoeuvre through closed doors in the same way escorts or massage parlour employees navigate the sex trade. Not only do life chances affect these material realities, the representations of street workers as both symbolic and physical “filth” underscores the ways in which many sex workers are constituted as outside the social imaginary (Hugill 2010). By virtue of their hyper-visibility as a public nuisance, they are stigmatized by the gentrified city dwellers concerned with depreciating property values and “unsafe” neighbourhoods.

At the same time the needs of sex workers, like other criminalized subjects, are constituted as risks. Kelly Hannah-Moffat (2005) outlines this in her work on tools of risks assessment and female prisoners. Factors such as poverty, homelessness, and even motherhood can be re-constituted as risk factors that would likely lead to recidivism. These heighten the perceived riskiness of those involved in the sex trade, pushing them further towards undesirability, and facilitating an economy of violence that disproportionately affects some of Canada’s most marginalized groups. The criminal stigma attached to these groups makes it increasingly difficult for advocates to highlight

vulnerability. If vulnerabilities are in turn transformed into risks, how do partisan actors achieve political and legal reform on behalf of such a group? This task is something I take up in the following chapters, but it stands to reason that many of these risky subjects are often made visible in terms of their of their entanglement with other criminal activities and invisible when associated with victimization. This poses a fundamental risk to the efforts of abolitionists and advocates who are not only concerned with framing the sex trade in a particular way, but also struggle with appropriating sex worker subjectivities to conform with their political ends.

The subject position of the vulnerable sex worker is one that evokes emotions of pity, empathy, and is the focal point in uncovering the ways in which risk interacts with affective narratives. Strategies of identity (re)appropriation, and what Massumi (1995) refers to as manoeuvrability through affect, are taken up in common and simultaneously different ways. Specifically, when we think of victimization and the sex trade, we can draw on Butler (2009, 44), who writes, “The question, though, of whose lives are to be regarded as grievable, as worthy of protection, as belonging to subjects with rights that ought to be honored, returns us to the question of how affect is regulated and of what we mean by the regulation of affect at all.” Here, Butler forces us to think about the role of affect in constructing certain subjects as worthy of a victim identity and how others are excluded from accessing such positions. It stands to reason “that certain kinds of bodies will appear more precariously than others, depending on which versions of the body, or of morphology in general, support or underwrite the idea of the human life that is worth protecting, sheltering, living, mourning” (Butler 2009, 53). The notion that sex workers are all seen as equally worthy of protection is a mere illusion. Imbedded within the way

sex workers are framed, as Butler suggests, is an ongoing struggle for visibility, recognition, and intelligibility. For the courts, some bodies, like those of trans or Aboriginal sex workers, are regarded as too risky, too complex, or too esoteric.

Affect becomes instrumental in formulating our understanding of the ways in which legal arguments are framed. As Butler (2009, 11) writes, “‘to be framed’ means to be subject to a con, to a tactic by which evidence is orchestrated so to make a false accusation appear true.” And as Sara Ahmed (2004b) and Michael Hardt (1999) argue, affect not only orients our understanding of subjectivities, it places subjects—both materially, emotionally, and psychologically—in various positionalities that negotiate their constructions:

In such affective economies, emotions *do things*, and they align individuals with communities—or bodily space with social space—through the very intensity of their attachments. Rather than seeing emotions as psychological dispositions, we need to consider how they work, in concrete and particular ways, to mediate the relationship between the psychic and the social, and between the individual and the collective (Ahmed 2004b, 119).

Affect, along with narratives of risk, allows us to conceptualize identities as always relational and constantly in motion. It provides a layer of subjectivity that otherwise goes unnoticed in discourses of risk, responsibility, and victimhood—all of which have been popularized in the criminological and sociological disciplines. Moving towards *Bedford* and Bill C-36, it is necessary to conceptualize the Parliamentary committee hearings as affecting risk narratives and (re)constituting the identity of the sex worker as worthy of protection in order to fully appreciate the theoretical interlinking between risk, emotion, and identity politics.

Epistemologically speaking, affect remains an immensely important conceptual

tool for exploring the ways emotions, experiences, and feelings shape broader socio-legal and political interventions of *knowing* the ontology of the subject. Ahmed (2004b; 2010) suggests that affect embraces a particular “stickiness” in which subjects and objects are bonded together through a spectrum of emotion. This relationship—one that invokes a semiotic and psychological connectedness—(re)orients bodies and subjects in both time and space, ultimately creating a dynamic that exists materially and imaginarily. It is something that exists everywhere and nowhere. To theoretically ground this notion of affect, this project mobilizes those voices of sex workers, their opponents, and politicians to weave together an understanding of a politics of emotion within the social-legal imaginary.

How we align ourselves with certain objects and subjects is indicative of the affective powers of emotion. While the frameworks above form the crux of my theoretical position my project is grounded in the House of Commons and Senate committee meetings on the potential impacts of Bill C-36. These hearings are not only full of expert testimony, but also rife with affective experiences of the sex trade that complicate our understanding of the sex trade and allow for the interrogation of the sex worker as subject constituted by and through affective-judicial discourses.

From its inception, Bill C-36 is drafted with an affective orientation. Conservative MP Joy Smith, one of the biggest proponents of Bill C-36, personally called many abolitionist witnesses to share their stories and experiences with the JUST committee. The sharing of experiences developed into a central theme of the hearings, which at times, stood in tension with the contributions of expert testimony given by academics, legal officials and researching organizations. Considering Brian Massumi’s (2010) work

on the political importance of affect in shaping the present towards the future, the Bill C-36 witnesses have an incredible role to play in negotiating how sex work is represented, and how the sex trade is constituted within a legal/political arena. For this reason, I have operationalized the types of witnesses called to testify. These distinctions may prove useful in the coming chapters for exploring how narratives are shared, who their intended audiences may be, and the implications of such discourses.

The witnesses can be assigned to one of three different categories. The first, I will refer to as abolitionist or prohibitionist lobbyists. These are individual citizens, or members of various advocacy groups, that seek the immediate abolition of the sex trade. Many of these groups, such as the Vancouver Rape Relief and Women's Shelter and Walk With Me Canada Victim Services, advocate for criminalizing purchasers of sex, while simultaneously supporting for the increase in monetary contributions and social resources to aid the exit of women from the sex trade. The second type refers to individual groups I will call pro-sex advocates and harm reductionists. These groups and individuals often testify to their experiences as current or former sex workers in favour of a decriminalized model of regulation. They also consist of advocacy groups, such as Prostitutes of Ottawa/Gatineau Work, Resist and Educate (POWER) or Pivot Legal Society, represent those in the sex trade who assert that the existing regulatory frameworks exacerbates conditions of violence and facilitates instances of violence and abuse. The third group is comprised of sociological and legal "experts." These consist of expert witnesses who have been called to testify for their legal expertise—particularly on their commentary of potential implications of the new regulatory model and opinions on the constitutionality of Bill C-36. Lawyers, professors, police chiefs, and official policy

analysts from government agencies, including the Department of Justice, make up much of this group who were called to testify because of their professional experiences and knowledge of the criminal justice system.

It is important to note here that the ways in which sex workers are able to communicate with the legal system is systematically constrained by the ways the legal system already conceptualizes itself and articulates its own identity. For the most part, the contemporary criminal justice system privileges an understanding of crime and victimization through the lens of risk—a calculated and objective metric of the potential for regulating and preventing certain behaviours. Sex work advocates and abolitionists ultimately navigate the legal system according to these pre-established boundaries of what can be said and what can be heard, both by criminal justice system and the courts. Through the *Bedford* decision, which effectively struck down the infringing *Criminal Code* provisions listed above, the courts have communicated that it is Parliament's obligation to protect the lives of sex workers. Bill C-36 represents the forum through which advocates and abolitionists voice concerns over the future of the sex trade in Canada. The ways in which they appropriate certain identities, hide others, and negotiate the vernacular of risk is increasingly telling of the ways in which our legal system poses barriers to accessing social justice from a vantage point that privileges intersecting and complex identities.

The binary of victim/agent places a particular limit on the sorts of analyses we can employ, and furthermore, restricts the arenas of public discourse to a narrow interpretation rendered by our legal system. Here I want to stress the need for a broader and more critical reworking of the ways in which we address criminological and

sociological sites of inquiry. Feminist socio-legal scholars, such as Smart, have laid the critical foundations necessary to question how the legal system is autonomously positioned in relation to the social and how law's ability to hear certain arguments is based on the pre-condition that law is only restricted by the domination of hetero-patriarchal notions of identity, risk, and morality.

Chapter 2: From Risky to Vulnerable: Constituting the Sex Worker Subject in *Bedford v Canada*

Advocating on behalf of sex workers is a particularly difficult undertaking, both for abolitionists and anti-abolitionists. On the one hand, sex workers have been historically constructed as criminals. On the other hand, sex workers have invoked a rights discourse that suggests the sex trade is risky and requires further state intervention in maintaining the safety of those who sell sex. Abolitionists have maintained that the liberal approach to supporting sex worker rights has failed insofar as it upholds the existing and inherently risky nature of the sex trade. For them, the sex trade is an immutably dangerous institution. It systematically exploits young women and lure and deceive them into a world of violence and degradation.

While both camps are trying to end violence against sex workers, their efforts for policy reform have been taken up in very different ways. This chapter will outline the abolitionists and anti-abolitionists have engaged in an identity politics that serves to homogenize experiences of the sex trade in an effort to create an emotional claim to vulnerability while playing on neoliberal logics of risk and victimization that are taken up by our contemporary criminal justice system.

The identity constructions that are reproduced within these narratives surround a vulnerable sex worker identity—one that is either vulnerable to external factors (i.e. pimps and johns) or one that is made vulnerable through the law's refusal to allow techniques of risk management and harm prevention. This chapter will provide a brief historical analysis of the ways sex worker identities have been historically constituted through Canadian legislation. It focuses on *Bedford* as a site of identity contestation—one

that involves a reorientation of sex work worker ontology, analyzing the ways in which sex work has historically been conceptualized as a nuisance into a new understanding of vulnerability and victimization, which seemingly focuses on the subjectivity of the sex worker.

From Past to Present: Competing Sex Worker Identities in the Canadian Imaginary

Historically, the law has not been particularly concerned with the ways sex workers experience the sex trade, but rather, has focused on regulating the *act* of prostitution, the risk related to its performance, and its representation as a nuisance. Prostitution was perhaps most visibly enforced through vagrancy laws where newly immigrated women were targeted because as a way of exerting control over the new populations. It became increasingly difficult, however, to enforce laws seeking to control women's behaviours solely through a criminal justice approach. The regulatory apparatuses moved beyond the criminal justice system when charitable organizations and religious groups made efforts to provide housing and other forms of support to those who would agree to conform to a moralistic definition of acceptable femininity (Backhouse 1991, 234). However, such organizations quickly realized that their resources were finite and that the criminal justice system was not providing the necessary solution for the "problem of prostitution" (Backhouse 1991, 235). In an effort to resolve the problem, nineteenth century legislators drafted the *Contagious Diseases Act*, which effectively constituted prostitution as a formidable health issue. Mariana Valverde (2008, 77) writes, "for many Canadians prostitution was really *the* social evil, the most important of a long list of

social problems ascribed to modern urban life” (italics in original). Its visibility as a morally suspicious activity represented a clear and identifiable threat to the sanctity of the heteronormative condition. Until the 2010 *Bedford*¹⁵ decision, the regulation of prostitution sought to control its visibility in the public sphere and reduce its impact as a nuisance on communities across the country.

This is particularly evident in an examination of the laws that govern sex work in the pre-*Bedford* era. Prior to the 2010 Charter challenge, prostitution, as a crime in itself, was not included in the *Criminal Code*. Rather, acts surrounding prostitution were governed in an effort to regulate the nuisance of prostitution:

It is not a crime in Canada to sell sex for money. However, it is a crime to keep a bawdy-house, to live on the avails of prostitution or to communicate in public with respect to a proposed act of prostitution. It is argued that these restrictions on prostitution put the safety and lives of prostitutes at risk, and are therefore unconstitutional.¹⁶

This regulation of the nuisance, particularly through police enforcement and ongoing projects of socio-spatial regulation, is largely accomplished through gentrification and the establishment of zoning practices that construct de facto prostitution strolls. It is through these policies that the production of the prostitute identity is fixed to a particular lifestyle of poverty, moral degeneracy, and undesirable femininity. The spaces sex workers occupy are constructed through a variety of regulatory mechanisms to constitute the identities of those who occupy them. Violence, theft, and harassment are then seen to be natural features of the space sex workers occupy (Razack 2002). These ways of discursively constructing the act of prostitution are perhaps quite evident from the early developments of the *Bedford* challenges, but shift as the issues make their way through

¹⁵ *Bedford v Canada* (Attorney General) [2010] ONSC 4264. [*Bedford v Canada*]

¹⁶ *Canada v Bedford* at para 1.

the courts.

Shifting the Frame: From Regulating Nuisance to Saving the Subject

The pre-*Bedford* regime sought to regulate sex work primarily as a nuisance. But within this notion of focusing on the act of prostitution came with it a particularly callous and unsympathetic understanding of the ways in which sex workers experience violence on a daily basis. Prior to and throughout the *Bedford* challenges, the state had maintained that the sex trade was inherently violent:

The Attorneys General of Canada and Ontario argue that prostitutes choose to engage in an inherently risky activity. They can avoid both the risk inherent in prostitution and any increased risk that the laws impose simply by choosing not to engage in this activity. They say that choice — and not the law — is the real cause of their injury.¹⁷

This notion of “inherent risk” is a strategic characterization of the sex trade. In most narratives, the sex trade is considered to be an inherent danger to sex workers in an effort to accomplish two strategic ends: 1) simplify the underlying socio-economic and historical circumstances that may contribute to the choice to undertake sex work; and 2) to absolve the state from any responsibility in providing substantial safety provisions that would allow sex workers to protect themselves from potentially violent encounters. In fact, “The Attorneys General rely on this Court’s decision in *Malmo-Levine*,¹⁸ which upheld the constitutionality of the prohibition of possession of marijuana on the basis that

¹⁷ *Canada v Bedford* at para 79.

¹⁸ *Malmo-Levine* is a historical constitutional decision in which the appellant argued that the criminalization of marijuana is unconstitutional because the role of criminal regulation is to reduce or protect against harm and that marijuana use was not harmful. The Court clarified the constitutionality of this argument, claiming that the criminalization of marijuana was in fact valid because the government need not establish that harm exists, but merely a reasonable apprehension of harm.

the recreational use of marijuana was a ‘lifestyle choice’ and that life- style choices were not constitutionally protected.”¹⁹ The state also reproduced this stance in the public sphere when “Federal Crown counsel Michael Morris called prostitution a choice, and that sex workers are aware of the safety risks involved with what they are doing” (Davidson 2012). The state has downloaded the responsibility of victimization onto sex workers in an effort to legitimize a governmentality that prioritizes criminalization rather than investment in social programs that would assist sex workers in transitioning out of the sex trade (if they so choose) or upholding legal recourse to allow sex workers to report instances of victimization.

The Supreme Court of Canada was unwilling to fully accept this argument, recognizing that while some people choose to engage in sex work, they do so as part of a range of *potential choices* (Bernstein 2007). The Court was inclined to operationalize an understanding of choice as part of a set of other potential choices— including choosing to engage in other forms of illicit behaviours. The choice to engage in sex work is often considered through one’s relative socio-economic position and is primarily negotiated through existing structural barriers to life chances.

In its decision, the Supreme Court is reframing the frame, choosing not to substantiate the law’s capacity to govern sex work as a nuisance, but rather, capturing the experiential knowledge of current and former sex trade workers. The Court argued:

The harms to prostitutes identified by the court below, such as being prevented from working in safer fixed indoor locations and from resorting to safe houses, are grossly disproportionate to the deterrence of community disruption. Parliament has the power to regulate against nuisances, but not at the cost of the health, safety, and lives of prostitutes.²⁰

¹⁹ *Canada v Bedford* (2013) at para 82.

²⁰ *Canada v Bedford* at preamble.

Rejecting the law's function of regulating nuisance opens tremendous space for a juridical re-interpretation of sex worker identity. The Court acknowledges the agency of sex workers, albeit to a limited degree, stating, "while some prostitutes may fit the description of persons who freely choose (or at one time chose) to engage in the risky economic activity of prostitution, many prostitutes have no meaningful choice but to do so."²¹ Though the Attorney Generals of Ontario and Canada made their position clear that the notion of "constrained choice" does not provide a realistic understanding of choice in that sex workers do not "freely choose" to put themselves at increased risk of violence, there is something worth unpacking in the juridical-discursive construction of the sex worker identity that extends beyond the simple victim/responsible agent dichotomy. The recognition of negotiated choice is representative of the fact that the Supreme Court is willing to acknowledge the intersectional and diverse experiences of sex workers and the different ways they themselves negotiate the sex trade, which ultimately disrupt this false binary. But this recognition is not without an intervention of risk assessment. Throughout the *Bedford* trials, and later into the Bill C-36 committee hearings, risk becomes a point of manoeuvrability, i.e. a way to make certain claims related to victimhood.

What I mean by manoeuvrability is that speaking to risk also requires speaking through risk. One cannot speak to a particular behaviour or subjectivity as risky without employing strategic narratives, words, descriptors that actively negotiate perceptions of how certain subjects are to be constituted (Moore and Rennie 2006; Moore 2007). In doing so, I want to challenge the notion that risk is a concept abstracted from the subject and restricted to descriptors of data aggregates related to certain populations. Instead, I

²¹ Ibid. at para 86.

want to push the traditional understandings of risk and argue that risk is actually mobilized in strategic ways that operate at the level of the subject.

Vulnerability, Risk, and (Ideal) Victimhood

Vulnerability and risk have been central to creating a legal regime that provides safety and security for sex trade workers. Street-based workers have primarily been taken up by both abolitionists and harm reductionists as the most vulnerable groups, claiming that “Many [sex workers] said that the fabric of the street environment prevented street workers from having any real control at all over their own personal safety” (Benoit and Millar 2001, 51). Similarly, the Supreme Court has been inclined to accept this argument, asserting that newly enacted provisions must place special emphasis on protecting those who sell sex on the streets. This opens up an interesting debate between the dangers of indoor versus outdoor sex work in that there is strong evidence to suggest, from a risk management perspective, that those able to work indoors experience less violence than those forced to operate on the streets. As such, anti-abolitionists contend that sex workers are placed in greater positions of vulnerability *because* of the law. In turn, they argue that by allowing women to work indoors and hire personnel, they will be empowered through law (and potentially through the absence of law) to effectively screen potential clients and to have the necessary resources to work safely (Chu and Glass 2013). Thus, risking sex work in such a way allows us to focus on the legal institution as an oppressive apparatus of criminalization and social control that

does little to protect sex workers and lots to subject them to violent encounters (Lowman 2000; Jeffrey and Sullivan 2009).

Vulnerability, as it relates to potential victimization, is the pivot point from which both sides of the debate effectively make their claims. Vulnerability operates along the same axis of risk in that it aims at assessing or predicting the likelihood of victimization. For Richard Sparks (1982), vulnerability is a metric of assessment that links those who can be harmed and those who put themselves at risk. In other words, it is a conceptual tool deployed to characterize the likelihood of being harmed, factoring in elements of self-responsibilization that consider how people contribute to putting themselves at risk and how they prevent potential acts of violence or harm. At its core, vulnerability is used to evaluate the potential of future victimization. The potential for victimization is almost always framed in terms of actuarial assessments. As a metric for demarcating the line between potential victim or potential offender, risk has become the standard assessment tool for predicting crime by actors (and their assessment tools) situated both within and outside of the criminal justice system (Garofalo 1979; Sampson and Lauritsen 1990; O'Malley 1992). Often times, those who are most vulnerable to being assaulted, i.e. racialized and socio-economically marginalized women, are seen as least deserving of criminal justice responses—often constituting their experiences of violence as justified (Razack 2002). As previously noted, the risk literature sees the victim (or potential victim) as an actuarial object of analysis that is somehow abstracted from the subject. The individual becomes the *object* of analysis, rendering the lived body virtually invisible (Spencer 2015). Here, I wish to disrupt this notion that risk and vulnerability are not constitutive of the subject. Instead, I want to put forth the idea that

the ability to choose which risks to take (and which risks to avoid) is a fundamental part of the processes by which subjectivities are formed within a juridical framework. In this sense, I argue that the narratives put forth in the Bill C-36 hearings are both corporeal and trans-corporeal. In this paradigm, the affective narratives of riskiness and vulnerability seek to attach themselves to particular subjects, via not only visceral images of bodies, but also through affective sharing of experiential knowledge—a way of orienting subjects closer to each other (Ahmed 2012).²²

The potential for labeling a certain population “vulnerable” rests heavily on the duality of offender/victim. It is often linked to the likelihood for victimization, while riskiness is often attributed to predicting future criminality (Bones 2013). This is particularly noteworthy because traditional criminological concepts often create a false binary between these two categories. The assumption is that these identities are mutually exclusive. I assert that this view is quite limiting, and instead, propose a nuanced understanding of the victim and offender categories as two intersecting and mutually constituting discursive constructs. In order to be constituted as a victim one must first distance oneself from any criminal activity. Drug users, for example, may find it difficult to represent themselves as victims of abuse, trauma, or discriminatory police practices by virtue of their criminal status. At the same time institutions such as Drug Treatment Courts can sometimes acknowledge the simultaneity of offenders as criminal and victim despite the fact that their experiences as drug users may not be explicitly framed as victimization (Moore 2007).

This identity politics is perhaps more evident in sex work discourses (as we will

²² I will begin here by discussing the case of abolitionist discourses and move onto the ways in which the affective sharing of identity operates on sex workers via the advocate camp.

see in Chapter 3), where abolitionists aim to “save” sex workers from dangers inherent in the sex trade while simultaneously establishing a distance away from criminality. The criminal aspects that have been historically constitutive of sex work subjectivities are subverted through a discursive construction of the prostitute as a victim of exploitation, trafficking, and human suffering. If sex workers are *always coerced* and do not *choose* to be involved in the sex trade, their criminality is now reconstituted into victimization—a strategic re-appropriation of identity that operates within but simultaneously counter to a logic of risk and harm reduction adopted by the Supreme Court.

The vulnerable subject and the victim identity category are not mutually exclusive. As Walklate (2011) argues, the risk of being victimized is negotiated in tandem with the propensity to overcome the potential victimization through adversity (whatever this may look like). The link between vulnerability and victimization is mediated through resiliency, i.e. the ability to overcome victimization (Walklate 2011, 176). Thus, vulnerability plays a significant role in the movement towards de/criminalization and has become the critical pivot point on which both sides of the debate have hinged their arguments.

For abolitionists, sex workers’ resiliency is virtually impossible.²³ Sex workers cannot overcome their victimization because abuse, exploitation, and harassment are intrinsically attached to the sex trade. For sex work advocates and harm reductionists, criminalizing the tools that ensure safety poses a threat to overcoming barriers that may threaten the livelihood of sex workers. But while vulnerability is supposed to be a metric of predicting the likelihood of victimization (Sparks, National Institute of Mental Health

²³ It is only impossible without the help of abolitionists. In their rhetoric, abolitionists claim to lend the tools to sex workers stuck in the oppressive structures of the sex trade.

(U.S.), Center for Studies of Crime and Delinquency (U.S.) 1982; Walklate 2011), abolitionists have argued that individuals, especially young women, lack the capacity to make a meaningful *choice* to engage in sex work. Instead, sex work is always forced. Of course, the Supreme Court was unwilling to accept this axiom and took the approach that sex workers choose, amongst other options, to engage in sex work (even if does mean they have no other choices for survival).

Abolitionist accounts really play on our traditional understandings of vulnerability and agency. Within the discussions related to *Bedford*, the choice to engage in a risky activity such as sex work precludes sex workers from accessing claims to victimhood, essentially denying them some of their most basic human rights. The use of the term inherent violence is a strategic homogenization and over-simplification of the complex forms of subjugation that women can experience and the techniques they can use to mitigate these circumstances. It shows that resiliency is impossible and that vulnerability is absolute. The ways this is achieved will be further explored in Chapter 3, primarily through an exploration of affective discourses that frame sex workers as victims. For now, it is important to remember that attention to individual vulnerability is a strategic shift from concentrating on the act of prostitution as a nuisance to an emphasis on prostitution as an oppression that affects the individual.

Accomplishing this requires a certain ontological shift away from understanding sex work as a problem that plagues our streets, and instead, directs attention to prostitution as a problem that affects women. This shift almost always involves the externalization of risk. In other words, risk becomes located elsewhere—it is something that exists outside of the subject but simultaneously acts on her. Risks of harm exist not

only because sex workers choose to engage in a risky activity, but rather, because of sex workers' exposure to risks that are external (i.e. johns, pimps, sex trade). The risks are external to the subject in that they act on the subject, but at the same time, are constitutive of the subject. What I want to stress, however, is that asserting that violence in the sex trade is inherent, i.e. static, actually serves to construct ideas around sex worker identities rather than giving an accurate account of the sex trade. We see this best reflected in the testimony by the Crown's expert witness, Melissa Farley, in the initial 2010 Charter challenge. The Court writes that according to Farley's testimony, "prostitution is better understood as domestic violence, rather than as a job."²⁴ While the concern is still aimed towards abolishing the sex trade in Canada, it stands to reason that the substantive arguments made against legalizing prostitution rest heavily on the shift towards understanding sex worker subjectivity in terms of vulnerability and victimization rather than that of a nuisance.

In fact, the Supreme Court held that "Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes."²⁵ The ways in which the Supreme Court shifts the frame here allows for sex workers to become grievable subjects. But in deconstructing the frame, we can see how this shift is possible. This externalization of risk is a strategic move in downloading responsibility onto other actors in the sex trade, primarily johns, pimps, and traffickers. This movement *away* from nuisance distances the sex worker subject from agency (and ultimately culpability) by packaging vulnerability in a way that subverts juridical constructions of sex work that historically hinge on criminality, and instead, attempts to reform the criminal law to aid

²⁴ *Bedford v Canada* at para 132.

²⁵ *Ibid.* at preamble.

in rescuing women from exploitation.

The shift from nuisance to an undertaking of sex worker victimology that focuses on the experiences of the individual is perhaps a recent juridical approach and one that is facilitated by the Supreme Court, which argues that the law's "Overbreadth allows courts to recognize that the law is rational in some cases, but that it overreaches in its effect in others. Despite this recognition of the scope of the law as a whole, the focus remains on the individual and whether the effect on the individual is rationally connected to the law's purpose."²⁶ This is, as I argue, a strategic turn in the history of sex work regulation, signalling a new recognition of sex worker autonomy and rights, providing a pre-requisite for law makers to actively consider how sex work affects the lived reality of individuals.

One should not be fully convinced, however, of the government's acknowledgement of constrained choice. In the state's view, sex work is always made through constrained choice and those who choose to sell sexual services do so because they cannot really choose to engage in other forms of labour. This of course delegitimizes those who sell sex as a way of disrupting heteronormative understandings of wage labour, ultimately disrupting the structures of domination that seek to reproduce normative understandings of sexual identities whilst perpetuating ideal forms of exploitative capitalism.

But the state has failed to make any meaningful distinctions between indoor and outdoor sex work,²⁷ refusing to acknowledge the myriad of social scientific data that suggests sex trade workers who conduct business indoors experience less violent encounters and have the necessary tools to screen clients and make informed decisions

²⁶ *Canada v Bedford* at para 113.

²⁷ *Ibid.* at para 133.

related to risk management (e.g. Whittaker and Hart 1996; Plumridge and Abel 2001; Lewis et al. 2005; Perkins and Lovejoy 2007). Though the decision does little to address some of the underlying socio-historic forms of subjugation that many face while working in the sex trade, it does provide an excellent case study for examining how the frame on sex work gets shifted from nuisance to victim, and in turn, how sex worker subjectivities intersect with other forms of power, including risk and affect (see Chapter 3).

Risking Sex Work: Conceptualizing Neoliberal Techniques of (Self) Governance

Vulnerability, risk, and the sex trade are intrinsically linked through the discursive constructions of the sex work victim. Victimization experienced by sex workers constitutes the very framework through which abolitionists and advocates attempt to achieve political and legal reform. But like the vulnerable sex worker subject, the risky sex worker identity is also (re)produced through accounts of the sex trade by pro sex work advocates.

The *Bedford* trials heard from interveners that largely consist of harm reduction advocates and representatives from several pro-sex work organizations who argue that the state's position to criminalize activities related to sex work does nothing to end prostitution; rather, it exacerbates the conditions that make sex work risky in the first place.

Unlike abolitionists, sex work activists have taken a harm reduction approach, arguing for the law's protection by merely allowing sex workers to negotiate the sex trade in a way that does not criminalize safety measures. This point should be stressed seeing

as how sex workers are not advocating for the positive involvement of the government to provide additional resources to ensure sex worker safety. Rather, sex workers are merely asking for the state to withdraw criminal penalties for actions that facilitate safer working conditions. In their efforts to end the subjugation of sex trade workers, advocates and their allies have formed a coalition aimed at taking a sensible approach to harm prevention and risk management, one that focuses on self-responsibilization. The argument stands that while there are undeniable risks associated with prostitution, those risks can be mitigated through technologies of risk management. In fact, the 2010 decision found that experts tend to agree on the following principles:

- a) Street prostitution is a dangerous activity;
- b) All prostitution, regardless of venue, carries a risk of violence;
- c) Prostitution conducted in indoor venues can be dangerous;
- d) There is significant social stigma attached to prostitution; and
- e) There are multiple factors responsible for the violence faced by prostitutes.²⁸

Operating along the assumption that sex work advocates and abolitionists both share common perceptions of the ways in which the sex trade operates, how do anti-abolitionists construct their arguments surrounding the sex trade?

The primary mechanism anti-abolitionists use to counter the morally charged and emotionally driven narratives of absolute victimization is an analysis of risk through harm reduction lens—an ostensibly logical approach to informing any legal decision with profound policy implications. In *Bedford*, we understand that the restrictions imposed by the impugned laws can only be justified if their restrictions are proportionate to their objective. In this case, the Supreme Court held that the provisions governing sex work were in fact grossly disproportionate and overbroad in governing prostitution as a

²⁸ Ibid. at para 116.

nuisance. The Court writes that the bawdy-house prohibition “is grossly disproportionate to its objective of preventing public nuisance. The harms to prostitutes identified by the courts below, such as being prevented from working in safer fixed indoor locations and from resorting to safe houses, are grossly disproportionate to the deterrence of community disruption.”²⁹ Moreover, while the laws governing living off the avails of prostitution may be designed to prevent exploitation by pimps, the law “punishes everyone who lives on the avails of prostitution without distinguishing between those who exploit prostitutes and those who could increase the safety and security of prostitutes, for example, legitimate drivers, managers, or bodyguards.”³⁰ Finally, the Supreme Court held that because of the criminalization of communication for the purposes of prostitution, sex workers were prohibited “from screening potential clients for intoxication and propensity to violence,”³¹ acknowledging the disproportionate response to the potential nuisance caused by street prostitution.

So how were sex work advocates able to achieve such reform? The answer may lie in their ability to play into the neoliberal framework of the criminal justice apparatus. If we return to our discussion of vulnerability and victimization, we see here that the logic of victimization operates differently than that of abolitionists. Harm reductionists actively challenge the notion that inherent risks exist. Instead, they focus on the capacity of individual subjects to implement techniques of self-regulation and harm prevention in an effort to convince the court of their capacity to act autonomously.

In her sworn affidavit to the Court as part of a thread of experiential witnesses,

²⁹ Ibid. at preamble.

³⁰ Ibid.

³¹ Ibid.

Kara Gillies gave her account of what it is like to conduct safe street-based work:

This struggle is the most stark at the street level. Throughout my sixteen years at Maggie's, I have heard women report that in order to avoid arrest under the communicating law, they are compelled to enter vehicles without proper negotiation with potential clients. Before the laws were introduced, they would take the time to assess potential customers, or jot down license plate numbers or other identifying information. Now they must make the decision to enter the vehicle in as little time as possible. By not being able to make a proper determination of a client's suitability before entering their vehicle, the sex worker instantly becomes disempowered vis-à-vis the client and is rendered more vulnerable to violence.³²

She goes on to tell the Court how the communication provision of the *Criminal Code* actually does more to harm sex workers:

With respect to the indoor worksites, even though they are illegal, they are by far the most economically viable and secure sites for women in the sex industry. I form this belief based on my conversations with hundreds of indoor sex workers, including those with former experience in street-based prostitution. In terms of safety, the set location provides the opportunity to work with colleagues and have someone else present on the premises if required. Further, other people know where the worker is located and will notice if they disappear unexpectedly. Also, women can control the number of people entering and occupying the space. Finally, women are aware of the location and accessibility of exits, telephones and other safety-promotion features. Due to the fact that they control the environment, workers can enhance safety protocols and security systems to a much more sophisticated level.³³

This experience is one that is well supported by social scientific evidence on the role of harm and risk reduction by Emily van der Muelen and Elya Durisin (2008). In their analysis, they explore “how federal and municipal regulatory structures penalize and criminalize sex workers’ common job-related activities and create the conditions that expose workers to unnecessary risks” (van der Meulen and Durisin 2008, 290). They suggest that escorts who provide “in-call” services are able to employ more measures of

³² *Affidavit of Kara Gillies*, Joint Discovery of Evidence to the Ontario Superior Court of Justice, (7 August 2009), Vol. 6 at 1300, <https://bedfordsafehaveninitiative.files.wordpress.com/2014/01/volume-6.pdf>.

³³ *Ibid.*

security and safety than instances where sex workers were required to provide “out-call” or even street-based sex work. Like Gillies, many sex workers feel in control of negotiations and can provide services they are comfortable performing in an environment that is controlled and regulated by sex workers. In fact, “Many described how the control afforded by an enhanced sense of safety allowed them to refuse unwanted risky services that they would have to perform in other environments where support from staff, other sex workers, or police was not readily available when clients used violence to force unwanted services such as unprotected sexual intercourse” (Krüsi et al. 2012, 1157).

David Garland (1996) refers to these techniques of self-responsibilization and harm reduction strategies as “criminologies of everyday life.” In fact, Garland defines criminologies of every day life as “The new programmes of action [that] are directed not towards individual offenders, but towards the conduct of potential victims, to vulnerable situations, and to those routines of everyday life which create criminal opportunities as an unintended byproduct” (Garland 1996, 450). This self-governance is taken up by harm reductionists in a way that asserts that the ability to protect one’s self from violence is in fact the primary legal argument made by the decriminalization movement. The argument made by many harm reductionists is that the law prevents sex workers from actively taking up these (neoliberal) techniques of self-regulation which prevent many sex workers from de-escalating risky situations or preventing dangerous encounters altogether. In relation to the bawdy-house provision, advocates “argued that these restrictions on prostitution put the safety and lives of prostitutes at risk, by preventing them from implementing certain safety measures—such as hiring security guards or

‘screening’ potential clients—that could protect them from violence.”³⁴

The uncertainty of risk is, as Pat O’Malley (2004) puts it, is the driving force in crime control strategies. The criminal justice system has oriented itself around modalities that claim to accurately predict which groups are more likely to commit crimes and which groups and individuals are likely to be targets of criminal activity. These assessments are compiled through aggregates of data collected by governmental agencies, both related and unrelated to law enforcement, and used by criminal justice agents to predict which groups are more likely to commit crimes and which groups and individuals are more likely to be targeted.

Robert Castel (1991) suggest that the concept or *measurement* of risk is based primarily on an actuarial model of assessment born out of a formulaic calculation. He writes, “A risk does not arise from the presence of particular precise danger embodied in a concrete individual or group. It is the effect of a combination of abstract factors which render more or less probable the occurrence of undesirable modes of behaviour” (Castel 1991, 287). Though abolitionists and harm reductionists can agree that there are certain risks that are prevalent during sexual transactions, the *Bedford* decision provides a site of contestation over the efficacy of risk management strategies. We know that clients pose a potential risk to sex workers. But we also know that without adequate measures of protection, many sex workers are vulnerable to violence, including physical, verbal, and psychological abuse (Nixon et al. 2002). The proliferation of risks associated with the sex trade, including increased drug use, sexual exploitation, physical and verbal abuse, psychological trauma, and increased exposure to criminal justice agencies make the need for harm reduction strategies extremely integral to ensuring

³⁴ *Canada v Bedford* at para 6.

safety among sex trade workers, particularly those who conduct street-based work.

While vulnerability is taken up by abolitionists in a way that serves to reify an understanding of sex work as inherently exploitative, anti-abolitionists shift the ontological realities of risk and vulnerability of the sex trade towards a harm reduction approach that actually embodies tenets of neoliberal conceptions of risk—a strategic manoeuvre to achieve recognition from the Court. For sex workers, choosing to sell sexual services does not always recognize the potential for danger. It does however almost always acknowledge a negotiated choice. As Alan Hunt (2003, 169) writes, “The significance of these choices is compounded by the disparate pressures of the mechanisms of responsabilization that demand that we make them in a context that requires us to treat our lives as a project over which we should exercise a deliberate and long-term calculative effort.” Here, the choice to choose sex work is wrong. The state is not committed to a biopolitical project of ensuring the survival of sex trade workers—a group that has been historically constituted as both criminal and disposable (Lowman 2000). Instead, if sex workers are riskier than those who occupy employment in fields that are respected by heteronormative standards, their choice to engage in safe sex practices, including those that prevent victimization, is a direct challenge to the notion of the passive/ideal victim (Christie 1986).

Harm and Self-Responsibilization: Exploiting the Neoliberal Game of “Ideal” Victimhood

From the perspective of victimology, the ideal victim must perform certain characteristics that play on this notion of responsibility. In fact some critical parallels can be made

between sex work self-responsibilization and the narratives of rape victims. For rape victims, certain criteria tend to increase the likelihood of criminal sanction against assailants if the narratives of the sexual assault tend to “conform to prevailing societal expectations, as *understood* by the legal system” (Stevenson 2000, 347). These expectations are often structured in a way that scrutinizes the victim’s relationship to the attacker, the victim’s identity (including age, sexuality, race), and the measures put into place to prevent such an attack. Wendy Larcombe (2002) provides an analysis of cases in Australia in which the commentary of judges suggest that the ideal victim of sexual violence is one who is married, an upstanding housewife, and a woman that does not provoke any sexual advancement. She is not assaulted by her husband, a person whom she loves unconditionally, but by a stranger who breaks into her dwelling and commits rape. As Larcombe (2002, 133) puts it, “Clearly, the construct of the rape victim valorised here invokes a particular ideal of woman: chaste, sensible, responsible, cautious, dependent.”

Those who can construct a narrative that removes responsibility or culpability from their actions are less likely to be blamed for their own victimization. In order to satisfy this, they cannot provoke their assailant nor can their victimization be constituted within a pattern of deviant and potentially “risky” behaviours. Sex workers, by the very nature of their business, contravene these normative assumptions surrounding victimization. They are the antithesis of ideal victim because they choose to involve themselves in a predominantly risky enterprise. Their romanticized nature as a group that willingly accepts risks as part of their normal business practices forces many sex work advocates to do more to invoke a sense of vulnerability because their claim to

victimization does not come as easily as that of the trafficked or exploited victim. This identity politics is taken up in a very strategic way, one that reflects many of the tenets of neoliberal governance and ideal victimhood. Before exploring this notion any further, I want to expand a bit on the ways Terri-Jean Bedford has framed pro-sex work arguments. Her advocacy has played a tremendous role towards acknowledging sex worker rights, and her efforts, along with Amy Lebovitch and Valerie Scott, have undoubtedly made sex workers more visible in the socio-legal and political realms.

Terri-Jean Bedford's position is well known. Her story as a dominatrix running a Bondage Bungalow in Thornhill, Ontario has become quite the media spectacle since the late 1980s. Her business as a dominatrix suffered a huge set back when it was raided in 1994 and she was charged with operating a common bawdy-house. Despite what many human rights observers think, this is the main thrust behind her constitutional challenge. In fact, her attitude towards street-based sex works is indicative of many of the theoretical assertions made in this paper, particularly surrounding a claim that sex workers are self-responsibilized neoliberal subjects.

In a sworn affidavit given to the Court by Terri-Jean Bedford in 2007, Crown prosecutor E. Gail Sinclair questioned the former dominatrix in this pre-trial deposition:

Sinclair: Let's skip ahead. You were ultimately convicted.

Bedford: Convicted.

Sinclair: And the conviction was upheld on appeal.

Bedford: Yes.

Sinclair: So you found yourself at a turning point once again.

Bedford: Yes, ma' am.

Sinclair: And at that point, you wanted to challenge the constitutionality of the prohibition on running a common bawdy house.

Bedford: Yes, indeed. If you only went through what I went through.

Sinclair: If the law prohibiting communication for the purpose of prostitution was struck down, would you return to prostitution?

Bedford: No, I have no interest in prostitution what so - the dominatrix is not a prostitute; however, the York Regional Police felt that they could charge me under the prostitution laws and the first judge agreed, there was no basis for the charges, and all my publicity will – I have clippings that say the cop says there was no sex for sale in this house. No, I wouldn't, no, absolutely not.

Sinclair: You do not like prostitution?

Bedford: Well, let's put it this way. I haven't got a problem with people who do like it because, I'll tell you, I've met some women that are super fine and very successful. The only problem is they're not paying their taxes, you know. That's a problem because they can drive these nice cars and get away with a lot but not pay their taxes, and they're sharp, they're financial wizards, okay, so there is no victims there (sic). What was the question?³⁵

Terri-Jean Bedford is strategically manoeuvring towards constructing a different frame around sex work. She is distinguishing herself from street-based prostitution, something she left because it was “repulsive and repugnant,”³⁶ and instead, moved toward a position of power and control³⁷ as a dominatrix. Her definition of sex work, however, comes into conflict with the ways in which she, and her allies, challenges the framework governing prostitution, arguing that all women are deserving of rights. It is clear from such a statement that she hierarchizes her sex work above other forms of sexual labour based on the fact that she pays taxes, ultimately allowing her to access some form of legitimacy.

³⁵ *Affidavit of Terri-Jean Bedford*, Joint Discovery of Evidence to the Ontario Superior Court of Justice, (7 August 2009), Vol.2 at 97-8, <https://bedfordsafehaveninitiative.files.wordpress.com/2014/01/volume-2.pdf>.

³⁶ *Ibid.* at 99-100.

³⁷ This notion of control juxtaposes speaks to the agent/victim dichotomy in a way that Bedford herself also reproduces.

Despite her history as a street-based sex worker, Bedford clearly distances herself from her troubled past, which includes a history of sexual abuse from her adopted brother, a drug addiction to speed, and a stint as a street-based worker where she was subjected to verbal and physical abuse.³⁸

What is fundamental is that Bedford maintains the position that decriminalization is a victory for *all* women despite the fact that she acknowledges that street workers are perhaps some of the most marginalized women in Canada:

On the street you're subjected to the worst forms of abuse imaginable and we're all in one accord on this. Humiliation, degradation, all the things that you are not allowed to do to another human being, it's open season on the girls on the street. You can't call a gay person a faggot any more, but you can call a woman standing on the street trying to make a buck a whore and get away with it. You can direct all your hatred to that woman on the street. As a matter of fact, you can take her home and murder her and probably get off pretty light, but you can't do that to anybody else.³⁹

While these are personal views, they never come to light in her representation of the sex trade in the public and political sphere. Bedford's attitude towards the sex trade reflects a position that invokes a right to be safe, but is often supplanted by a right to work. This is best reflected in her sentiments towards those who cheat the tax system. She distances herself from these women, as they do not represent the interests of good, hard working neoliberal subjects. Bedford's shrewd business approach is an obvious attempt at subverting the stereotypes around degeneracy, but at the same time, reproduces ideas surrounding ideal victimhood.

I do not wish to stagnate on the personal position of Bedford, as she is only one political player in a myriad of ongoing grassroots organizations that have formed a coalition towards ending violence against women. Her politics, however, are indicative of

³⁸ Ibid. at 87-8.

³⁹ Ibid. at 95.

a broader political struggle to (re)appropriate the damaged sex worker identity as one that is capable of implementing cunning business strategy and employing principles of risk management. Of course, few street-based sex workers would have the necessary cultural and social capital to launch a constitutional challenge. Bedford represents a niche of sex workers who are able to perform sex work outside of the street-based sex trade, including those control their own businesses and provide sexual (and sometimes nonsexual) services to clients that is distinct from what Bedford calls “prostitution.”

This is why Bedford is the key political player in prostitution reform. She is least objectionable. She does not engage in sexual intercourse for money; rather, she only provides s/m related services. She pays taxes and teaches women the art of domination—a form of sex work that allows women to maintain control over their clients. Bedford’s story is in part, a rag to riches narrative that captivates the listener through her complicated upbringing and ongoing struggle to live. Sex work, as she describes it, gave her the opportunity to empower herself, but it seems as though her attitude towards the ways in which it should be governed have a lot do with reproducing neoliberal tenets of “good citizenship.”

Bedford’s testimony may seem tangential to the overarching theoretical point of this project, but it actually remains quite central. Shifting the frame onto Bedford herself reveals that she is situated in the middle of the diverging sets of narratives that are constitutive of a very complex sex trade. While at times it may seem that Bedford speaks on behalf of *all* women, she does this in an effort to convey to the Courts that the ability to leave the violent sex trade is still possible if women are given the ability to empower themselves (though it is quite an odd and somewhat precarious argument in itself). From

her own experiential knowledge, Bedford is making a claim that prostitution is violent, it is risky, and it is degrading. At the same time, she wants to give women alternatives to street-based sex work and allow women to move indoors to massage parlours, escort services, and even Bondage Bungalows like her own.

Moving outside the public and political frame through which Bedford presents herself, we see that she is in fact asserting that “legitimate” sex work actually looks a certain way. She is advocating that sex workers be given the necessary tools to avoid criminalization because sex work is real work, and in doing so, privileges the ability to negotiate an economy of sex that can provide financial support while also empowering women to take control of their own sexual and entrepreneurial prowess.

Her approach to sex work is less based on harm reduction and focused more on experiential knowledge. In a statement to the press, she claimed that the Nordic approach to sex work will be rendered ineffective because “you can’t punish men for their natural needs” (Fine 2013). This narrative is consistent with the assertion that sex workers are people capable of negotiating their own terms and conducting their own business. This is perhaps best reflected in the testimony of Amy Lebovitch, one of Bedford’s co-applicants, who stated that her efforts to decriminalize sex work are intended to remove any laws that regulate sex work:

As I said, I think it should be run by sex workers, it should be—that's why—how I see a distinction between legalization and decriminalization. Myself, personally, as a sex worker and not a lawyer who understands, you know, the law like you would, I'm someone who believes from what I've read from various areas that, you know, a collective of sex workers coming up with regulations that are based on safety and not based on morality, not centred around, you know, that it's a dirty job to be part of.⁴⁰

⁴⁰ *Cross-examination of Amy Lebovitch*, Joint Discovery of Evidence to the Ontario Superior Court of Justice (7 August 2009), Vol.2 at 225, <https://bedfordsafehaveninitiative.files.wordpress.com/2014/01/volume-2.pdf>.

The question of how the state should regulate sex work is one of great importance to a political movement that has so many social and legal implications. While my research focuses on the ways in which subjectivities are constantly in flux, more research needs to be done in the areas of the Canadian coalition of sex workers. From my experience speaking with and listening to sex workers, the majority of whom conduct business indoors, the Charter challenge led by Terri-Jean Bedford was actually something they were not expecting, nor was it something they could fully embrace. For many indoor sex trade workers, their relationships with clients and police were manageable. Navigation through the regulatory regime that sought to criminalize acts related to prostitution was relatively accessible for many indoor sex workers.

But Bedford and her allies accomplish this in a very specific way. Many sex work advocates have taken it upon themselves to challenge dominant perception of sex work and invoke an identity of the sex worker that resembles a worthy neoliberal subject.⁴¹ This is of course to challenge the stigmas surrounding the way sex workers have traditionally been perceived as a societal nuisance and vectors of disease, while also invoking an idea of sex work as a legitimate business enterprise. This framing of sex work is imperative when attempting to shift our understandings away from a historically tainted and prejudicial view that suggests sex workers are less than human and simultaneously responsabilizes the sex worker subject for techniques of self-governance.

⁴¹ This does not mean that all sex work movements resemble a neoliberal strategy towards risk logics and worker's rights. My research currently focuses on the ways in which sex workers make their claims that are intelligible to the Courts and to the Parliamentary system. Anarchist and social movements are very much prevalent in sexuality politics, but for the purposes of this discussion, I have limited my scope to what is said at Parliamentary hearings and sworn testimony, which often mobilizes the lexicon of liberal democracy and principles of constitutionalism.

This is particularly important because if sex workers are capable and willing to govern themselves, they pose less of a risk to society.

Subverting Passive Victimization through “Care of the Self”

This choice to actively self-responsibilize and ensure technologies of self-protection and risk management is part of an ongoing tactic by sex workers that challenges the passivity of victimization and reconstitutes the vulnerable subject as a worthy victim—one that is not in need of saving but in need of legal recognition. Claiming that the government is taking actions to prevent sex workers from employing strategies of self-care is a clear strategy in claiming that sex workers are self-responsibilized victims. Instead of relying on the state to provide any sort of substantial legal protections that would give sex workers special status, sex workers have advocated for the retractions of criminal sanction that would prevent abuse, trafficking and violence, many sex workers are advocating for a system that allows them effectively perform strategies of neoliberal governance (Rose 1998).

What we are witnessing within these debates is a particular tension between a form of pastoral power and the care for the self. According to Foucault (1977), the state is engaged in an ongoing project of normalization, seeking to regulate behaviour through a myriad of various governmental strategies. Sex work regulation is one of these strategic interventions designed to normalize deviant behaviour in such a way that positions the state as a pastoral figure granted with the task of ensuring the safety of its flock. Like other offenders in the criminal justice system, such as drug users (see Moore 2007), the

state systematically encourages projects of self-care as part of a broader set of intersecting governing strategies to download criminality and responsabilization onto individual subjects. Sex workers, like drug users, are governed through public health and welfare related policies that force these criminal subjects to accept their own participation in a world of self-damaging practices. These practices, however, are not strictly imposed by the state; rather, they operate through practices of self-care (Foucault 1978; 1986). The drug user, sex worker, and vagrant are systematically policed into owning their plight, acknowledging their culpability, and developing strategies that will ensure redirecting their lives on the “right path.”

Criminalizing certain subjects allows for other interventions that operate within and external to the criminal justice system. We see this quite clearly in the *Bedford* trials as evangelical groups have paraded around the immorality of sex work, while public health specialists have touted that criminalization may in fact increase the spread of STIs (Canadian HIV/AIDS Legal Network 2012). Caring for the self requires a particular downloading of responsibility onto the individual subject, which is designed to make the person complicit in their own regulation (Cruikshank 1993). While governmentality scholars (e.g. Rose, O'Malley, and Valverde 2006) would suggest that caring for the self is part of the power matrix that makes certain subjects governable in a way that aligns the individuals' interests with that of the state, sex work advocates give us a particularly messy and nuanced illustration of how these techniques can also be mobilized as part of an ongoing project of resistance.

Sex workers employ a narrative that suggests they want to actively engage in harm reduction tactics not only to prevent harm, but also to distance the state's

involvement in their lives. Taking up a project of self-care signifies that the state's responsibility does not rest in the pastoral role of tending to the flock (even if part of the flock has strayed), but actually challenges the notion that the state should have *any* role to play in regulating sex work. Abolitionists would contend that there is a fundamental inability to choose within the sex trade. For them, caring for the self is not possible under circumstances of duress and ongoing exploitation. Sex work advocates, however, challenge this assumption. In their orientation towards framing sex work as choice, they have imbedded a systematic framework that requires the legal system to not only recognize their abilities to choose what type of services they wish to sell, but how they plan on implementing security mechanisms that would require little state intervention. Choosing sex work over welfare benefits is actually a subversion of the kinds of stigmatizations that attach themselves to the prostitute identity.

In fact, Scoular and O'Neil (2007) suggest that exiting the sex trade is often imposed as a requirement in order to be eligible for many social assistance programs. But many would rather negotiate the stigmas of the sex trade than the stigmas attached to welfare recipients (Hallgrímsdóttir, Phillips, and Benoit 2006). What is interesting about the dynamic here, as it relates to risk, responsibility, and vulnerability is that the neoliberal techniques of governance that regulate sex work are actually paradoxical. The effective strategy is to advocate for the exit of sex trade with the promise of job training programs, psychological counselling through victim support groups, and other transitional programs that all continue to constitute the sex worker subject as a "subject" that is reformed by our criminal justice system. What this does is actually blur the broader structures of subjugation, including gender, race, sexuality, race, and cultural and

economic capital. Scoular and O’Neil (2007, 760) write, “such factors are not included to advance a discussion of social justice (especially in relation to the distributive and associational aspects of social justice) but, rather, either to further criminal justice control over those individuals who are constructed as responsible for the harms in prostitution or to inform an individualized model of exit-focussed intervention.” These exit-focused interventions actually responsabilize street-based workers for their socio-economic disenfranchisement, much in the same ways that Hannah Moffat (2005) describes the needs of offenders (e.g. financial need, familial obligations, etc.) actually become reconstituted as the factors that label certain subjects as risky. This of course absolves the state from its complicity in these structures of socio-economic and historical marginalization of sex workers, particularly in an ongoing process of gentrification, differential police enforcement, and colonialism.

In this sense, responsabilizing sex workers for their own socio-economic disenfranchisement runs contrary to some of the austere neoliberal techniques of welfare reductionism and the criminalization of the poor. This may provide an explanatory framework as to why anti-abolitionists are adamant about the constructing the frame around sex work as an enterprise in which they themselves have a vested interest in regulating. In this case, the rights claimants in *Bedford* are not seeking to have the state involve themselves in the sex trade, but rather, remove themselves from any regulatory capacity they may have over the lives of sex trade workers. Sex workers want to adopt their own techniques of risk management in an effort to challenge the dominant stigmatizations that they are dependent on state intervention.⁴² The challenge is that while

⁴² Of course, this is taken up in different ways. Some have the capacity to responsabilize themselves in a way that refuses any involvement of the state, while others, who are perhaps subjugated through race,

these strategies may be effective, its logic runs counter to some of the grassroots organizations, like POWER and Maggie's Toronto Sex Work Action Project, that also have a vested interest in changing some of the structural conditions that make women vulnerable. Valerie Scott also mirrored some of these concerns in her affidavit to the Court, acknowledging that the survival sex workers often have different needs that cannot be addressed through a decriminalized regime:

Yes, I would say that is correct. I don't think it does—survival sex workers, and I use the term "sex workers" loosely in that situation, I don't think we should whitewash the problems with prostitution. They have many problems that need to be addressed, but I think survival sex workers need different kinds of help than people that choose this business.⁴³

The dichotomous nature of focusing on a de/criminalized regime of governance focuses primarily on the impact of the criminal justice system and less on other institutions that perpetuate other forms of subjugation, such as the capitalist wage labour system, gendered inequality, and a history of material and symbolic dispossession of land to racialized groups, particularly indigenous people.

Contested Vulnerability

The vulnerable subject is thus a particularly fluid and yet contested subject position within the *Bedford* trials. Both abolitionists and advocates discursively constitute the vulnerability of sex worker in a way that attempts to subvert the risky sex worker identity. This is not to say that our understanding of vulnerability is dichotomous to that

class and material dispossession may look to the state to provide some forms of socio-economic sustainability.

⁴³ *Cross Examination of Valerie Scott*, Joint Discovery of Evidence to the Ontario Superior Court of Justice, (7 August 2009), Vol.4 at 577-8, <https://bedfordsafehaveninitiative.files.wordpress.com/2014/01/volume-4.pdf>.

of risk. Instead, I stress the co-constitutive nature of these conceptual categories. The riskier the subject appears to the courts, the less deserving they may appear when advocating for minimal criminal justice intervention. In this light, I have mapped out a particularly triangular relationship between strategies of state subjugation, the abolitionist reframing of vulnerability and risk, and the strategic appropriation of neoliberal narratives on the part of sex work advocates. These techniques have a seemingly similar orientation towards highlighting the objective nature of risk management while simultaneously removing any moral residue. The following chapter will explore the ways this contested notion of vulnerability intersects with risk, emotion, and morality to compete with the Supreme Court's ruling in *Bedford*.

Chapter 3: Subjectivity, Criminality, and Victimization: Bill C-36 as a Case Study for Affecting Sex Work

The hope of a decriminalized regime was extremely short lived. In June 2014, Justice Minister Peter Mackay introduced Bill C-36 (*The Protection of Communities and Exploited Persons Act*), the legislative response to the *Bedford* decision. The new legislation draws heavily on elements from the Nordic model of enforcement, which focuses criminal justice attention onto those who buy and create the demand for sexual labour. For many abolitionists, it is a seemingly logical approach: imprison those who create the demand for sexual labour. The bill, however, does not only criminalize johns and pimps, it also targets many sex workers by prohibiting the sale of sexual services in public places where minors may be present.⁴⁴ It is this provision that makes Bill C-36 “uniquely Canadian” in that it not only targets the exploiters within the sex trade, but it also establishes safeguards to protect any minors from being lured into a dangerous lifestyle. Despite this, the legislation has been supported by many for its tough on crime approach towards the villainous characters of the sex trade while simultaneously constituting sex workers as those who have been victims of exploitation.

The revitalization of criminal justice sanctions towards those who have been identified as the exploiters and abusers of women is an ostensible win for abolitionists who hold a vested interest in ending violence against women. But harm reductionist and pro-sex work lobbyists also have an interest in ending violence against sex workers, particularly by johns, pimps, traffickers, and even police. Why have their efforts been ess

⁴⁴ This clause has sparked debates within the committee meetings. Many are opposed to any provision that will target sex workers, while others feel the measure is necessary to prevent children from being “lured” in to the sex trade.

effective in the political realm? If sex work advocates are playing into the neoliberal rhetoric of self-responsibilization, why is the government unwilling to let sex workers regulate their own industry? Why have the seemingly calculated and risk-oriented approaches to sex work been overtaken by emotionally driven narratives?

Using the data collected from my observations of the Bill C-36 House of Commons and Senate committees, I will provide an explanatory model for why and how discussions surrounding risk become intertwined with affective narratives of victimization and exploitation. In this chapter I put forth the idea that the emotional dimensions of risk disrupt certain criminal justice risk logics, attempting to incorporate sex workers into the national imaginary—something not attainable by traditional deployments of risk.

In other words, I argue that affective narratives related to victimization, exploitation, and sex trafficking capture the sensibilities of those who are listening to such claims. The risk logics put forth in *Bedford* by anti-abolitionists are pushed to the margins in favour of stories that highlight victimization over risk management. In this light, Conservative politicians and anti-sex trade lobbyists have formed a coalition that affectively orients sex workers into the discursive position of passive victim, allowing for the prostitute category to be reconstituted as a woman in need of protection—a strategic manoeuvre that aligns the “prostitute” ontology with that of the state’s legislative objectives.

From its very onset, Bill C-36 suggests a repositioning of the ontological identity of the prostitute from nuisance to that of exploited person. According to the Department of Justice, Bill C-36 represents a “significant paradigm shift away from the treatment of

prostitution as ‘nuisance’, as found by the Supreme Court of Canada in *Bedford*, toward treatment of prostitution as a form of sexual exploitation that disproportionately and negatively impacts on women and girls.”⁴⁵ This objective, however, is mediated through the fact that the proposed legislation is not meant to legalize prostitution, nor is it meant to overlook the sale of consensual sex—it is designed to criminalize. Peter Mackay testified to the mandate of the bill, asserting, “Bill C-36 makes prostitution an illegal activity. Accordingly, it does not in any way seek to condone, allow or facilitate either the purchase or the sale of sexual services.”⁴⁶

We see a fundamental tension between the objectives set out in *Bedford* and the objectives of the newly introduced legislation. The government has made its position clear: sex work is illegal. But it has done so in a way that not only addresses the constitutional issues established in *Bedford*, i.e. mitigating the law’s impact on placing sex workers in circumstances of increased precarity, it attempts to position sex workers within a new realm of social inclusion and citizenship through victim discourse. This shift in the ontology of the sex worker as a crimino-juridical subject accomplishes two key political mandates: 1) it appears to address the underlying risks of the sex trade (i.e. men) who demand sexual services, ultimately protecting the most vulnerable groups in our society; 2) it reinforces elements of the criminal justice system that grant police the necessary tools to arrest those involved in the sex trade and save those who have been systematically exploited. These two objectives work simultaneously, and in fact, are often constituted as part of the same ideological agenda to “save” sex workers. The former is

⁴⁵ *Department of Justice (Canada)*, Technical Paper (1 December 2014) at 3, <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/protect.pdf>.

⁴⁶ *Senate of Canada*, Standing Senate Committee on Legal and Constitutional Affairs, 9 September 2014., 41st parliament., 2nd sess., no.15 at 12.

the hegemonic centrepiece of the neoconservative agenda as it provides the veneer of addressing risks related to the sex trade. The latter operates as the legitimizing function for the continual use of the criminal justice system as a mechanism of moral and penal intervention. This knowledge/power dynamic exposes the “true reality” of the subject and allows the state to correct, manage, and survey that subject with very little resistance from non-political actors.

While the state is confident in its position to end the demand for sex, opponents of Bill C-36 have argued that it does not have constitutional muster. The criminalization of johns and pimps will only do more to displace sex work to the dimly lit alleyways of urban spaces. It poses a barrier to sex workers who will have increased difficulty screening clients because those who purchase sex will mask their identities in fear of prosecution. Moreover, the provisions that centre on criminalizing sex workers who conduct business near minors is only an additional tool for police to apprehend, interrogate, and harass sex workers. Recently, Ontario Premier Kathleen Wynne had the office of the Attorney General of Ontario review the newly passed legislation, which ultimately found it to be constitutional (Jones 2015). The constitutionality of such newly implemented legislation centres on whether it upholds section 7 of the Charter—the right to life, liberty, and security of the person. The new provisions do virtually nothing to address the conditions sex workers face. In fact, it makes their ability to mitigate risk just as difficult as the previous regime of governance. This is because criminalizing the purchasers of sex will often create a transaction where potential clients are reluctant to provide their real names and will go to great lengths to conceal their identities. This will prevent sex workers from having accurate bad-date lists and will ultimately create a

barrier when reporting instances of violence and abuse to police.

What has actually changed in this post-*Bedford* epoch is how the objectives of the legislation have shifted from ones that govern sex work as a nuisance to the acknowledgment of sex workers' lives as grievable and worthy of recognition. As discussed in the previous chapter the ways in which the Supreme Court of Canada has challenged traditional juridical notions of the sex worker identity forms the fundamental question surrounding how identities are re-framed. The purpose of the new bill is not to facilitate better working conditions for sex workers or improve their safety in a meaningful way. Rather, the purpose of the legislation is to maintain social control through criminalization in a way that legitimizes police intervention through rhetoric that positions sex workers as worthy of rescue. Thus, this chapter interrogates the ways in which sex work abolitionists engage with the Supreme Court of Canada's ruling and how this forges different sex worker identities. I argue that the use of affective accounts of the sex trade, particularly those rooted in experiences of violence and victimization, form an essential part of reconstituting sex workers as subjects worth governing. It is a type of governance that invests itself in the criminalization of clients (and many sex workers) through the protection of exploited persons and the assurance of safer communities. This identity politics operates at both the level of the subject and of public policy, legitimizing a moral intervention of social control by attempting to undermine the efforts of harm reductionists and other sex work advocates. Affect not only aligns certain subjects to invoke grievability and recognition (Butler 2006), it also challenges traditional logics of the criminal justice system in an effort to legitimize a sex work-phobic legislative response.

Inherent Risks vs. Harm Reduction: Examining Risk Logic in *Bedford* and Bill C-36

The experiential and expert knowledge taken from the Bill C-36 hearings focus primarily on the ways abolitionists counter the narratives put forth by harm reductionists and sex work advocates in *Bedford*. I am cognizant that the testimonies presented by the witnesses do not serve to reproduce a universal truth, but rather, the fact that I am analyzing the transcripts of these committee meetings should reinforce my presuppositions that there exists a set of competing, divergent, and intersecting narratives of the sex trade. However, Butler warns that the ways in which political parties frame their campaigns are also part of the processes that construct the ontological realities that can be further explored when we shift these frames. When a frame transcends its original context, “the ‘taken-for-granted reality’ is called into question, exposing the orchestrating designs of the authority who sought to control the frame” (Butler 2009, 11).

The ways in which political actors control the frame change from moment to moment. The state, for example, took up a project of nuisance control in the pre-*Bedford* era, claiming that those who choose to engage in sex work do so knowing the inherent risks involved in selling sex. But as noted in the previous chapter, this choice responsabilizes the subject and ultimately absolves the state from intervening when women are actually victimized. Shifting the frame onto Bill C-36 we can see the different approach in legislative objectives—one that addresses the Supreme Court’s ruling on constrained choice and highlights the conditions that make exploitation possible.⁴⁷

⁴⁷ *Canada v Bedford* at para 85.

Trafficking, Sex work, and the “Ideal” Victim

The contested nature of sex worker vulnerability through *Bedford* is further entrenched in the Bill C-36 committee hearings. Perhaps we can gain better insight into what Butler refers to as the “political potential” of affective practices, particularly those that touch the sensibilities of the public regarding the vulnerability and potentially harmful treatment towards sex workers. Traditionally, sex workers have almost always been constituted outside the realm of social and cultural citizenship. There are, however, certain sex worker identities that garner public attention much more effectively than others. The trafficked victim is perhaps the most profoundly discussed subjectivity within sex work discourse, largely due to its existence both within domestic regulation and foreign policy analysis. For those who oppose the sex industry, the trafficked victim, like the prostituted victim, is removed of agency. While the trafficked victim is constrained by choice, much like their domestic counterpart, they are also perceived to be part of a larger project of globalized sexual demand—one that extends across borders and renders many of these victims powerless (and often times stateless) within an increasingly growing underground market.

For some sex work scholars (Kempadoo and Doezema 1998; Brennan 2004; Andrijasevic 2007), the trafficked victim exists as an ideologically constituted identity on a global scale and one that is often implicated in the drafting of foreign policies. Ideologically, the notion of trafficking is very broad. In fact, sections 279.01 and 279.04 of the *Criminal Code* define trafficking in such a far-reaching way that many other activities, particularly those related to consensual sex work, are often dealt with under

trafficking provisions (Roots 2013). Often this leads to inflated statistics regarding trafficking victims and ultimately produces an ideological tautology that suggests we need even more criminal enforcement and stricter criminal legislation to target those who are trafficking young women into the sex trade. Katrin Roots (2013, 26) writes, “This ambiguity may create an atmosphere where police suspicion of sex workers’ consent is legitimized, consequently increasing police surveillance over the sex trade.” Such increased surveillance inevitably leads to the production of statistics that exaggerate trafficking aggregates. As a result, women in the sex trade who may work as part of an organization may be included as trafficking victims, according to police definitions. We see this play out heavily in Bill C-36 hearings where the notion of the trafficked and enslaved sex worker victim is romanticized, ultimately obfuscating the realities of sexual transactions between consenting adults. In fact, Weitzer (2005, 143) suggests that many academic studies take the particularly traumatic accounts of trafficking victims and impose those violent experiences onto all sex trade workers. This framework feeds the neoconservative agenda of tougher penalties for actors within the sex trade, ultimately justified through the representation that sex trafficking is on the rise and that any legislation related to governing sex work must give police the capacity to apprehend potential traffickers and “rescue” those who have fallen victim to criminal prostitution rings.

Despite *Criminal Code* provisions that already exists to prevent sex trafficking, abolitionists perpetuate the rhetoric that Bill C-36 will lend police and other governmental agencies the necessary tools to investigate and prevent trafficking. York Regional Police Chief, Eric Jolliffe, testified to the merits of introducing such broad

legislation:

A 2014 York Regional Police initiative resulted in the arrest of 10 men for human trafficking in relation to the sexual exploitation of a number of women and girls, 40% of whom were under 18 years of age. Although we did not initially have grounds to lay human trafficking charges, we were able to rely upon prostitution-related offences to separate these men from their victims. This gave us the opportunity to gain the trust of the victims, eliciting comprehensive statements to form the basis of human trafficking charges, as well as connecting those victims to support agencies.

You see, without the *Criminal Code* tools we would not be able to suss out the would-be victims and create the distance between the victims and the abuser. This is time consuming and often takes several attempts to gain the trust and confidence to help victims escape their abusers, not dissimilar to domestic violence.⁴⁸

These *would be* victims, as Jolliffe so eloquently points out, are those who, by their very nature, have not and cannot consent to performing sex work. Timea Nagy, founder of Walk With Me victim services, spoke to these experiences as a trafficking victim:

I originally entered the sex industry when I was forced into it by traffickers. Sometime after my rescue I went back to the business for a few months, responding to a huge financial crisis. I already knew what I had gotten myself into and I voluntarily returned, but my choice to prostitute myself was to make a living, to avoid becoming homeless, and to be able to put food on my table.

In the media these days we hear the voices of women sex workers who demand their human rights be respected in their choice of work. Those women represent a small percentage of women in prostitution. Studies estimate the number of women voluntarily making an informed choice to do sex work is between 1% to 10%.⁴⁹

Though we cannot actually ascertain the number of women who work in the sex trade, Weitzer (2005; 2007a) contends that the number of trafficked women in Canada is disproportionately lower to the number of women who engage in consensual sex, but is

⁴⁸ House of Commons, Standing Committee on Justice and Human Rights, 9 July 2014., 41st parliament., 2nd sess., no. 38 at 7.

⁴⁹ Ibid., 7 July 2014., 41st parliament., 2nd sess., no. 33 at 1.

still represented as the norm in today's moral panic.⁵⁰ In fact, victims of violence are often those who engage in sex work on the street, mainly due to unsafe working conditions and the inability to properly screen clients and establish proper terms of the sexual transaction (Lowman 2000). The moral panic of sex trafficking, as Wetizer (2007b) suggests, requires the state to prioritize the concerns of those who do not freely choose to participate in sex work while criminalizing those who do.

But as we see throughout the course of the hearings, human trafficking becomes one of the central markers of prostitution. Brian McGonaghy (Founding Director, Ratanak International) told the Parliamentary committee that he evaluates "human trafficking and prostitution as inseparable and simply different elements of the same criminal activity, which exploits vulnerable women and youth. The separation of these elements I view to be largely academic."⁵¹ The largely academic scope of his assertion comes from research (to which he gives no contextualization or citation) that supports the findings that "legalizing the sex trade will, if we consider Germany and the Netherlands, increase the size and scope of the trade, leading to more human trafficking, more involvement of organized crime, more prostitution, and de facto more violence (sic)."⁵²

Just as Jolliffe testified, the trafficked victim allows for an interesting identity politics that skirts the objectives of protecting women from criminalization and in strategic ways, euphemistically grants police the discretionary powers to stop, intervene, and arrest those they feel are involved in sex trafficking.

Below is an excerpt of the dialogue between NDP MP and JUST committee

⁵⁰ Because these groups operate in an illicit economy we will never actually be able to know with much certainty how many sex workers are trafficked.

⁵¹ Ibid., 10 July., 41st parliament., 2nd sess., No. 43 at 7.

⁵² Ibid.

member, Ève Péclet, and the President of the Canadian Police Association, Tom Stamatakis. Throughout the course of the hearings, many of the NDP and Liberal MPs, including Péclet, struggled to understand how Bill C-36 will do any more to prevent trafficking than s.279.01 of the *Criminal Code* which already gives police the tools to arrest those suspected of trafficking:

Ève Péclet: Yes, but that was only one year ago. The exploitation and the trafficking weren't struck down, so they're still in force.

Tom Stamatakis: Right, but when we're talking about the most marginalized or vulnerable women, we were using those provisions before to intervene, to intercede, and to try to make a difference. The issue is what do we do now, since *Bedford*. I think that Bill C-36 provides us now with some of those tools that we can continue to employ.

Ève Péclet: But what kinds of tools...? This is what I want to know.
Okay, so yes, both what kinds of tools and which clause of the bill or which definition or which...whatever?

[...]

Tom Stamatakis: Well, it would be the provisions around 213 where the communication gives us an opportunity to intervene; the provisions around someone engaging in sex trade activities in front of a school, in a park, where it's causing other issues; the provisions around preventing youth from being drawn into the sex trade. Those are the kinds of tools that Bill C-36 provides that I think the police can use to protect vulnerable people in our community.⁵³

The affective elements of sex trafficking allows for the insertion of a moral intervention that is masked as a mechanism of public safety. Under the rhetoric of Bill C-36, human

⁵³ Ibid. at 16.

trafficking is a social evil that must be addressed, despite the fact that women should already be protected under s.279.01 of the *Criminal Code*. The moral panic of trafficking allows for politicians and anti-sex work lobbyists to circumvent the logics of harm reduction set out in *Bedford*.

The trafficked subject, as Weitzer (2007b, 448) argues, is part of a discursively constituted moral panic:

Casting the problem in highly dramatic terms by recounting the plight of highly traumatized victims is intended to alarm the public and policy makers and justify draconian solutions. At the same time, inflated claims are made about the magnitude of the problem. A key feature of many moral crusades is that the imputed scale of a problem (e.g., the number of victims) far exceeds what is warranted by the available evidence.

This panic operates under a specific rubric that is inextricably linked to risk and emotion. Jo Doezema (2010) considers how the use of emotive language in accounts of trafficking illustrates a strategically constructed trafficked identities—ones that are absolved from criminality, and instead, thrown into the realm of vulnerability. She writes, “In such reports, an image of the ‘typical’ trafficking victim becomes evident. Even in these few examples, we can see an emphasis on certain words and phrases: ‘young’, ‘naïve’, ‘beauty’, ‘better life’, ‘lured, deceived and forced into prostitution’” (Doezema 2010, 1). Such colourful language allows for the repositioning of sex workers from criminal to victim, but again, this shift works insofar as it allows certain bodies to access victimhood while excluding those who actively “choose” to engage in prostitution.

The lured or coerced sex trade worker is a powerful identity and one that Claudia Aradau (2004) suggests is constituted through a “politics of pity.” For her, the politics of pity is strategically deployed to counter the hegemonic narrative that sex trade workers are in fact transgressing social and legal boundaries (Aradau 2004, 160). The political

and legal claims maintained by trafficked victims must be packaged in a way that minimizes involvement in an illicit economy of sexual labour, and instead, adheres to a script of vulnerability and victimization. She writes, “The most important task for the politics of pity is therefore one of identifying trafficked women through dis-identifying them from such a dangerous subject. To invoke the spectator’s pity, trafficked women must be specified as non-dangerous” (Aradau 2004, 249). In fact, Aradau suggests that representatives of NGOs, like the ones testifying in Bill C-36 hearings, strategically deploy pity to disrupt normative conceptions of trafficked women. From a feminist lens, this ethics of care embodies powerful potential for identity reconstitution.

In this light, sex workers are absolved from their link to any criminal identity. Timea Nagy argues that criminalization of sex workers is not something that her organization is willing to support. She testified, “From our perspective, over 70% of the people who use our service come through a police link. Therefore, if there is no trust in that triangle of police, the person in the sexually exploited situation, and our organization, the exit strategy, in our view, will fail.”⁵⁴ Despite this, she supports a legislative initiative that will inevitably target those who choose to engage in sex work in public places and ultimately continue to restrict sex workers’ abilities to screen clients.

The politics of pity entangles itself with an ethics of care, transforming the dynamics of self-responsibilization discourses into an “[appeal] to an imaginary of common suffering” (Aradau 2004, 261). In other words, though there are sex workers who protect themselves through techniques of self-governance, these self-responsibilized individuals are conflated into a homogenous group of all sex workers who experience

⁵⁴ Ibid., 7 July 2014., 41st parliament., 2nd sess., No. 33 at 2.

suffering as a static and univocal collective. But we must remember, “Despite these unifying representations of inflicted pain, not all victims have been physically abused, abducted and then repeatedly raped, beaten up, their bodies burned with cigarettes ends” (Aradau 2004, 262-3). Thus, the strategic ends of deploying a totalizing and homogenizing narrative is both useful to the political end game of abolitionist camps, but also, violent in the sense that it serves to reify a passive sex worker that is dependent on state intervention. Katarina MacLeod (Founder, Rising Angels) argues, “We all hate our jobs...some of us. I don't know, but some of us in life hate our jobs. But being a prostitute is a job that you're going to every day to be raped and to be violated and to be used and abused for a man's own pleasure. I don't see how that is a choice.”⁵⁵ Speaking on behalf of all sex workers, even those who find sex work to be a particularly liberating enterprise, is a way that of compacting a complex and diverse issue into a palatable and simplified common suffering.

Complexity in the lived experiences of the sex trade must be met with a complex policy initiative that takes into consideration the plurality of these accounts. Moral panics, on the other hand, tend to construct a common enemy and delegitimize claims that contradict legislation implemented through fear (Lea 2002; Goode and Ben-Yehuda 2009). It is a vulgarization of the deeply historical and complex experiences of sex workers in Canada, particularly of Aboriginal youth, who experience higher rates of sex trafficking—despite their under representation within these hearings. This narrative strategically denies freedom to those who sell sex. As Aradau points out, not all sex workers are abused, exploited, and victimized. There are those who choose to participate

⁵⁵ Ibid., 9 July., 41st parliament., 2nd sess., No. 38 at 16.

in the sex trade instead of engaging in other forms of wage labour. Thus, constructing all sex workers as passive and victims of the sex trade allows for the construction of a moral panic. The collapsing of complexity into rhetoric of “saving” women (Hallgrímsdóttir, Phillips, and Benoit 2006) serves to reproduce a moral panic that all women in the sex trade are potential trafficked victims—legitimizing a system of enforcement that is ultimately disproportionate to its objective.

Recognition, Identity Contestation, and the “Politics of Immediation”

I want to trouble the understandings of sex worker subjectivities that occur within the Bill C-36 committee hearings, which have tremendous implications on the ways in which the criminal justice constitutes, regulates, and enforces sex work via legislation. As Grosz (1994, xi) contends, the contestation of these identities leaves potential to “extend the frameworks which attempt to constrain them, to seep beyond their domains of control.” As such, I wish to interrogate these frameworks and expose the ways in which they have enormous political potential (Butler 2009). Drawing heavily on testimony given at Bill C-36 committee hearings, I explore the potential for a new theoretical space where affect and emotion intersect to construct a vulnerable sex worker identity.

Exploring victimization in the sex trade, we can return briefly to the ways in which vulnerability and resiliency are linked. We know from the abolitionist rhetoric, overcoming victimization within the sex trade is impossible. The only way to overcome violence and victimization is to exit, irrespective of the mechanisms one can put into place to ensure greater safety. Many of those who have successfully exited the sex trade

refer to themselves as survivors. This is not dissimilar to victims of other sexualized forms of violence including sexual assault or spousal abuse. The survivor identity is one that is extremely powerful. It positions the subjectivity of that individual as someone who has experienced both the trauma of the sex trade and the liberation of living a “straight life.” Many women have been personally asked to testify by Conservative MP Joy Smith because of their survivorship and their testimonies below reflect their authority as individuals who have experienced these inherent forms of violence.

This is represented in the testimony of many women, including Cassandra Diamond (Program Director, BridgeNorth) who “[stands] before [the committee] as a survivor of the sex trade, echoing the experience of hundreds of women who cannot be here today.”⁵⁶ Former sex trade worker, Bridgett Perrier (Co-Founding Member, Sextrade101), invokes a similar position, claiming that as a sex trade survivor, she has “the honour of speaking on behalf of the survivors of Sextrade101 and all the survivors across Canada, whether they are still in or have exited.”⁵⁷

Unpacking this notion of survivorship allows us to see how the precariousness of sex work can be mobilized to achieve some kind of political end. Here the sex trade’s “inherent” danger becomes evident and manifests itself through personal story telling.

Perrier went on to share her horrific trauma as a former sex trade worker:

I was lured and debased into prostitution at the age of 12 from a child welfare-run group home. I remained enslaved for 10 years in prostitution. I was sold to men who felt privileged to steal my innocence and invade my body. I was paraded like cattle in front of men who were able to purchase me, and the acts that I did were something no little girl should ever have to endure here in Canada, the land of the free.⁵⁸

⁵⁶ Ibid., 7 July., 2014, 41st parliament., 2nd sess., No. 35 at 1.

⁵⁷ Ibid., 9 July., 41st parliament., 2nd sess., No. 39 at 2.

⁵⁸ Ibid. at 1.

The animalistic and savage imagery conjured in such an emotionally charged statement only serves to reify the belief sex work objectifies women—not to mention the fact that the imagery of an abusive childhood is invoked. It enslaves the soul and transforms the street worker into urbanized cattle that are herded, slaughtered, and sold. It reflects the common sentiments that women are property of their purchasers, reduced to nothing more than the flesh on their bodies.

Timea Nagy, founder and front-line victim care work for Walk With Me Canada claimed that she had entered the sex trade through a limited and constrained set of choices. She had to choose between prostitution and homelessness. But she claims that the options presented to her did not constitute a “real” choice. Nagy also identifies as a survivor of the sex trade—one of the most common narratives abolitionists invoke. Survivorship, in this case, relates to the precariousness of sex worker subjectivity (Butler 2009). At same time, it points us to the notion of agency. Surviving is an indication of temporality and affect. It suggests that to survive means having endured and overcome a precariously horrific event, moment, or circumstance. For these women, survival means being able to exit the sex trade. Like Perrier, Nagy affectively (and effectively) orients her testimony towards the issue of agency—a fundamental principle in choosing whether one should enter into the sex trade. Despite this being addressed in the *Bedford* decision as operating along the formula of cost-benefit (or risk-benefit), abolitionists like Perrier and Nagy contend that their personal traumas warrant a different understanding of the sex trade.

Survivorship, Precariousness, and the Sex Trade Slaughterhouse

Part of the tension between sex work advocates and abolitionists relates to this legislative objective of preventing trafficking. Advocates assert that laws in the *Criminal Code* give police the necessary tools to intervene in sex trafficking. Nagy, along with many other testifiers, suggest that Bill C-36 lends police the necessary tools to address the root causes of trafficking, i.e. the demand for sex. Nagy asks:

What about girls who are trafficked and kept in horrible conditions across Canada as we speak? What about their safety? What about their freedom? What about their rights to safety? They can't be here today to tell you the truth about johns and the pimps. They are not in the industry to buy a thousand dollars' worth of shoes. They are not in the industry to pay for college. They have been lured, manipulated and being kept against their will while serving 10 to 15 clients a day, like I did once, just so they can eat once a day. They're not doing this for money, to save up. They are doing this so they don't get beaten.⁵⁹

For Nagy, the truth represents something outside of the Supreme Court's initial ruling in *Bedford*. Her experiences constitute her truth. However, she, like the other interveners, mobilizes affect in a way that positions their personal experiences in contradistinction to the mounting evidence put forth by countless witnesses favouring harm reduction approaches. I will not break here to interrogate the types of witnesses called to intervene in *Bedford*, but I do want to stress that testimonies that rely heavily on the visceral affective responses of their audiences are attempting to subvert sociological and criminological discourses surrounding the "reality" (if I can even write such a thing) of the sex trade. A few months prior to her testimony in front of the Senate, Nagy gave a rendition of her position that clearly counters contemporary sociological and

⁵⁹ *Senate of Canada*, Standing Senate Committee on Legal and Constitutional Affairs, 9 September 2014., 41st parliament., 2nd sess., no.15 at 48.

criminological data, which suggests that sex work can in fact be a choice among many women:

In the media these days we hear the voices of women sex workers who demand their human rights be respected in their choice of work. Those women represent a small percentage of women in prostitution. Studies estimate the number of women voluntarily making an informed choice to do sex work is between 1% to 10%.

I speak for the other 90% of prostituted women and men whose voices are largely not being heard in this debate precisely because they are still trafficked and they are still forced to do this work. I speak for the 60% to 95% of women in the sex trade, based on numerous studies, who were sexually molested or assaulted as children. I was sexually molested between the ages of 12 and 17, and that background sets you up to be abused again.

I speak for the 70% to 95% of people who were physically assaulted while in sex work. My first encounter when I was sex trafficked was in a massage place where three Russian men entered the room, and I more or less just became meat. Three men started to take pieces out of me. I was lying on this very cold massage table and I closed my eyes and I looked up and I wondered if anyone had seen this and would anyone rescue me, only to find out later my so- called bodyguard was watching the whole thing on video.⁶⁰

Her testimony is nothing short of moving, but at the same time, requires further unpacking. Nagy is relying solely on the data collected by her institution, Walk With Me Canada—it is not representative of the myriad of ethnographic and social scientific data studies conducted on the ways in which sex workers manoeuvre through the sex trade (e.g. Tyndale, Lewis, and Street 2005). These statistics on violence are often contested, as much of the sociological data will suggest that those who perform indoor sex work experience much less violence, particularly through screening mechanisms (Armstrong 2014). Ironically, John Lowman (2000) suggests it is this very narrative that poses barriers to achieving safe conditions for sex workers across Canada. He argues that the

⁶⁰ *House of Commons*, Standing Committee on Justice and Human Rights, 7 July 2014., 41st parliament., 2nd sess., no. 33 at 1.

predatory nature of some violent johns and pimps is naturalized and reproduced through stigmas that position sex workers as “damaged goods,” perpetuating the narrative that these women are “disposable.” The irony here is that Nagy and Perrier, like many other abolitionists, tout a rhetoric that closely resembles the viciously cyclical and violent nature of stigmatization surrounding sex work (Hallgrímsdóttir, Phillips, and Benoit 2006).

As noted above, the successful implementation of Bill C-36 rests heavily on narratives like these as a justification for imposing a more punitive model of enforcement onto sex workers. However, many abolitionists do not see it this way. In fact, as Ms. Georgiale Lang states, “[Bill C-36] speaks to the real issue, which is the exploitation of women and the commodification and the commercialization of women's bodies, which is a frontal assault on human dignity and a breach of human rights.”⁶¹

Speaking to the “real issue” requires a certain socio-legal finesse. It demands that sex workers no longer be constituted as criminal and that sex workers are able to claim a legitimate victim identity. Michelle Miller, Executive Director of Resist Exploitation, Embrace Dignity (REED) claims that “Bill C-36 is a progressive, historic piece of legislation that finally dares to criminalize the source of harm in prostitution, the johns, and largely decriminalizes those being exploited.”⁶² This is obviously in direct contrast to testimony given by critical sociologist, Chris Atchison (Research Associate, Department of Sociology, University of Victoria), who maintains:

Yet another assumption underlying the bill appears to be that demand can be curbed and attitudes and behaviours can be changed simply by criminalizing the purchase of sexual services, arresting and incarcerating and fining the people who engage in such behaviour. The results of my

⁶¹ Ibid., 9 July 2014., 41st parliament., 2nd sess., no. 39 at 16.

⁶² Ibid. at 4.

research indicate that such approaches simply result in displacing the behaviour to hidden and potentially more dangerous locales.⁶³

Exploring the implications of such provocative language and visceral imagery allows us to re-conceptualize the normative prostitute identity from that of offender to that of victim. In the moving testimonies given by Perrier and Nagy, we see that very strategic elements are conjured in the minds of the listener and their reference to the carnal destruction of prostitution serves as a very intentional manoeuvre to shape the way we understand the sex trade. First, it reinforces Victorian notions of the animalistic and depraved nature of prostitution (Walkowitz 1982; Valverde 2008) though in a very unique way. This notion of commodity, as illustrated by abolitionists, stresses the lack of agency women employ within the sex trade. For this reason, many of the interveners, including Megan Walker (Executive Director, London Abused Women's Centre), told all MPs in the committee that “[they] do not recognize prostitution or sex trafficking as work. We refer to this as “prostituted women” or “women in prostitution.” I would ask that today you respect that language when you are addressing questions to me or any of the panellists (sic).”⁶⁴

The use of the term “prostituted” is mobilized to signal that women in the sex trade lack agency—a common narrative explored through the victimology literature. While the sociological literature points us to a refined notion of agency—i.e. one that acknowledges constrained subjectivity and agency within a spectrum of various positionalities—the abolitionist camps refuses to acknowledge that choice exists within the sex trade. The term “prostituted” demarcates the line between choice and agency and offers a unilateral understanding of prostitution. Witnesses like Julia Beazley (Policy

⁶³ Ibid.

⁶⁴ Ibid., 8 July 2014., 41st parliament., 2nd sess., no. 36 at 2.

Analyst, Centre for Faith and Public Life, Evangelical Fellowship of Canada) argue:

Bill C-36 also initiates a critical shift in how those who are prostituted are viewed in law. Research and anecdotal evidence tell us that between 88% and 96% of those in prostitution are not there by choice and say that they would get out if they felt they had a viable alternative. This bill recognizes and reflects that reality. The government has made it clear that in the spirit and intent of the legislation those who are prostituted are no longer seen as a nuisance but as vulnerable, and therefore afforded immunity from criminal charges except under specific circumstances.⁶⁵

In these narratives, the prostitute is in fact recognized as something that is both human and animalistic. In this moment of recognition, the visceral carnality of being torn apart like freshly butchered meat has “enormous political potential” (Butler 2009, 39). To ground these narratives in a theoretical model of affect and politics, Butler’s work is greatly complimented by that of anthropologist Lori Allen (2009), who explores the links between visceral imagery and identity.

Allen’s work draws on the notion of the “politics of immediation”—a conceptual framework that provides an underpinning for the political potential of affect in constituting actors within (and outside) of the socio-legal and political realm. For Allen, moments of political and legal turmoil often accompany rhetoric of human rights issues. Asserting such a rights claim, as Allen suggests, depoliticizes the involvement of actors within the struggle, and in turn, presents their victimization as a neutral enterprise. In other words, reclaiming the passive victim identity through a removal of culpability in the sex trade allows for a subjectivity that can gain access to victimhood instead of criminality. If we use the work of Allen, and her analysis of rights claimants implicated in the Palestinian/Israeli conflict, we see an interesting affective identity politics develop. For Allen, the representation of victims operates along a depoliticized continuum. In this

⁶⁵ Ibid., 7 July 2014., 41st parliament., 2nd sess., no. 34 at 4.

sense, those that seek foreign aid relief for acts of war, missile strikes, and other militant operations that cause civilian casualties must do so through the position that they are not involved in a political project. Affect is the catalyst that achieves these (de)politicized goals. She writes, “Palestinian human rights representatives place a heavy stress on sharing the experience of Palestinian suffering with foreign visitors, on opening channels through which foreigners can identify and empathize with Palestinians” (Allen 2009, 167). To accomplish this, rights representatives actively distance the victimization assumed with the political struggle over an occupied land, and instead, put forth the narrative that these victims are non-political actors who have no involvement in an ongoing struggle over sovereignty.

The “politics of immediation” reflects the political tactic of reconstituting political actors, i.e. those who make political choices, as victims with relatively constrained agency. The visceral emotional reaction intended to invoke empathy comes through the visuality and aesthetic elements of narrative, photography, and imagery. The presentation of bloody bodies, tattered clothing, and parentless children serves as a reminder to continue global efforts of initiating peace, but also to ensure continued financial and moral support.

Allen describes these elements as almost always strategic:

First, the orchestration of emotionally charged interchanges creates (or can create) an actual visceral— affective sharing— or compassion... A second level of immediation simultaneously at work occurs in the visual surround of these interactions. Touring scenes of destruction, seeing the bloody detritus of a murder, and looking at the photographs of charred human remains are presented as an impetus to action (Allen 2009, 169).⁶⁶

⁶⁶ In the case of imagery in Palestine, Allen suggests that the visualization of innocent actors serves as a purposeful depoliticization that allows for certain subjectivities to access victimhood. The depoliticization in this case mirrors that of a diffusing, or downplaying, of any political involvement.

Bill C-36 is very much about establishing a legitimate presence in the political sphere. It is, as I refer to it, a re-politicization of identity in which the identity politics waged in this socio-legal realm is one that serves to re-establish an identity of victimization. The theme of cattle and carnality is important not just for its vivid visuality and immediacy, it also diverts attention away from those who make “choices” in the sex trade and reverts attention to the image of the deviant trafficker who lures sex workers with lucrative promises, only to exploit their sexuality and dispose of their bodies. We see this quite clearly in a unifying effort between sex work advocates and abolitionists to ensure that sex workers are not criminalized for their involvement in the sex trade—albeit they take this project up in very different ways.

Negotiating Risk through Affect

Ahmed (2004b; 2010) leads us on an interesting theoretical pursuit in asserting that emotions “do things” and the value of affect becomes obvious when we examine how frames shift contexts. Just as Butler warns, shifting the frame from one legal regime of regulation to another allows us to recognize the affective economies of victimization, responsibility, and personhood shift. The statement above reflects a “new” sentiment by the Canadian government, one that allegedly reflects its contemporary attitudes towards a “significant paradigm shift.” This shift, however, is done through a specific re-framing of prostitution as a nuisance to a seemingly deeper understanding of prostitution as inherently exploitative. For example, the statement that “Prostitution reinforces gender inequalities in society at large by normalizing the treatment of primarily women’s bodies

as commodities to be bought and sold,”⁶⁷ serves to qualify the government’s position in maintaining that sex workers are in fact viewed as commodities. There is a clear disjuncture between the two camps of sex work rights claimants, i.e. the decriminalization advocates on the one hand and abolitionists on the other. Referring back to victimology, I am inclined to express a new perspective on the ways in which affect and risk get taken up. In the sex work debate, it is clear that abolitionists have mobilized a certain rhetoric of risk—one that highlights the riskiness of non-culpable victimization versus the riskiness of actively participating in the sex trade. For abolitionists, including the government, the need to be protected from sex traffickers is not met by the need to provide protection, but rather, to abolish the systems of oppression. As Larissa Crack (Co-founder, Northern Women's Connection) puts it:

Violence has been, and always will be, associated with prostitution. This holds true for a large proportion of women involved in the sex trade who admit to experiencing abuse and violence as a direct result of the sex trade. It doesn't matter if women are given 2 seconds or 20 minutes to assess and screen the men looking to buy sex. When women are required to identify violent offenders, their immediate safety will be put at risk. Predators can be manipulative, charismatic, and smooth talkers; all of which would make it easy for them to move past any so-called safety practices put in place by sexually exploited women, and we cannot put this onto the backs of women who are placed in this position.⁶⁸

The claim is that the threat of violence, or risk of harm, is so prevalent that mechanisms of harm reduction are an effort in futility. Speaking in the language of intrinsic risk accomplishes two things. First, it demoralizes a largely neoconservative agenda to prohibit sex work from happening. Second, it aggregates the individual and diverse experiences of sex trade workers into a univocal narrative, destroying any individuality of

⁶⁷ *Department of Justice Canada*, Technical Paper (1 December 2014) at 3, <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/protect.pdf>.

⁶⁸ *Ibid.*, 9 July 2014., 41st parliament., 2nd sess., No. 40 at 6.

experience, and flattening the diverse ways in which different identities navigate through the sex trade. But the ways in which abolitionists have packaged their arguments does not speak to risk in the same way as the decriminalization movement. For many of these interveners, invoking an emotional response is used to skirt the conversations around risk management, which is the central tenet of the *Bedford* decision. Through affect, abolitionists have framed sex work in a way that is extremely difficult to challenge. Larissa Crack went on to further discuss the violence she encountered while being forced into the sex trade:

I have been held at gunpoint and watched my friend get murdered in front of my eyes. I was tied down for days at a time and injected with numbing drugs while men paid to rape me. I was drugged. I've been beaten and thrown out of the vehicles of men who didn't want to pay for the service they had received and suffered multiple injuries from the pimps who wouldn't accept anything under a predetermined amount of revenue. After all of these abuses that I have endured, the worst part is now living with and hearing others talk about the sex trade as if it were a choice, a form of employment that could become normalized if Bill C-36 is not passed, and constantly hearing that what I went through could have been prevented by having a bodyguard or by having the privilege of working inside.⁶⁹

With such a provocative statement, testifiers like these not only give horrifying accounts of their traumatic experiences, they also challenge the assumptions of harm reduction in an effort to advocate for the abolition of the sex trade. The affective dimensions of these narratives bring our understanding of sex work away from the logical and into a realm of moral condemnation. We may be angered by the fact that women are treated in such a way or saddened that this could actually happen to someone. Such statements are not easy to dismiss, nor should they be dismissed. But what remains at tension with these accounts are the experiences of sex workers who engage in techniques of client screening, in-call services, and hire body guards and drivers to supplement protection.

⁶⁹ Ibid.

Thinking about Bill C-36 as a different way of framing sex worker subjectivity calls into question the frame itself. We see that the state, along with its abolitionist allies, have reframed the issue of prostitution to focus on the victimization and traumatic experiences of those who have been harmed within the sex trade. Doing so not only silences those who effectively navigate the sex trade, but systematically denies the possibility that people can act freely within the sex trade. The Supreme Court of Canada's decision did not place enough pressure on the government to enact legislation that would provide meaningful mechanisms to ensure safety. Instead, the decision simply reorients our understanding of sex work from a problem that affects all of society to a problem that affects all who sell sex. Speaking in terms of harm and risk leaves little room for arguments that assert sex work is a choice. It can be a choice by a multiplicity of gender identities to engage in behaviour that is not always sexual and not always dangerous. Framing sex work as an issue of the criminal justice system leaves almost no room for addressing underlying social conditions that cause some sex workers to be more vulnerable than others. The way this debate is framed restricts the language that can be used. Affect challenges this restriction and allows for the frame to be changed yet again, only this time, it allows for the re-inscription of morality and the undermining of sociological and legal research.

Conclusion: Identity Politics, Affect, and the Carceral State Apparatus

Risking Morality

Because complete abolition of the sex trade is a project that extends beyond the politics of the criminal justice system, condemning sex work relies heavily on a moral intervention that counters the logics of harm reduction put forth by much of the sociological research. Claiming that the sex trade can be abolished in its entirety is certainly a task that extends far past the role of all branches of government. It would, in fact, require a complete dismantling of the capitalist wage labour system to provide equal life chances for all. Nevertheless, there are many who engage in sex work not only for the economic empowerment, but also for the expressive freedom of performing a sexual practice that challenges dominant heteronormative assumptions surrounding monogamy and patriarchy (Bernstein 2004).

Traditionally, risk requires an objective analysis, one that draws on statistical surveillance and the romanticization of aggregate data sets. Haggerty and Ericson (1997) argue that techniques of criminal justice risk analysis are largely employed through aggregates. In this sense, risk data is collected and the subject is virtually abstracted from any individual reality. In other words, the subject is lost in a risk analysis, only to be abstracted into a series of numbers, digits, and statistical representations.

Due to the constructions of sex work as inherently risky, it may be useful to think of sex workers as stuck in a “double bind” (Stychin 1994) or matrix of agency, self-responsibilization, and criminality. In other words, sex worker narratives are often

constructed through the careful balance of risk and choice—they are both forced into the sex trade through external factors, but at the same time, freely choose to engage in risky behaviours. A common stereotype, for example, is that of the addicted sex worker who sells sexual labour to support her addictions. This rationale situates sex workers in an even more precarious identity politics, one in which their criminality as drug users, vagrants, and prostitutes is given more attention to the socio-historic and economic factors that may contribute to these stigmatized lifestyles. As Stychin (1994, 519) puts it, “To be ‘hooked’ is to lose control, to fall victim to a compulsion which negates the exercise of choice.” The erasure of choice is centred largely on the premise that sex workers are always victims *because* the sex trade is inherently violent. While this positions seemingly hinges on risk, it galvanizes a strong moral stance.

In our everyday lives, the decision to choose risky activities is normative. We negotiate risks on a daily basis, sometimes choosing for more risky behaviours over less risky ones. But how are certain risks constructed as more acceptable than others? Sex work has generally been seen as an intolerable or non-desirable risk whereas other dangerous forms of labour, including blue-collar labourers (i.e. police officers) are touted as noble professions that contribute to society in a positive way. Taking risks through other forms of entrepreneurship are seen as the cornerstone of our capitalist society, particularly when businesses profit from taking immense financial risks. We generally think of those that risk their lives as heroic or at the very least, as a positive contribution to society.

Though risk scholars have made it clear that risks is abstracted from the subject, I have argued that choosing certain risks over others is constitutive of the subject. For this

reason, affect plays an immense role in demarcating the boundaries between (constrained) choice and the externalization of risk and responsabilization. The politics of pity constitute the subject as not necessarily choosing to engage in sex work, but rather, as a subject that is systematically forced into the oppressive nature of the sex trade. But the politics of pity intersect with the politics of fear, reproducing moral panics of exponentially high rates of sex trafficking in Canada as a result of a potentially decriminalized climate.

Exploring the affective dimensions of sex work discourses allow us to reposition our considerations of risk and its use in shaping public policy and discourse. Legislating through a politics of fear (Cohen 2002) has effectively contributed to the ongoing war against terrorists, but is also useful as a technique of imposing harsh sanctions on criminals society has deemed incorrigible (Altheide 2006). But the ongoing politics of pity/risk that we have seen employed in the previous chapter suggests that the neoliberal approach of risk management actually gets entangled with an affective dimension of pity and immediacy, lending a new understanding of how risk gets deployed. Ahmed's work suggests that this affective dimension is integral in policymaking as it positions the subject it seeks to govern in relation to a larger project of nation building—a fundamental component of the sociality of emotion.

Anna Carline (2012) takes up a similar project, exploring the use of affect vis-à-vis the UK Policing and Crime Act, which like Bill C-36, attempts to focus the penal attention of the criminal justice system on those who exploit sex workers. Carline suggests that the previous legislation governing such offences has merely been re-'invoked under a new guise. She argues that there is room for policy makers to exploit

the affective dimensions of regulatory regimes. Her analysis, however, does not explore the potential for similarly exploitative notions of risk and affect that may in fact be used by sex work advocates achieving their respective political ends. Here I do not mean exploitative in a way that seeks to undermine the efforts of current and former sex workers who have dedicated much of their lives advocating for equality. Rather, I am drawing on the points raised in the previous chapter to invoke an understanding of why a harm reduction model based on risk negotiation is actually seen as less valuable than a strategic deployment of emotion and victimization.

As we have seen from the analysis above, the government's tactic to focus on those who shape the demand for sexual labour is part of a broader neoliberal governance strategy that seeks to constitute the issue of prostitution as amoral, while simultaneously governing on emotionally charged rhetoric that is substantially void of any methodologically sound research (e.g. Farley 2012). The homogenization of different experiences serves as a crucial stepping-stone in constructing a narrative that frames sex work as always dangerous, inherently risky, and static and unchanging. Sex work abolitionists are not really engaging in risk analysis—they are speaking a language of risk. The distinction here is that abolitionists are not in favour of a harm reduction approach. There is no such thing as inherently risky since risk is measured in terms of internal and external factors.

Legal Paternalism and the Limits of Liberal Democratic Identity Politics

The accounts of sex workers navigating through the sex trade suggest that many Conservative politicians are simply unwilling to listen to research that supports harm reduction. They instead have opted for a moral agenda aimed at rescuing sex workers and delegitimizing their choice to sell sex. This need to protect women from themselves using the criminal justice relates to what Elizabeth Bernstein (2010) refers to as “carceral feminism.” This paternal/maternal role the state plays in attempting to help sex workers actually does very little to provide any substantial or meaningful reform. Bruckert and Hannem (2014) suggest that the criminalization of sex workers perpetuates a stigmatic representation that sex workers are somehow less deserving of basic human rights. They argue, “The ideological commitment to legal paternalism and feminist maternalism continues despite the overwhelming empirical evidence presented in *Bedford* that the victimization of sex workers, in large part, a product of the laws created to ‘save’ them” (Bruckert and Hannem 2015, 334). But more critical research needs to be conducted into the ways sex work advocates and harm reductionists rely heavily on an ideal victim identity and how this too can be a dangerous way of speaking to the criminal justice and legal systems.

For example, when analyzing what types of identities are being mobilized sex work advocates also deploy a homogenizing discursive construction of the sex worker. For many advocate groups, the ideal sex worker is one that employs mechanisms of self-regulation, conducting their own safe business practices while protecting themselves and peers. Chris Bruckert’s testimony during the committee hearings speaks to this, arguing

that the implementation of Bill C-36 “will decrease the ability of sex workers to access those services of third parties that improve their safety and security, such things as screening, maintaining bad date lists, collecting and verifying personal information, providing a deterrent presence, and hiring on-site or on-call security persons.”⁷⁰ While these strategies provide a formal equality to sex workers and acknowledge their rights, they do not address underlying socio-economic conditions that make increase sex worker vulnerability.

I am sure many sex work advocates agree that the underlying socio-economic conditions inform the choice to enter and exit the sex trade. In a response to a question regarding the role of affordable housing and poverty reduction strategies as a way of addressing the inequalities that may put women in precarious financial situations, Emily Symons of POWER eloquently stated, “I think what it will do, not just for the sex industry but for work in general, is to give people more options. Giving people more options to make the choice of what form of labour they wish to engage in is a positive thing.”⁷¹

When we use the criminal justice system to solve social problems, we run into a vicious cycle of criminalizing the poor and disenfranchised. More importantly, speaking about sex work in terms of criminality not only limits how we can address underlying socio-economic circumstances that affect people’s life chances, it limits what can actually be said in such hearings. It should come as no surprise that very few witnesses addressed the issue of life chances in their testimony. When this issue was raised, sex work was often touted as a way of combating marginalization and disenfranchisement, but the

⁷⁰ Ibid., 8 July 2014., 41st parliament., 2nd sess., No. 37 at 2.

⁷¹ Ibid., 7 July 2014., 41st parliament., 2nd sess., No. 35 at 17.

processes of marginalization were often taken for granted. The very framing of sex work within these debates focuses on the constitutionality and legality of implementing a regime of governance that criminalizes those who are involved in the sex trade. It is not the forum to address some of the systemic issues that many street workers endure as part of an ongoing neo-colonial project of land dispossession, gendered income disparity, intergenerational abuse, and domestic violence—issues that disproportionately affect indigenous and other racialized women.

While John Lowman (2000) suggests that only about 20% of sex work is conducted on the streets, the complexities of sex worker experiences is drastically silenced when we focus on a rights narrative grounded on a risk discourse. This is perhaps where my intervention as a socio-legal scholar and sex work advocate conflict. My research has found that while many sex workers choose to work indoors, some do not possess the cultural or social capital to do so. Seldom do we hear talks in parliament or through the Supreme Court about the complex nature of sex work. The Aboriginal Women's Action Network, for example, has taken a prohibitionist stance, arguing that more legislation is needed to curtail the demand for sexual labour, which systematically exploits Aboriginal women. A more nuanced approach, which addresses the deeply complex nature of the sex work debates, is taken by the Native Women Association of Canada (NWAC), who call for the complete abolition of prostitution in Canada, ultimately denouncing those who create a demand for sexual labour among Aboriginal women and youth while opposing the further criminalization of Aboriginal people. They argue, "It is wrong to criminalize Aboriginal women who are being prostituted. This only further punishes women for their poverty and exploitation. It also contributes to the high

numbers of Aboriginal women in prison and the separation of Aboriginal women from their children. NWAC supports the decriminalization of women who are prostituted.”⁷² This approach is quite complex, but it acknowledges a deeply historical legacy of land dispossession and intergenerational abuse that positions Aboriginal women in more precarious positions than white sex workers (Sangster 1999).

Because the *Bedford* decision is largely centred on the disproportionality of risk vis-à-vis the objectives of regulating prostitution as a nuisance, it seems logical (according to a particular risk logic) that those who pose greater risks of victimization, i.e. Aboriginal women, trans, and homeless people, are not seen as particularly ideal representatives of a political movement that seeks to reconstitute sex workers from a criminal identity to a legitimate labourer subjectivity. Like the abolitionist movement, this strategic appropriation of ideal victim subjectivity is one that masks the complex and diverse nature of sex work experiences. The media is perhaps most complicit in perpetuating stereotypes and reinforcing which identities are worthy of victimhood, and which are less deserving of emotional energy (Surette 1998; Altheide 2002; Gilchrist 2010). Jiwani and Young (2006) suggest that this affects Aboriginal women in the sex trade disproportionately to other identity groups namely because of the historical White Settler construction of Aboriginal women as both objects of sexual desire and as culturally inferior.

Conflating sex work experience is actually a by-product of the largely risk oriented *Bedford* decision. Harm must be shown as affecting *all*, or at least *most*, women in the sex trade in order to make a compelling argument. Vulnerability, as the

⁷²Retrieved from: <http://www.nwac.ca/sites/default/files/imce/Understanding%20NWAC%27s%20Position%20on%20Prostitution%20-%20Nov%202012.pdf>.

abolitionists have put it, succeeds in reinventing a paradigm of immediacy and morality. We might say that their logic of risk is actually not really logical at all. Risk operates along an axis of predictability. If exploitation is inevitable and inherent, how does risk apply at all? Garland (2003, 57) suggests that moral interventions along the axis of risk are possible because “Democratic governments have learned that they must listen to public concerns of this kind, rather than brush them aside as ‘uninformed,’ ‘irrational,’ and ‘unscientific.’” But this sentiment is a rather optimistic view of the liberal democratic state. Through its moral project the state (and its allies) can actually divert attention away from harm reduction, and instead, invoke a project of criminalization based entirely on morality but cloaked in empiricism. In this light, the risk society is not intended to gather information in order to uphold a biopolitical project of population management (Ericson and Haggerty 1997). Instead, we have a system that treats sex workers as governable subjects under the mentality of risk but is one that is really invested in maintaining a moral project of condemning those who challenge the heteronormative fabrics of the Canadian imaginary.

The question of how these identities form the imagined communities they seek to govern rests largely in how sex work narratives are taken up by politicians, former sex workers, current sex workers, and advocates for de/criminalization on behalf of all sex workers in Canada. These camps acknowledge the fractured nature of sex work within their own personal accounts of prostitution, but seldom ever formulate a legal response/claim that would actually address all of these structural issues. They claim that decriminalization is beneficial for “all women” or they cite that sex work is inherently exploitative for all women. Sex worker identities are essentially appropriated on behalf of

politically motivated actors in an effort to make a legitimate legal claim in favour of de/criminalization.

The appropriation of these identities and the formulations of these arguments show a clear power dynamic in which the law actively constructs identities, but at the same time, requires a certain manipulation of identity in order to make a legal claim. Because these identities become transformed into legal categories, and in turn, inform the regulatory practices they accompany, how can we resist these subject positions? Can sex workers reject the abolitionist or pro-sex work identities constructed?

To return to Butler (2005), it is extremely important to take up a project of deconstructing how this may be (im)possible. For Butler, identities are not intrinsic. Subjects are never fully knowable, even to themselves. To know the “true” self would entail a complete disconnection from the social world. She writes, “It is only in dispossession that I can and do give any account of myself” (Butler 2005, 37). Thus, to fully “know” the self one must be constitute the self within the various power relations/institutions that serves to create, reproduce, and negotiate subject identities. The law is a central mechanism of this project.

Butler’s analysis points us to an understanding of our identity that is systematically beyond our control. As explored throughout this project, the power imbedded within these relations of power can be quite compelling. Our ability to resist or fully reject the identities that form our subjectivities is a project that cannot be easily accomplished or explored. Of course, there are mechanisms of resistance that are well within our scope of reason, i.e. challenging stereotypes. But the perversely complex and decentralized nature of identity politics facilitates a dynamic where despite our resistance,

the regulatory apparatuses that govern us also constitute our identities (Brock 2009).

In the case of sex workers, “Women working in prostitution become prostitutes in the eyes of others; that is, publicly they are more identified with their work than are people in other jobs” (Brock 2009, 11). In fact, identity categories themselves and the power imbedded within them can put sex workers at risks. Not only are sex workers restricted from accessing certain forms of social citizenship/inclusion, the stigmas associated with sex work serve as a barrier to civic exclusion and the symbolic exclusion women face can often have very material consequences. The identities forged in these legal battles are not only indicative of a legal system that privileges certain normative experiences, it is one that contributes to a fluid understanding of risk that is often subverted, negotiated, and appropriated in ways that may in fact run contrary to objectives of harm reduction. In this way, the subject is mobilized as the very metric of risk. The ways in which the subject can be (re)constituted within the legal realm leaves room for a negotiated understanding of that subject is constituted as “risky.”

This project has opened up a space of questioning the capacity of socio-legal interventions and radical identity politics. The criminal justice and legal systems are structured in ways that govern the kinds of identity politics that can be achieved and who can effectively achieve them. Dean Spade (2011) argues that the reliance on the legal system for achieving social reform is quite limited. In most cases, groups who advocate through equality or rights-based legislation are actually strengthening the institutions that seek to criminalize them. Giving police the powers to rescue sex workers will only give them the necessary tools to continue their ongoing project of policing morality and criminalizing risky groups.

Theoretically, this re-appropriation is simply not an effective resistance to the material effects of harsh regulatory frameworks. As Spade (2011) suggests, the subjugation of particular bodies is a central mechanism of law and it relies heavily on the power of the criminal justice system. But because power is decentralized, subjugation operates across a variety of axes of identity (Crenshaw 1991), affecting people from a variety of intersectional backgrounds. In his analysis, Spade offers a radical critique of the liberal democratic legal apparatus, positing that in order to effectively transform and redefine our identities, we must actively dismantle the system of subjugation. To do this, he suggests that we need not engage with law itself. Legislation such as anti-hate laws seemingly provides a mechanism of legal recourse to those affected by hate crimes; however, Spade contends that these laws fail to address wider forms of subjugation. They fail to address the underlying socio-economic circumstance that may place queer and racialized communities in a position of marginalization. Spade (2011), along with Lamble (2013), suggest that when groups turn to the criminal justice system as a method of attaining reparation and justice, they are only reinforcing and strengthening the very system that subjugates them.

Shifting the frame of the sex work debates actually allows us to see that identity politics intertwines with narratives of risk and affect. In fact, the shift from policing the act of prostitution to focusing on individuals who enter (or already operate within) the sex trade is a clear indication that our justice system has operationalized the subject as a signifier of risk. The concern here is that individuals must be rescued from the depths of despair. The nuisance element of prostitution, which was seen as a combination of risky behaviours that are criminal in themselves (i.e. drug use, theft), has been set aside for a

new political agenda that focuses on targeting the individual.

This does not mean, however, that the implementation of Bill C-36 will be a softer, gentler approach to criminalizing prostitution. Instead, I assume that the approach taken by the state, and its allies, is one that strategically legitimizes an increasingly punitive approach. The regulation of prostitution will continue to be enforced through actuarial mechanisms of mapping crime hotspots and preventing criminogenic behaviours that lead vulnerable women into the sex trade. I am not hopeful in the slightest that sex work regulation will consider the many accounts of those who want to navigate through the sex trade on their own terms. I am even less optimistic that the current Canadian government will adopt strategies that will give sex workers the resources to choose if sex work is fitting for them. In other words, if women who engage in survival sex do so because of increased poverty and other forms of socio-economic marginalization and exclusions, the state must address those systematic barriers to reasonable life chances in order to give survival sex workers a comparable alternative to sex work, if they choose to take up such options.

Despite these efforts for pragmatic policy reform, the state and its allies have adopted a neoconservative approach to governing sex work through a moral paradigm. Returning to Carol Smart, the legal system is fundamentally concerned with having the experiences of women fit the pre-existing expectations set by broader societal norms. These not only shape the ways we can speak about experiences of the sex trade, but the ways in which we can conceptualize the various identities that exist by and through intersections of risk and emotion.

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