

**Protection for whom and from what? Canadian sex work legislation and competing narratives of structure and agency**

**by**

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## ABSTRACT

### PROTECTION FOR WHOM AND FROM WHAT? CANADIAN SEX WORK LEGISLATION AND COMPETING NARRATIVES OF STRUCTURE AND AGENCY

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This thesis investigates the relationship between agency and social structures based on narratives on sex work provided during a series of meetings where the *Protection of Communities and Exploited Persons Act* (Bill C-36) was being reviewed in 2014. The meeting participants were Department of Justice representatives; Members of Parliament, and; expert witnesses. Bill C-36 is intended to protect of sex workers, but this thesis reveals that the provision of protection is reliant on their commitment to exiting sex work. The dominant discourse employed during the meetings established sex workers as invariably exploited by individuals who purchase sexual services and underestimated the impact of structural and systemic violence that makes sex work a viable work option. In sum, the discourses of sex work that emerged reproduced perceptions of sex workers as victims rather than workers with diverse class and gender identities who have varying degrees of control over their career choices.

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## CHAPTER 1: INTRODUCTION

By using theoretical concepts of agency and structure, this thesis investigates the complex and variable constructs of sex workers' exploitation and protection based on the narratives provided during a series of meetings where the *Protection of Communities and Exploited Persons Act* (Bill C-36) was being reviewed in 2014. The participants of the meetings were: representatives from the Department of Justice who presented the Bill and the context within which it had been drafted; Members of Parliament who formed the Standing Committee on Justice and Human Rights and were tasked with reviewing the Bill prior to making a recommendation to the House of Commons to adopt or reject the Bill, and; a group of 74 expert witnesses who appeared to provide testimonies to help the Committee make an informed decision. While the title of Bill C-36 identifies the protection of sex workers as one of the intentions, this thesis reveals that the provision of protection is reliant on their commitment to exiting sex work, rather than reducing risks of violence toward those who continue their work. The dominant discourse employed during the Committee meetings established sex workers as invariably exploited by individuals who purchase sexual services and underestimated the impact of structural and systemic violence that makes sex work the most viable work option for those who lack social and cultural capital. This research demonstrates that the protection of "exploited persons" is secondary to the protection of communities in the Bill, as it proposed to criminalize sex workers when they work in locations where children may be present and to criminalize the advertisement of sexual services. While some participants stressed that the new legislation is likely to increase the risks of violence for sex workers by driving them underground, their concern was ignored by those who argued that abolishing sex work was the only valid means of protection. In sum, the discourses of sex work that emerged during the discussion of the new

legislation reproduced the dominant perceptions of sex work as a threat to social order and the views of sex workers as victims rather than workers with diverse class and gender identities who have varying degrees of control over their career choices. By using Sherry Ortner's concept of agency (2001), this study concludes that doing sex work can be an exercise in agency that is often performed within the limitations of oppressive structures, and that structural inequalities that severely limit the availability of viable work options need to be dismantled prior to eliminating sex work.

In 2013, through a constitutional challenge called *R. v. Bedford*, initiated by three current and former sex workers, the Supreme Court of Canada struck down three sections of the *Criminal Code of Canada* that were ruled to be a violation of the *Canadian Charter of Rights and Freedoms* insofar as they infringed on the rights of security of the person (3 SCR 1101). At the time of the decision in *R. v. Bedford*, the government of Canada was given until December 2014 to implement new laws related to prostitution before the sections of the *Criminal Code* that were deemed unconstitutional would be repealed. As such, Bill C-36, the *Protection of Communities and Exploited Persons Act*, was proposed and then voted into law on October 6, 2014. In this thesis, I will be examining a series of meetings of the Standing Committee on Justice and Human Rights (the Committee) that took place from July 7 to July 15, 2014 where witnesses made presentations on the *Protection of Communities and Exploited Persons Act* to show their support or opposition to the Bill, or portions of the Bill. Law is typically understood to be created and enforced to ensure order and uphold rights, but a close examination of the Committee meetings illustrates that what constitutes order and whose rights are upheld, who deserves to have their rights upheld and who deserves to define order, are not determined in a social and political vacuum. Shore and Wright state that policies and law are “narratives that

serve to justify or condemn the present, or as rhetorical devices and discursive formations that function to empower some people and silence others” (1997:6). In this thesis, I will show the ways by which sex workers’ agency is denied, their work discredited, and their protection considered secondary to the protection of communities and children during the consideration of Bill C-36.

Bill C-36 sought to criminalize the purchase of sexual services, restrict selling sexual services in spaces where one could reasonably expect children to be present, criminalize the advertisement of sexual services, and criminalize third party exploitation (pimping) (JUST 32). From July 7 to July 15, 2014, the Standing Committee on Justice and Human Rights heard testimony from 74 individuals prior to the adoption of Bill C-36, the *Protection of Communities and Exploited Persons Act*. The Act was introduced as a response to R. v. Bedford where three sections of the Criminal Code related to prostitution were found to be unconstitutional because they violate the right to freedom of expression and the right to security of the person. As part of the outcome of Canada (Attorney General) v. Bedford, the judges ruled that there would be a one year period before those sections would be deemed invalid in which parliament would have the chance to create new regulations that do not infringe on Charter rights. The testimony provided to the Standing Committee on Justice and Human Rights was offered to influence the *Protection of Communities and Exploited Persons Act* and thus the culture of sex work in Canada.

The aim of this thesis is to examine sex work, and the discourse regarding sex work, through the testimony of the 74 witnesses who testified before the Standing Committee on Justice and Human Rights. Sex work, as discussed in the Committee meetings, is what is normally understood as prostitution, however, outside of this context, and in the anthropological literature on this topic, sex work can encompass any type of sexual act for pay. My first goal in

this research was to determine what were the dominant narratives about sex work in Canada espoused by the witnesses during the meetings of the Standing Committee on Justice and Human Rights where Bill C-36 the *Protection of Communities and Exploited Persons Act* was being reviewed. Secondly, I analyzed what the concept of community protection meant in the context of Bill C-36 by examining the characteristics of the exploited people being protected, who was worthy of protection, and from what they were being protected. Finally, I explored how the concepts of structure and agency were conceived of by participants in the Committee meetings by examining their discussions of exploitation and protection involved in sex work.

Theoretically I have examined how agency, choice, and structure are embedded in the testimony provided by the witnesses and how they impact the notion of protection. For the purposes of this study, I have used Anthropologist Ortner's concepts of agency including her definition of an agency of intentions and an agency of power (2001). The agency of intentions is exerted when someone takes action to realize a goal or desire, while the agency of power refers to actions that are either an exercise of power or of resistance to power (Ortner 2001:78-79). However, agency is not exercised in a completely free environment, and social structures always limit the choices that an individual has and thus guides the exercise of agency. One way of understanding the impact of structures, or an individual's access to choices in everyday life, is the concept of structural violence, defined by Anthropologist Paul Farmer as: "violence exerted systematically—that is, indirectly—by everyone who belongs to a certain social order" (2004:307). I have used the concept of structural violence, as proposed by Sociologist Johan Galtung (1969) and as defined by Farmer (2004) above, to understand the impact of structure on agency and choice. In my analysis of the narratives offered in the Committee meetings, I paid special attention to whether structural violence and social systems were considered in the



discussion on sex work and what importance was attributed to structural violence compared to the individual, personalized violence that often comes with sex work. The focus of the *Protection of Communities and Exploited Persons Act* on buyers of sexual services presents a shift away from criminalizing the provision of sexual services, and provided space for commentary on safety, exploitation, and criminality within the boundaries of the predominately male group of people who make use of sexual services. Nevertheless, my analysis reveals that those who sell sex remained the central topic in the testimony provided to the Standing Committee on Justice and Human Rights.

The name of the Bill articulates its intended purpose: to protect communities and exploited people. Based on my analysis of participants' testimony, I argue that the protection offered by Bill C-36 is protection from the risk and danger of doing sex work with the assumption that sex work is not a choice, but that all sex workers are coerced into prostitution and would like to exit. The move toward the abolition of sex work is based on moral grounds and does not respond to the social and economic context that makes sex work a viable, albeit often constrained, choice for the people who do it. As my analysis in this study will illustrate, what constitutes protection is defined by policy makers and does not reflect proper consultation or representation of sex workers. What protection is warranted and who is deserving is influenced by and indicative of the shared notions of sex work as violent exploitation among the individuals who testified, as well as the committee members, and those who drafted the legislation. This thesis provides a glimpse into how the definition of protection is developed through a long sequence of posturing and rhetoric from policy makers and witnesses in an effort to placate notions of protection that vary from the one presented in the Bill C-36. While the stated intention of Bill C-36 is the protection of exploited persons, namely sex workers, whether or not that

intention is realized becomes further removed from those who drafted the Bill when more people are included in the consultative process, even if the consultation does not result in meaningful revisions to the Bill. Despite the perceived clarity of the title and intention of Bill C-36, I will argue that “policy can serve to cloak subjective, ideological and arguably highly ‘irrational’ goals in the guise of rational, collective, universalized objectives” (Shore and Wright 1997:9).

In this research, I have identified the dominant attitudes and perceptions about sex work in Canada held by the witnesses who appeared before the Committee, coming from varied and diverse positions and perspectives, including researchers, religious groups, advocacy organizations, legal experts, and state representatives. I have also attempted to locate the concept of community protection within the discourse in order to determine who is worthy of protection and from what Canadians must be protected. I have identified how sex workers are included and excluded from this protection and the ways in which their work is defined as something from which sex workers need protection, but also something from which communities (and especially children) require protection. Finally, I have outlined the various ways in which structure and agency are conceived of in relation to sex work through the narratives provided by the witnesses and how these narratives impact sex workers’ access to protection.

Based on my analysis of the testimony from the 74 witnesses who appeared before the Standing Committee on Justice and Human Rights, I argue that Bill C-36 was drafted based on the assumption that all sex workers and people involved in prostitution are victims with no agency. By punishing people who buy sexual services, rather than those who provide sexual services, the Bill vilifies buyers of sexual services rather than sex workers. Despite this shift away from the criminalization of prostitution and the emphasis on the “protection” of sex workers and communities, the meetings failed to adequately address the requirement for the

development of effective strategies to provide sex workers with viable alternative life options. Some witnesses problematized the structural forces of oppression that make sex work the only viable option available to certain marginalized people and groups, and others warned the Committee that the Bill might create even more dangerous and violent work conditions for sex workers. Yet, the emphasis on the victimization of sex workers through the rhetoric of protection served to silence the voices of the sex workers who expressed their desire to continue doing sex work *safely*, given the limited number of other viable income generating strategies available to them, and their advocates who argued the same.

This research highlights the underlying assumptions and biases about sex work that were the foundation of Bill C-36, the *Protection of Communities and Exploited Persons Act*, and how those were manifested into rhetorical tools and devices that, whether consciously or subconsciously, rendered sex workers as victims without agency during the consideration of Bill C-36. Herein, I have examined the limited narratives on sex work that were revealed during the meetings of the Standing Committee on Justice and Human Rights and compared these to the more nuanced narratives of sex work offered by previous studies, primarily focusing on how agency, sometimes colloquially referred to as choice, is afforded or denied to sex workers in these narratives, especially in contrast to the other actors involved. In this way, I have developed a more comprehensive description of sex work than has been offered previously, by focusing on the diversity of sex workers and their working conditions. Further, I have aimed to advance the understanding of the interaction between structure and agency in sex work by applying these concepts to sex work in Canada, as captured in the meetings of the Standing Committee on Justice and Human Rights, to highlight the usefulness of this theoretical approach in future research on sex work.

## CHAPTER 2: LITERATURE REVIEW

### *Introduction*

The revision of the *Criminal Code of Canada* in 2014 opened up opportunities for research and discussion that can begin to take into account the diversity and transformation of sex work, and the ways in which the law in Canada has responded to these changes. The anthropological research on sex, and more specifically sex work, is limited and Anthropologists Dewey and Zheng attribute this to a dissociation of research on sex from anthropology (Dewey 2010:4). Qualitative research does exist though, within anthropology, sociology, and gender studies and the competition between the theoretical concepts of structure and agency within these studies acts as the foundation for my research on sex work (Bernstein 2005, Bernstein 2007a, Bernstein 2007b, Brennan 2004, Chapkis 2000, Chin 2013, Davis 2000, Day 2007, Doring 2009, Earle and Sharp 2007, Jenkins 2006, Lantz 2004, Oakley 2008, Ray 2007, Weitzer 2000). These studies provide an excellent basis for examining how concepts of structure and agency materialize and are taken into consideration when debating new legislation regarding sex work. The debate over the presence or absence of agency in sex work in recent studies provides my entry point into examining the way that the concept of protection, in the context of Bill C-36, is used to uphold patriarchy, paternalism, and morality rather than to ensure the safety and security of the people who do sex work.

### *Sex Work*

It is important first to understand what is meant by “sex work”. In the context of Bill C-36, the type of sex work that is being discussed is what is typically understood as prostitution. However, sex work examined in previous studies, outside of the context of Bill C-36, encompasses a wide variety of sexual acts for pay. This can include pornography, performing

sexual acts on live camera online, telephone sex, and selling used underwear among other things. Day describes the term sex work, coined in the 1970s by Carol Leigh, as an acknowledgement of sex work as work, and as free of at least some of the connections to deviance and immorality that accompanies the term prostitute, or worse (Day 2007:8). Sociologist, Elizabeth Bernstein, contributes to the usage of the term sex work stating that it invokes that sex work is “not necessarily any better or worse than other forms of service work or embodied labour” (2007a:11). Weitzer, a sociologist, describes sex work as “commercial sexual services, performances, or products given in exchange for material compensation” (2000:3). When the term sex work is used in this study it refers to any sexual act offered in exchange for some material benefit (which may be money, food, shelter, etc.). In this definition, sex work is only different from sex in that there is a direct economic outcome that is inherent in the interaction, without which the parties would not be engaging in any sexual activity. Sexual acts are not limited to physical experiences; sexual acts include all types of behavior that are performed with the intention of providing sexual gratification to one or all of the people involved.

Sex work is different from sex trafficking in that sex work is not coerced by another individual, and is done of the individual’s own volition. Survival sex work, where individuals do sex work to meet basic needs such as food or shelter, is done when someone has few or no other options available to them, but is still not done under the direction of another individual. Sex work (prostitution) and sex trafficking are dealt with differently under criminal law and while some scholars, and many of the witnesses, whose discourse I will be analyzing herein, equate the two, I maintain their distinction. I will argue though, that structural violence can be coercive, limiting, and degrading and can limit one’s social, economic, and political capital so extensively that sex work is one of very few options, none of which might be desirable.

Some studies have examined how the Internet has instigated changes to labour and intimate relationships and how this has impacted the sex industry. This includes a shift in the spectrum of actions that constitute sex work and the environment in which sex work can happen (Ray 2007, Bernstein 2007, Roberts et al. 2010). Bernstein states, that “feminist and sociological analyses of prostitution have yet to adequately account for the persistence and diversification of the sex trade or for the transformations that have occurred in intimate relationships, labor, and consumption in post-industrial cities more generally” (2007:3). The integration of the Internet use into everyday life has transformed, and continues to transform, social interaction and communication (Griffith 2001:333). Communications about sexuality and for sexual purposes are not immune to the transformations of the broader category of interaction and communication, and the Internet has played an influential role in carving out new spaces for people to express their sexuality, learn about sexuality, and challenge expectations. The changing context of sex work must be an important consideration when creating new legislation to regulate sex work.

*Clients and Call Girls: Seeking Sex and Intimacy*, by Sociologists Lever and Dolnick, examines the role of emotion work (normally a part of women’s unpaid labour and done in the private sphere) as it is intertwined with sex work (2000:85). By emotion work, Lever and Dolnick are referring to emotional investment and care that is offered to sex workers’ clients including conversation and different kinds of touching that are more tender and convey desire and care (2000). Calling this emotion work draws a parallel to the kind of work that is normally done in non-commodified relationships and that women are expected to perform for free. Bernstein is also particularly interested in this kind of emotion work and writes extensively on what she calls “bounded authenticity”, a term she uses to describe the intimate relational experience that customers were increasingly looking for in addition to, or instead of, a purely

physical experience (2007:75). Emotion work, and other non-sexual acts that are performed in conjunction with sex work, help to expand the understanding of sex work during a period of change in intimate relationships and problematizes notions of sex work as purely physical and as objectifying sex workers for the use of their bodies.

### ***Sex Work and Power***

The literature on the sociocultural and sociopolitical contexts in which sex occurs and sex work is discussed informs my study because I am analyzing public discussions of sex work that occurred when determining the adoption of Bill C-36. Tiefer states that “it is widely accepted within sex research today that sex is not a ‘natural’ act” (1995) but one that must be understood within a sociocultural context. This context determines what counts as sex and the meanings we attribute to where, when, why, how and with whom one has sex” (Sharpe and Earle 2007:6). Furthermore, talking about sex does not occur in a sociopolitical vacuum. Michel Foucault’s *The History of Sexuality* (1978) illustrates the importance of power dynamics involved in the discourses on sexuality. In his analysis of the history of sexuality, Foucault attempts to counter the notion that sexuality has been repressed, instead contending that discourses on sexuality are abundant but that the content, location, and context of discourse follow a very specific trajectory based on politics of power and knowledge (Foucault 1978). According to Foucault, more focus should be on what is said and what is silenced in sexuality discourse and the relationship between these two (1978:27). Who is allowed to speak, when, and to whom are also important aspects of sexual discourse that must be examined (1978:27), because “these discourses on sex did not multiply apart from or against power, but in the very space and as the means of its exercise (1978:32). For the purposes of this study, it is important to consider who is silenced in

the Committee meetings and for what reasons, as well as who is permitted the space to speak and what kind of power that offers them.

The concept of structural violence, “violence that is engrained into the structures of society and that does not necessarily have individual subjects” (Galtung 1969), is a useful way of understanding the power dynamics and the representations of sex workers in the Committee meetings; the moral and social expectations and norms that exist surrounding sex and sex work and how those expectations impact the discourse on sex work, and; systemic inequalities that impact the ability of women, poor people, and racialized people to meet the expectations of a society that was established without them in mind (especially in relation to work). Galtung questions and problematizes the phenomena whereby personal violence (violence where there is an actor) (1969:170) receives an inordinate amount of attention while structural violence is normalized, despite their interconnection (1969:173). Galtung argues that structural violence leads to personal violence and that it is difficult to separate the two phenomena or to determine who should be accountable for each type of violence (1969). Who is the victim of personal violence, and for what reasons, can be attributed to the normalization of social hierarchies. Anthropologist Paul Farmer states that “Structural violence is violence exerted systematically—that is, indirectly—by everyone who belongs to a certain social order: hence the discomfort these ideas provoke in a moral economy still geared to pinning praise or blame on individual actors. In short, the concept of structural violence is intended to inform the study of the social machinery of oppression” (Farmer 2004:307). It is more socially acceptable to exert control over, demean, harass, and physically and sexually harm certain people based on the violent structural systems in place that identify certain people as less valuable, or that establish some ways of life or types of work, as deviant, abnormal, and unacceptable. Bernstein talks about this phenomenon



whereby women are strictly scrutinized for offering sexual services, while others who make money from the commodification of sex, such as hotels, phone companies, and other businesses that offer pornography, or are conducive to its existence, are not criticized for their role (2007:11). She critiques the framework from the beginning of the 20<sup>th</sup> century where prostitution was framed as a “necessary evil”, effectively “naturalizing the male desires that underpin the institution of sexual commerce” (Bernstein 2007:9) while “women’s path into prostitution was deemed to be largely a question of individual psychopathology” (Bernstein 2007:10). Bernstein’s description of the conceptualization of sex work for men by women is an example of structural violence, where the dual narratives of sex work for men and women are normalized and indisputable.

Farmer states that “Structural violence is structured and *structuring*. It constricts the agency of its victims” (Farmer 2004: 315), but I argue that individuals still maintain their agency even when their choices are limited by structural factors beyond their control. The choices that people make all happen within a cultural context where different options are available to different people at different times (Long 2005:6). The cultural context in which people make decisions, includes “moral rules and principles” (Melden 1968:43) by which those choices are judged. However, Browning, an anthropologist, explains that all people “are conceived as equally responsible beings, though clearly the limitations of insight, intelligence, and education serve to constrict the alternatives and possibilities of choice” (1964:78) and that choices are “thoroughly determined by and dependent upon the agent” (1964:82). All individuals can make choices to attempt to determine who they are and the kind of person they want to be, but everything about the individual which offers freedom or constraint must be considered (Long 2005; Bernstein 1971). There is freedom to choose, but what a person can choose is heavily

determined by structural factors, and this perspective on choice informs my analysis of sex work in this study.

Ortner describes two types of agency that complement the concept of structural violence that I am applying in this thesis. Ortner describes agency as “the mediation between conscious intention and embodied habituses, between conscious motives and unexpected outcomes, between historically marked individuals and events on the one hand, and the cumulative reproduction and transformations that are the results of everyday practices on the other” (2001: 77). This definition permits agency to fluctuate and to be influenced by external factors that cannot necessarily be controlled or even acknowledged by the individual. Within this conception of agency, Ortner identifies two distinct types of agency: the agency of power and the agency of intentions, both of which are useful when considering the agency of sex workers (2001:78-79). The agency of power captures agency as exercised by those with power to influence other people and events, but also more simply to “maintain some kind of control in their own lives”, as well as agency to resist power in the most minimal of ways or in the form of outright rebellion (2001:78). The second form of agency, the agency of intentions, is a simple concept wherein individuals have the agency to organize their lives “in terms of culturally constituted projects, projects that infuse life with meaning and purpose...within a framework of their own terms, their categories of value” (2001:79). The agency of intentions “is about people having desires that grow out of their own structures of life, including very centrally their own structures of inequality,” (2001:81) which connects with the description of structural violence provided by Galtung (1969) and by Farmer (2004) and permits individuals to hold agency despite the structures of inequality within which they exist and within which everyone exists.

### *Sex Work, Victimization, and Choice*

Representations of sex work can be divided into two factions: those who contend that sex work is inherently violent, degrading and exploitative (Davis 2000) and those who acknowledge the agency and choice of sex workers - some going as far as arguing that sex work can be empowering (Oakley 2008, Bernstein 2007a, 2007b, 2005, Ray 2007, Day 2008). Davis calls one the “civil rights emphasis on the right to free sexual expression” and the other “the radical feminist perspective that prostitution is a form of male sexual oppression” (Davis 2000:139). I consider the dichotomy in the literature to be a significant drawback to understanding the complexity of sex work and to critically analyzing the social, economic, and political structures which constrain and expand available choices depending on one’s social, political, or material capital. While some individuals do sex work because of limited options and because sex work allows them to access basic necessities like food and shelter, others do sex work because they have many options and so they do not have to fear someone “finding out” about them doing sex work or because they have the option of only doing sex work in very controlled settings where they can manage risks more effectively. That one person can feel empowered by sex work and build confidence and self-esteem should not silence the experience of a sex worker who feels disempowered, mistreated and abused in their work, and the opposite is true as well. This dichotomy provides an interesting insight into the ways in which structure and agency are conceived of in sex work research, although the definitions of structure and agency in these studies are not so clearly defined as the underlying arguments.

Fortunately, Anthropologists Dewey and Zheng (2010), Gender and International Relations scholar Chin (2013), and Anthropologist Brennan (2004) drew attention to this binary and took into account the problems resultant from such a division. A better model for examining

sex work is not to divide based on choice and coercion, but to acknowledge that while there is always choice, choices may be limited and constrained in different ways and for different individuals. In her analysis of the notion of choice and death in postindustrial Japan, Anthropologist Susan Long is critical of egalitarian ideology within which "...we often do *not* recognize constraints on our choices imposed by our political-economic system, social structure, interpersonal relationships, and cultural symbols and metaphors" (Long 2005:5) and where the impacts of class, race, and gender are rejected (Long 2005:5).

Many studies have provided insight into the way sex workers view their bodies and conceive of sex work as "simply work" as well as the reasons for entrance into sex work and the moral dilemmas that accompany the decision (Jenkins 2006, Day 2007, Oakley 2008; Bernstein 2007b; Chapkis 2000; Weitzer 2000). Oakley's collection of essays by sex workers writing about their work is an attempt to humanize sex workers in order to establish sex workers as "people deserving of safety, agency, and respect" (2008:11). Oakley views agency as something to be granted or denied by those in power and provides space for sex workers to share their stories when sex workers' stories are typically mediated by academia or the audience for which they are performed. This collection offers useful insights into the spectrum of sex workers' experiences, different kinds of sex work performed by people of multiple genders and for a variety of reasons.

Psychologist Rich and Sociologist Guidroz, for example, provide nuanced accounts of sex work and workers' sense of agency within a constrained environment. The women interviewed by Rich and Guidroz all shared three characteristics: "1) the need for money, 2) they see phone sex as their most lucrative option, and 3) they feel reasonably sure they would be comfortable talking about sex over the phone" (Rich and Guidroz 2000:40). Many expressed fear of certain male callers and discomfort with their interests and fantasies: pedophilia, rape, abuse,

and bestiality, but they also noted that they had the option to hang up on callers who wanted them to engage in specific types of fantasies and the security of anonymity (Rich and Guidroz 2000:45). At the same time as they expressed fear and disgust of some clients, other clients helped to increase their self-esteem by making requests for specific women, giving them tips, and enhancing their self-awareness, self-respect, and their knowledge and comfort with their sexuality (Rich and Guidroz 2000:44). The women in this study also saw their work as a sort of education for their clients, and, while they were not allowed to criticize callers, they performed small acts of resistance or education in order to “send a message to callers that certain sexual fantasies and practices were unacceptable or immoral” (Rich and Guidroz 2000:46). This study, therefore, emphasizes the importance of sex workers’ agency. The sex workers in this study are agentic individuals who have made thoughtful and intentional choices about the work they do, acknowledging that sex work is a lucrative option for themselves and that their comfort doing sex work outweighs the discomfort they experience interacting with some of their clients. These women do not have unlimited or completely unrestrained choices, but this does not negate their agency.

*From Victims to Survivors: Working With Recovering Street Prostitutes*, by Nanette Davis, a sociologist, is positioned on the side of the discussion on sex work that views sex workers as victims. Davis does not believe in the potential for sex work to be empowering or liberating and says that the idea that “prostitution is lucrative, glamorous, and sexy” is a myth (Davis 2000: 140). The exit program offered by the Council for Prostitution Alternatives to help sex workers find an alternative job is not perfect, but Davis states that, “At its best, radical feminist advocacy serves as a reclamation process for some prostitutes, empowering the disempowered. At its worst, it reinforces stereotypes about prostitutes as unfit and degraded

persons” (Davis 2000:154). Despite this, however, Davis’ language demonstrates where she stands within the debate about the morality and acceptability of sex work. Davis locates the experience of all sex workers within a framework of victimization despite discrepancies in the narratives and experiences of the women who made use of the program. In this way, she fails to adequately account for the various definitions of work, the structural constraints on agency that impact sex workers’ choice to do sex work, the level of exploitation they experience, or agency they are able to exert.

In contrast to Davis’ article, *Power and Control in the Commercial Sex Trade* by Sociologist Wendy Chapkis begins by stating that, “One of the most profound misunderstandings about sex work is that it involves the purchase of a prostitute’s body for indiscriminate sexual use” (Chapkis 2000: 181). Degrees of exploitation vary among different types of sex work, and Chapkis states that, “the sex industry still offers workers greater flexibility and control than many other forms of available employment” (Chapkis 2000: 191). Chapkis examines how the legal parameters of sex work influence the safety of sex workers and the desirability of working in places where sex work is legal, like certain areas of Nevada to which individuals would travel from far away in order to do sex work legally (Chapkis 2000: 182). The ways that sex workers exert power and agency, and the ways in which they are limited, are also a central focus of Chapkis’ research. She looks not only at the legal status of sex work, but also the rules set out by managers and third-parties, meant in some instances to protect sex workers, and in others to ensure profitability for the third-party (Chapkis 2000). Sex work, for several of the women that Chapkis interviewed, was a means of freeing up time so they could focus the majority of their time on things that they really wanted to do, such as activism, working for non-profits, or going to school (Chapkis 2000:192). According to Chapkis, “free choice” is constrained for sex

workers but this is no different than for most women, whose decisions are also made within power structures where women disproportionately fill low-paying and low-status jobs (Chapkis 2000:200). Ortner shares this perspective, arguing that people can act intentionally, create projects, and have desires, all components of agency, even within structures that may impose limitations on each of these (2001:81). The participants in Chapkis' study are exerting an agency of intentions when they decide that sex work is the best course of action if they wish to attain other life goals.

Anthropologist Denise Brennan directly addresses the debate within sex work discourse and research, which "centres on issues of agency and victimization, economic empowerment and powerlessness" (2004:23), and quotes Anne McClintock's warning that conflating all sex work as slaves "theoretically confuses social *agency* and identity with social *context*" (2004:23). Brennan recognizes the various experiences and contexts in which women choose sex work, and that there is inequality which affects "women's capacity for choice" but that sex work is also used as an "*advancement* strategy" for some (2004:23). Brennan explains that for women in the Dominican Republic, sex work is one of the best paid jobs they can get with little education (2004:121). Women weigh their options, and sex work is often a better choice where they can work fewer hours and make more money than in other jobs that offer no potential for social mobility (2004:130), a sentiment echoed by sex workers in many studies (Roberts et al. 2007, Lantz 2004, Weitzer 2000) and another example of Ortner's agency of intentions.

In this book, Brennan draws attention to the "large structural forces" (2004:14) that have made significant impacts on the lives of individuals in Sosù. She focuses on tourism/sex tourism and migration as results of globalization and the inequality that is perpetuated through aspects of globalization (2004:14). The title of the book, *What's love got to do with it?*

*transnational desires and sex tourism in the Dominican Republic*, refers to the inclination of sex workers to feign love, a strategy used by sex workers in Sosúa. This strategy is used as a tactic to marry and migrate out of the Dominican Republic, which is a rare occurrence, but “the few instances in which sex workers migrate to Europe as the girlfriends or wives of European tourist propel the fantasy for others” (2004:20). Sex work in Sosúa is popular among foreign men because of the low cost of living and low cost of purchasing sex, allowing them to feel rich, and enjoy anything they may desire, despite their working class or middle class background that may prove limiting in their home country (2004:29). This situation differs from sex work in other locations where sex workers must only pretend to desire, not love, their clients (2004:20) as discussed by Dolnick and Lever (2000) and Bernstein (2007a). Brennan’s account of sex work in Sosúa introduces emotional labour as an additional component of sex work that continues to expand the understanding of the complexity of sex work and the circumstances in which it can be viable and attractive to consider sex work.

Chin’s *Cosmopolitan Sex Workers* is similar to Brennan’s examination of globalization and shifting economic policies as important influences on sex work and migration trends (2013). She also considers large structural influences and contextual factors that affect individuals’ choice to do sex work. Chin notes that “Women’s transnational migration for sex work need not be driven exclusively by an economic survival imperative, that is, it need not be the job of last resort” (2013:21). There are multiple considerations that take place before making the decision to do sex work, including: making money, escaping a negative home environment, and wanting to travel (2013:21). Not all of these considerations illustrate an open and free decision-making process, but these considerations do highlight the conscious decision-making process within the context that each woman and sex worker lives. In this way, sex work is construed as a rational



decision made based on its superiority when weighed against the other possible alternatives (Browning 1964:43). Chin states that, “Transnational migration for sex work neither is the outcome of women’s unconstrained agency, nor that of overly deterministic structural forces in which they are left helpless but to participate in sex work as a last resort” (2013:117). Chin does not ignore the reality of sex trafficking that happens in Kuala Lumpur, but wants to be clear that trafficking is different from situations where women have chosen to do sex work, and have not been sold to do so, thereby illustrating diverse structural factors shaping people’s “choices” to join the sex industry (2013:117).

Quantitative research on sex work is not the focus of this project and so I will not spend much time writing about the difference between qualitative and quantitative sex work studies. I will note though that, within quantitative studies, one of the ways of framing sex work is to attempt to identify common variables, in terms of personal characteristics (e.g. a history of abuse or neglect) among sex workers (Matthews 2008, Roberts et al. 2007). This kind of research is a stark alternative to the qualitative studies described above. These studies provide important information about personal history correlations between sex workers, but without the inclusion of qualitative or experiential data, the information reads as a condemnation or acknowledgement of some deficiency in the individual sex workers without consideration for the broader context in which people do sex work. None of the qualitative studies that I am familiar with to date indicate that sex workers think of a previous history of sexual or physical abuse, or family disruption as their reason for entering the sex industry. We should be asking, within the context of existing social structures and forms of structural violence, why people who do not wish to do sex work are so constrained in their decision making that they turn to sex work, not by which personal characteristics this has happened.

### *Sex Work, Space, and Identity*

Spatial contexts in which sex work occurs shape the qualities and conditions of sex work and sex workers' identities, and the literature on space in the study of sex work informs my analysis of community protection and sex work involved in the Bill C-36. The literature illustrates that sexual services consumed in public/private or virtual/non-virtual spaces qualitatively differ, which affect stigma and risks associated with sex work as well as sex workers' management of their identities in daily life.

Anthropologists Donnan and Magowan, for example, examine how the spatial boundaries of sexuality are delineated and the politics involved in determining what is constituted as a public or private space (2010: 12-17). Sex work is inherently transgressive as sex, which belongs in the private sphere, enters the public realm of work (Donnan and Magowan 2010:12-17). Sex workers regularly erect new spatial boundaries to contain their work lives and their private lives, and compartmentalizing life is often a means for sex workers to evade stigma as well as legal repercussions (Day 2007, Bernstein 2007, Weitzer 2000, Dewey and Zheng 2010). The sex work Sophie Day spoke to in her ethnography created new boundaries and rebuilt public and private realms in ways that fit with their occupation; their private lives were ultimately very similar to the private lives of women not doing sex work, but their public lives varied greatly (2007:5). According to Day, these boundaries differed between women, but the distinction between public and private, the division of the two realms, was constructed and negotiated by each of the women in her research and they held to the basic principle that "sex involved relationships but work did not" (2007:35). Boundaries could include renting apartments specifically for working; refusing to allow their clients 'inside' their bed, only 'on top'; and using aliases in the areas of town where they worked (Day 2007). Sex workers may also establish boundaries by categorizing what

sexual activities were allowed at work and which were reserved for home: “working sex is circumscribed in place and time. Activities are restricted and dissociated from pleasure and reproduction” (Day 2007:38).

A distinction between home and work, or public and private spaces, is also established by the women Rich and Guidroz interviewed, and this division helped to define their identities (2000:36). In *Smart Girls Who Like Sex*, Rich and Guidroz demonstrate “how phone sex operators attempt to create and maintain a positive self-identity while employed in a socially stigmatized position” (2000:35). The tactics employed by the women that Rich and Guidroz interviewed follow Sociologist Erving Goffman’s description in *Stigma* of “the methods by which deviant people strive to conceal or manage their ‘discredited’ or ‘spoiled’ identities” (2000:36). The distinction between public and private spaces is a common topic within sex work research and appears to act as a way for sex workers to compartmentalize aspects of their lives in order to protect themselves from legal reprimand, social sanctions, and, on a more individual level, emotional and psychological hardship.

Others have examined the creation of a new space for sex work (virtual space), and how post-industrial society has transformed labour and intimate relationships permitting the diversification of the sex industry (Bernstein 2007a, Bernstein 2007b, Roberts et al. 2010), and how the Internet has opened new avenues into the sex industry (Ray 2007). The Internet allows people to create new identities, which corresponds with Goffman’s theory about the presentation of self (Goffman 1981). He contends that “negotiations” and “adaptations” occur in most social situations subconsciously (Goffman 1981). In subconscious and conscious ways, individuals are “inclined to be the persons called for by the situation” and the Internet provides the opportunity to seek out specific situations that permit them to present themselves in new ways (Goffman

1981). Giddens argues that the construction of self is a “reflexive project” where the individual, by “balancing ‘opportunity and risk’” of certain identities and characteristics, attempts to find authenticity (Hammond 1993:1198; Sharpe and Earle 2007:10).

The development of sex work in virtual space has shifted the meaning of sex work and diversified the identities of sex workers by attracting many middle-class people to take part in the sex industry. Bernstein examines, in *Sex Work for the Middle Classes*, how the Internet facilitates the entrance of non-traditional demographics into sex work (2007b). Bernstein attributes increased involvement of middle class people in sex work to a recreational sexual ethic, but also acknowledges that financial considerations and economic gender inequities are still the main reasons that people do sex work (2007a, 2007b). Sex work became a more viable option though because it can be conducted more safely from home and because options like live sex shows online pose fewer risks (Doring 2009, Bernstein 2007a). The new sexual spaces and opportunities on the Internet allow people to build identities that may not be possible in the material world, and to have those identities affirmed and accepted. The anonymity of the Internet provides a relatively safe space for people to express and experiment with sexualities that transgress the boundaries of monogamous cis-centric heterosexuality. Ray’s description of her decision to do sex work follows what Bernstein calls a “recreational sexual ethic” (2007a) whereby she did not see a significant difference between “casual hookups and sex for hire” and found liberty on the Internet where she could be, as she says, “the person I am in my brain, not in my awkward social moments” (2007:4-5). Doring, a psychologist, establishes six categories of sexual behaviour facilitated by the Internet that allow for the creation of new norms and moral boundaries which cater to the people who occupy various spaces on the Internet, and that allow people to explore themselves in ways that were previously inaccessible, or had limited

accessibility, in perceived privacy. Doring explains that “the Internet offers female and male prostitutes additional opportunities to market their services, work independently, network, participate in political activism, or verify the identity of potential clients” (2009:1094). Sex workers in many cities have used the Internet to establish websites with lists of “bad dates,” that provide descriptive information about clients, which may include physical attributes as well as the reasons they have been classified as a “bad date” (e.g. Maggie’s Toronto Sex Workers Action Project and Sex Professionals of Canada).

The Internet not only creates new opportunities and spaces for sex workers to do their work, but consequently for buyers of sexual services to explore their options as well. Sociologists Sharpe and Earle examine an online community of men who buy sex and who consider what they do to be a hobby rather than a deviant or abnormal act (Sharpe & Earle 2007). According to Sharpe and Earle, “it seems fair to argue that within contemporary western societies, paying for sex is both a discreditable and a discrediting activity and those involved in selling sex, or indeed those involved in any aspect of the sex industry, are on the whole considered deviant” (Sharpe & Earle 2007:1). However, within the online community described by Sharpe and Earle, a man is “no longer obliged to define his actions only in terms of the prevailing (negative) attitudes to paying for sex (for example, that men who pay for sex are inadequate) but can now do so in relation to, and within, an alternative normative order in which paying for sex is defined as perfectly compatible with a creditable heterosexual masculine identity” (Sharpe & Earle:13).

### ***Conclusion***

The studies covered in this chapter establish a foundation for understanding the diversity of sex work and the people who do sex work. The research I have examined on phone sex, sex

on the Internet, sex tourism, and emotional labour still do not account for all forms of sex work. Notably, these studies also do not extensively include the experiences of men, transgender, gender non-conforming individuals, and non-heterosexual individuals of all genders. The majority of the studies included here provide, intentionally and sometimes unintentionally, support for the argument I will be making later in this thesis: that doing sex work is always an exercise in agency whether because of constrained or seemingly unlimited options. Agency itself varies and I have used Ortner's concept of agency of power and agency of intentions to understand agency within sex work rather than attempting to apply a more heroic type of unrestrained agency that I would argue applies to very few people even outside of the sex industry (Ortner 2001). Examining the concept of structural violence provides a sound basis for understanding Ortner's two types of agency and provides the context for evaluating the Committee transcripts and discourse on sex work with more empathy and reflexivity about choice, context, and social situations.

### CHAPTER 3: METHODS

Bill C-36, the *Protection of Communities and Exploited Persons Act*, was reviewed by the Standing Committee on Justice and Human Rights during thirteen meetings that took place from July 7, 2014 to July 15, 2014. The primary source material for this research was the transcripts from the thirteen meetings. Each meeting was approximately 2 hours in length, with the final meeting lasting 4 hours and 25 minutes, for a total of 29 hours and 27 minutes of meeting time. The entirety of these meetings was transcribed and made public. I used the transcripts from the Committee meetings to understand how structure and agency are discussed and how they can be used to explain the relationship between exploitation and protection of sex workers. I analyzed the transcripts of the meetings of the Committee with a specific focus on the testimony that was provided by the 74 witnesses who appeared before the Committee.

These Committee meetings were the site where the rights of sex workers would be determined and where abolitionists and their counterparts were required to perform for the Committee to convince and compel the Committee members to act in what they consider to be the best interests of sex workers, communities, children, and families. I note that the witnesses had diverse perspectives on sex work and those who support the continuation of sex work and those who seek to abolish sex work hold these positions for a myriad of reasons that are not always consistently aligned with their position. The documents used in this research are all public documents and no other individuals were interviewed, surveyed, or otherwise engaged to complete this work.

***The Birth of Bill C-36, the Protection of Communities and Exploited Persons Act***

R. v. Bedford was a constitutional challenge brought forward by Terry Jean Bedford, Amy Lebovitch, and Valerie Scott, where it was argued that three sections of the *Criminal Code of Canada* that related to prostitution were a violation of their rights under the *Canadian Charter of Rights and Freedoms*. The sections of the *Criminal Code* in question were Section 210, 212 (1), and 213 (1). Briefly, Section 210, that deals with bawdy-houses, made explicit reference to prostitution and made it illegal to keep, or be in, a bawdy-house; Section 212 (1) prohibited living off the “avails of prostitution”; and 213 (1) made it illegal to communicate in a public place for the purposes of prostitution (3 SCR 1101). It was argued in R. v. Bedford that these three Sections of the *Criminal Code* violated Section 7 of the *Canadian Charter of Rights and Freedoms*, which reads: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” (*Canadian Charter of Rights and Freedoms*). On December 20, 2013, The Supreme Court of Canada ruled that those three Sections of the *Criminal Code* were not consistent with the *Charter*, that they infringed on the right to security of the person. At the same time, the Supreme Court of Canada declared that the identified Sections would be void in one year, providing time for Parliament to establish new legislation to regulate prostitution if Members of Parliament should so choose. Bill C-36, the *Protection of Communities and Exploited Persons Act*, was drafted in response to the decision in R. v. Bedford and was subsequently adopted by Parliament.

The Standing Committee on Justice and Human Rights is a standing committee of the House of Commons which “has the power to review and report on the policies, programs, and expenditure plans of the Department of Justice, [and] which has the mandate to support the dual roles of the Minister of Justice and the Attorney General of Canada (the chief law officer of the



Crown)” (House of Commons, Standing Committee on Justice and Human Rights). Bill C-36 was referred to the Standing Committee on Justice and Human Rights by a vote of the members of the House of Commons on June 16, 2014, which means that the Committee was tasked with reviewing the Bill and bringing a recommendation to adopt or oppose the Bill to Parliament.

The first two meetings and the last meeting of the Committee, on the topic of Bill C-36, were unique and all other meetings followed the same format and structure. During the first two meetings, the Minister of Justice and Attorney General of Canada, Peter MacKay, and three representatives from the Department of Justice presented to the Committee on the process undertaken since December 20, 2013 to draft Bill C-36 and provide the context for the draft Bill that was presented to the Committee. Following the presentations by the Department of Justice, members of the Committee were permitted to ask questions. The following ten meetings all followed the same format: five to eight witnesses would join the Committee and each one would be given ten minutes to present to the Committee and, after all witnesses had presented, the Committee members were permitted to ask questions of specific witnesses.

The final meeting of the Committee involved the Committee considering each clause of Bill C-36 and either approving it or amending it prior to recommending the Bill be adopted by Parliament to become law. The Committee voted to pass the Bill as amended and to report the amended Bill to the House of Commons in September 2014 when the House of Commons reconvened (JUST 44). The Bill was passed on October 6, 2014 with 156 in favour and 124 opposed ([openparliament.ca](http://openparliament.ca)). Those in favour were comprised of two Independent Members of Parliament with the remainder of those in favour being Members of the Conservative Party of Canada; those opposed consisted of members of the NDP, Liberal Party, Bloc Québécois, and Green Party ([openparliament.ca](http://openparliament.ca)).

### *Participants*

There were three types of participants in the Committee meetings: representatives of the Department of Justice, Committee members, and witnesses who all have different opportunities to influence the discussion.

### *Representatives of the Department of Justice*

During the first meeting of the Committee on Bill C-36, the Minister of Justice, Peter MacKay, and two associates introduced the Bill and entertained questions from members of the Committee. Peter MacKay was the first person to present to the Committee and provided a justification for the Bill, explaining why it was drafted as it was and the goals of the proposed legislation. MacKay explained that “faced with the Bedford decision and the one-year timeline, the government had a choice: condone the exploitation of vulnerable persons and harms to Canadian communities, or protect them” and further explained that the goal of Bill C-36 “is to reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it, and ultimately abolishing it to the extent possible” (JUST 32). These quotes from Peter MacKay underscore the ideology upon which the Bill was drafted. It is important to understand that the legislative response to *R. v. Bedford* could have come in many forms and to acknowledge that the original drafters of Bill C-36 held almost exclusive power to shape the legislation that would take effect in response to *R. v. Bedford*. The ideologies, philosophies, and beliefs of any of the 74 witnesses would have also formed valid bases for a Bill in response to *R. v. Bedford*, but the witnesses did not hold the political office necessary to draft this legislation.

Two representatives from the Department of Justice were present to answer procedural questions about the development of the draft Bill after Peter MacKay had provided his introduction to the Bill. These representatives explained the process of consultation with the

public and with various shareholders; how the outcome of *R. v. Bedford* was taken into consideration when drafting the Bill; the nuances of how the Bill could be expected to be enforced, and; the intentions behind the proposed language. It is important to note that while the representatives from the Department of Justice, and indeed many committee members, have a background in law, they are not Supreme Court judges who would ultimately rule once again on the constitutionality of the legislation should another constitutional challenge be brought forward. Some members of the Committee tried to persuade the committee to have the Supreme Court provide a ruling about the constitutionality of the legislation prior to implementation but this motion failed and the legislation was implemented without any certainty that it would pass a constitutional challenge. Interestingly, there were questions that Peter MacKay, the Bill's sponsor, and the representatives from the Department of Justice could not answer about the application and enforcement of the proposed legislation - apparent ambiguities that would be left to judges and police to interpret and apply. Judges have significant latitude to make rulings when legislation is unclear and their decisions set precedent for how the law will be applied going forward.

### ***Committee Members***

The members of the Standing Committee on Justice and Human Rights are Members of Parliament and the composition of the Committee changes each time there is a federal election. In July 2014, the members of the Committee were: Mike Wallace (CPC), Françoise Boivin (NDP), Sean Casey (Lib), Blaine Calkins (CPC), Bob Dechert (CPC), Robert Goguen (CPC), Pierre Jacob (NDP), Ève Pécelet (NDP), Kyle Seeback (CPC), and David Wilks (CPC). The chair of the Committee is required to be a member of the political party in power, which was the Conservative Party of Canada at the time, and the two Vice-Chairs of the Committee must be

members of opposition parties (2009: House of Commons). The remainder of the Committee members and their political affiliation is not prescribed and is determined through negotiation between the political parties prior to the appointment of the Committee members (2009: House of Commons). In addition to the listed members of the Committee, there were 117 Associate Members of the Committee who were eligible to stand in for the Regular Members of the committee if they could not attend (House of Commons, Compendium of Procedure). The role of Committee members at each meeting was to listen to the witnesses and to ask questions after all witnesses had presented in order to gather enough information to make an informed decision about how to move forward with Bill C-36 (e.g. recommend Parliament adopt or oppose the Bill or refer it to the Supreme Court for review).

### *Witnesses*

The individuals who provided testimony to the committee were a group of “private citizens, experts, representatives of organizations, public servants and ministers”, called witnesses, who were invited by the committee to present and provide feedback on Bill C-36 (House of Commons, Guide for Witnesses). Committee members selected the witnesses based on the relevance of the person’s, or their organization’s, research, work, or other attribute that made the legislation of particular importance to the person. Anyone interested in appearing before the committee to speak about Bill C-36 was eligible to send a request to appear, which included information about their interest in the Bill, and the Committee subsequently invited 74 people to appear before them. These 74 people were representing 44 different organizations and 13 witnesses who appeared as “individuals” without any affiliation. The number of applications to appear before the Committee, if any individual or organization who made a request was denied, and how the Committee decides which witnesses will appear, beyond what is outlined above, is

not known. Seven of the witnesses who presented to the Committee had also acted as intervenors in *R. v Bedford*, meaning that they applied to the Supreme Court of Canada asking to provide information to the court that would help the court to make its decision on the constitutional challenge in *R. v. Bedford*. One of the witnesses, John Lowman, did not appear before the Supreme Court, but provided documents for consideration in *R v. Bedford*. Fourteen of the organizations represented in the group of witnesses who presented to the Committee were granted “intervener” status in *R. v. Bedford*.

### *Critical Discourse Analysis*

Critical Discourse Analysis (CDA) is an important tool within the social sciences that focuses on how language influences action and interaction and also the social and cultural function of language (Wodak and Meyer 2009:2). “One of the most significant principles of CDA is the important observation that use of language is a ‘social practice’ which is both determined by social structure and contributes to stabilizing and changing that structure simultaneously” (Wodak and Meyer 2009:7). This is especially important when it comes to law because law is often framed as if it is neutral and uninformed by hegemonic ideology and institutional power relations, while the discourse used to discuss new legislation and the implications of law are in no way neutral. Niemi commented on the legal language used in relation to prostitution legislation in Sweden, stating, “There is no doubt that the way we speak about a phenomenon also frames the problem and defines the cluster of possible solutions to it” (Niemi 2010:159). Concepts of structure and agency are established in narratives about choice in relation to sex work. Susan Long claims that postindustrial societies “...stress the need to make choices to create a desired “self” ...Decisions thus become a means of expressing who we are or want to be in society” (2005:4).

At the very foundation of discourse analysis is discourse itself, whether in speech or text form, Goffman states, "... a basic normative assumption...is that, whatever else, [discourse] should be correctly interpretable in the special sense of conveying to the intended recipients what the sender more or less wanted to get across" (1981:10). The process of conveying a message and having it received in the way the speaker or writer intended requires the speaker to have significant knowledge about the recipient in order to communicate at the same level as the recipient. First and foremost, "The issue is not that the recipients should agree *with* what they have heard, but only agree with the speaker *as to what* they have heard" (Goffman 1981:10). However, once the initial goal of conveying a message in an understandable way has been achieved, the speaker must also be aware of creating an "audience-usable self to do the speaking, He performs the self-constructing at the podium" (Goffman 1981:194). The speech must be understandable and relatable in order for it to be effective.

The "audience-usable self" lends itself well to Habermas' Sociological theory on communicative rationality, and what he calls a "performative attitude" that must be embraced by anyone wishing to persuade an audience of what they are saying (Habermas 1996:40). In the performance, the speaker makes what Habermas calls a "validity claim" meaning that they claim truth in the statement they are making, but the facticity of the claim is only established when the audience agrees to the statement (1996:15). Habermas states, "beyond the propositional content, every thought calls for a further determination: it demands an answer to whether it is true or false." Thinking and speaking subjects can take a position on each thought with a "yes" or "no"; hence, the mere having of a thought is complemented by an act of judgment" (1996:12). Speakers must be cognizant in their testimony of establishing credibility, which involves

appealing to hegemonic ideology, and upholding societal values, but also involves a larger process of performance in order to receive affirmation.

These basics of communication in practice can then be scrutinized with discourse analysis and the structural and power implications of certain types of speech and Habermas draws specific attention to law in this regard: “law has the special task of generalizing behavioral expectations in the temporal, social, and substantive dimensions in a congruent manner” (1996:48). The implications of “generalizing behavioral expectations” necessarily includes power dynamics, whereby one group is deciding what the expectations should be and then imposing those expectations on society at large.

The three types of participants in the Committee meetings speak and interact in prescribed ways and it is within these interactions that the representatives of the Department of Justice, Committee members, and witnesses exert their varying degrees of power. Each witness was permitted ten minutes to present their position and I will argue in Chapter 4 that the content of witness testimony is determined at least in part (it is impossible to determine to what extent without further research with those witnesses) by the reception they can expect from Committee members. I will argue that witnesses do not only present their perspective or opinion, but that they are performing with the goal of convincing Committee members and that this purpose, at times, requires equivocation. During committee meetings, witnesses were permitted ten minutes of uninterrupted time and only spoke again if a question was posed of them. In this way, the ability of witnesses to guide discussion was limited, and not all witnesses were called on equally to elaborate on their testimony.

After all witnesses had testified during a given meeting, Committee members were then given time to ask the witnesses questions and witness statements were often co-opted to make

the case of Committee members. Getting more information or seeking clarification based on witness' testimony was not the only function of the question and answer period. Committee members also used this time to provide a platform for witnesses whose perspective or research supported their own position, and also to stifle perspectives that they did not agree with or to discredit some witnesses. In this way, witnesses relied on Committee members for their credibility and to permit them space and time to offer their perspectives. An example of this is in the following interaction from Meeting 33:

Françoise Boivin (Committee Member): “Émilie, I'll start with you since we haven't heard much from sex workers themselves ever since this whole debate began. I want to give you an opportunity to speak to certain things you probably didn't have a chance to address. You can have two minutes to answer. How will this bill make it more dangerous for you to conduct your business? I'd like you to explain that to the committee and to respond to some of the comments the professor from the University of British Columbia made. Forgive me, but I can't remember her name.”

Émilie Laliberté (Witness): “Ms. Benedet”

Françoise Boivin: “She said that you were all exposed to violence and that you weren't treated equally, contrary to section 15 of the charter.”

Émilie Laliberté: “First of all, Ms. Benedet did not distinguish between victims of trafficking and consenting adults in the sex industry. As my colleague Naomi Sayers made abundantly clear, those who are forced to provide sexual services against their will are victims of exploitation. That isn't sex work. The Criminal Code contains a host of provisions to deal with that reality: offences related to organized crime, human trafficking, illicit trafficking, domestic violence and extortion. In short, the Criminal Code contains enough provisions to address violence in those situations, which are appalling. As I see it, this bill does exactly the same thing as the previous provisions that were deemed unconstitutional, and even goes further.

Thank you, by the way, for giving me a chance to respond to Ms. Benedet's comment. She said police would now be able to go after clients on the street...”

The questions and answers between Françoise Boivin and Émilie Laliberté continue, but this excerpt from the transcript illustrates that Committee members have the power to afford more



time, and specified amounts of time, to specific witnesses (and perspectives) with the intent of discrediting other witnesses (and perspectives). In this excerpt, Émilie Laliberté is asked to rebut and refute some of the comments provided by Janine Benedet. Only because another Committee member asks a question of Benedet later in the question and answer period does Benedet have the opportunity to speak again, and even when she does, it is to answer the questions of the other Committee member, not to engage with the comments Laliberté makes in the quote above. Committee members thus control the speaking time of the witnesses and can highlight the perspectives of some witnesses to the detriment of others. In the context of the Committee meetings, the narratives of some witnesses are acceptable and others are not, which becomes clear when specific witnesses are called on to expand on their testimony and when Committee members attempt to discredit witnesses with certain perspectives. The perceptible power dynamics that exist within the Committee transcripts however, do not account for the narratives and individuals who were not permitted to present to the Committee. Because I do not have access to the full listing of individuals and organizations who submitted requests to appear before the Committee I cannot make any comparative arguments about the types of voices and individuals who were provided a platform and those who were not. I can say, though, that of the organizations who were provided the opportunity to present to the Committee, decisions were made about who would represent the organization and who could provide a credible narrative. Within the scope of that decision-making process, specific ways of speaking, dressing, and performing that are valued in spaces such as parliamentary committee meetings necessarily guided the decisions about who should represent the organization, whether those decisions were made consciously or not.

### *Coding*

When reviewing the transcripts from the Committee meetings, I established 23 codes to organize and understand the data. The identified codes were based on the themes identified through my initial research and that are discussed in Chapter 3. I used two major codes to categorize narratives that were either supportive of sex work or supportive of abolishing sex work to understand the kinds of narratives that each side of the debate engendered. I also identified codes to distinguish between the different kinds of danger that were identified for sex workers such as exploitation, gender inequality, and inherent risks. Further, I coded the transcripts by identifying discourse where agency or choice was discussed and when structure or social supports were discussed. I also used codes to track themes such as discourse on trafficking, work, morality, buyers, representation of sex workers in the consultative process, and the personal characteristics that were attributed to sex workers. These codes helped to understand the larger codes and the general division in discourse between supporters of sex work and abolitionists.

In order to better understand the types of witnesses involved in the Committee Meetings, I categorized them in three ways when analyzing the data. First, I identified their primary affiliation as fitting into one of the following categories: legal, personal, religious, research, sex work advocacy, state (includes government and police), women's advocacy, and other. There were ten witnesses whose primary affiliation I identified as being legal meaning that they were lawyers or experts on legal interpretation and spoke to the application and/or constitutionality of the proposed Bill; four witnesses were there because of a personal interest which I categorized based on either having a family member who had experienced sex trafficking or representing the Adult Entertainment Association of Canada and thus having a financial interest in the outcome of

the Bill; three witnesses were representing primarily religious organizations; four witnesses had research as their primary affiliation meaning they had done research related to sex work or sex trafficking; six witnesses, identified as affiliated with the state, were representing police forces or government; thirty two witnesses were present representing sex work advocacy organizations; twelve witnesses were representing women's advocacy organizations; and, three witnesses did not fit into the categories (two were nurses and one was a representative of the British Columbia Civil Liberties Association). This categorization was an important step in understanding the kinds of people deemed to have expertise on the subject under consideration and the number of each kind of expert that the Committee decided to have represented. It should be noted that these categories do not determine the position or perspective of the witness on Bill C-36 or on sex work (i.e. those who I have categorized as representing sex work advocacy organizations may be advocates of sex workers as workers, may be advocates of the abolition of sex work, or hold some other position).

Second, I identified which of the witnesses did or did not have direct experience selling sexual services. Among those who had direct experience selling sexual services, some identified themselves as having experienced sex trafficking and some described experiences that would fit within the *Criminal Code* definition of trafficking without naming it as such. I should note that there is a conflation of sex work and trafficking for a specific political reason among some witnesses and committee members, but the witnesses also use these terms interchangeably for ostensibly different reasons. I will analyze the ways in which the term "trafficking" was used in Chapter 4. Twenty-two witnesses had direct experience selling sexual services and fifty-two of the witnesses did not.

Finally, I identified whether the witness was in favour, opposed, or had a conditional response to the Bill (conditional meaning that they were either in favour or opposed but with reservations or with conditions attached to their position). The purpose of the Committee meetings makes this category a natural one, and one that was easily identifiable, but the reasons for opposition or support are nuanced. Seventeen witnesses were in favour of the Bill, thirty witnesses were in favour of the Bill but requested amendments, twenty-six of the witnesses were opposed to the Bill, and it was not possible to discern the position of one of the witnesses.

Those opposed believe sex work is inevitable, that there are social systems that prevent people from doing other work, that for some people sex work is empowering, that sex work is not necessarily different from other kinds of work, that Bill C-36 is poorly researched, and/or that the Bill will not stand another constitutional challenge. Meanwhile, those in favour of Bill C-36 variously believe that sex work is inherently oppressive, exploitative, and violent, that sex work has a detrimental effect on children and on the families of sex workers and of those who purchase sex work, and/or that Bill C-36 is going to protect sex workers and make it more possible to contact the police when they are needed.

Those who identified themselves as supporters of Bill C-36 with some conditions or reservations almost unanimously shared the same reservations: that there should be no more aspects of the *Criminal Code* that criminalize sex workers, who are conceived of as victims, and requested that the components of the Bill that permitted sex workers to face criminal charges be removed from the Bill (e.g. provisions prohibiting communication in locations where children could reasonably be expected to be present). To be clear, each witness in each category does not hold all of the perspectives that I have identified, but some combination, and the reasons behind the perspective vary between witnesses. In the next chapter, I will identify how the various

positions either grant or deny agency to sex workers and how structural factors are integrated into these understandings.

## CHAPTER 4: DATA AND ANALYSIS

### *The Protection of Communities and Exploited Persons Act: The Importance of the Title*

Peter MacKay, Minister of Justice, stated in front of the Standing Committee on Justice and Human Rights, that the *Protection of Communities and Exploited Persons Act* had the following purpose: “to reduce the demand for prostitution with a view to discouraging entry into it, deterring participation in it, and ultimately abolishing it to the extent possible” (JUST 32). The title of Bill C-36 further qualifies the stated purpose as protective, specifically protective of communities and exploited persons. Both “communities” and “exploited persons” remain undefined, but it is difficult to argue that communities and exploited persons should not be protected. Thus, the title of the Bill becomes the initial location of tension where the goal of the legislation is identified even before those who have been invited to speak have the opportunity to do so. The goal of Bill C-36 and the assumed impact are identified in the title of the Bill before the witnesses have the chance to convince and persuade members of the Committee that there are other ways of handling sex work and that there are multiple potential outcomes of the implementation of Bill C-36 that may not benefit sex workers. While sex workers may be protected in certain contexts by Bill C-36, sex workers could also experience increased risk in other situations. Moreover, the type of protection that is being offered may not necessarily meet the needs of sex workers. Understanding the review of Bill C-36 thus requires a careful consideration of the various stated intentions and rhetorical devices used to win support. The arguments made by the Bill’s sponsor, witnesses, and Committee members do not always follow a logical narrative and are often contradictory. This should not be surprising as logic and narrative do not always make winning arguments, and the goal of each actor is to obtain

credibility, convince, and persuade. In this effort, confusion and emotional appeals can sometimes be more productive than honest, logical, or comprehensive dialogue.

Bill C-36, the *Protection of Communities and Exploited Persons Act*, was introduced, and was argued by a number of witnesses, to have provided a new perspective on sex work. Instead of addressing sex work as a public nuisance and criminalizing sex workers, Bill C-36 reimagined sex workers as “exploited persons” in an attempt to protect them. So, in the following text I will examine the notions of exploitation and their relationship to the constructs of protection. For example: Who is an exploited person? Who decides whether someone is exploited? Who is responsible for the exploitation? What are exploited people and communities being protected from? Do exploited people or communities receive more protection from Bill C-36? When is protection offered or restricted?

By exploring the above questions, I argue that the agency of sex workers is denied and diminished by centralizing the experience of sex workers who wish, or wished, to exit sex work without allowing those experiences to exist alongside the experiences of sex workers who do not wish to exit sex work for a variety of reasons (including structural forces that limit their access to other viable options for work). Sex work is described as dangerous, violent, degrading, and exploitative and this view on sex work usurps and overshadows the reality of sex workers who express their disagreement with these descriptions. As Foucault suggested, I will focus on both what is said and what is silenced in the discourse on sexuality to shed light on the power dynamics at play within these Committee meetings, and, more broadly, the power dynamics between sex workers and social norms (1978:27). Of particular importance is the regular conflation of sex work and sex trafficking, which succeeds in framing sex work as a coerced action that cannot be done by one’s own volition and which encourages a competition between

sex workers and the survivors of sex trafficking that invalidates the experiences of both. I will argue that the legislation was drafted based on the experience of a single, non-dynamic, version of a sex worker and fails to take into account, or fails to value, the diversity of sex workers' experiences and their positionalities in terms of gender, race, and class.

### ***Constructing Exploited Persons***

The contents of Bill C-36 define sex workers as exploited persons and the witnesses, Committee members, and representatives of the Department of Justice refine the definition in various ways. Each participant in the Committee meetings plays a role in determining who is an exploited person, and shares, to varying degrees, their interpretation of this notion. For Peter MacKay, "Persons who sell their own sexual services are prostitution's primary victims. But prostitution also victimizes the communities in which it takes place, including children who may be exposed to it, and indeed society itself, by normalizing the gender inequalities inherent in prostitution and the objectification and commodification of individuals" (JUST 32). Julia Beazley, a witness from the Evangelical Fellowship of Canada, shares the desire to stop the commodification of individuals, and supports the Bill because it: "challenges the assumption that men are entitled to paid sexual access to women's bodies, and boldly refutes the notion that buying sex is an inevitable in our society" (JUST 34). This notion that individuals are being commodified in sex work is a useful one for the purpose of persuasion; it can evoke a visceral reaction and challenge the parameters of where sex should happen, how it should happen, and between whom it should happen. These arguments are based on the idea that *women* are bought and sold instead of that *sexual services* are bought and sold, and ignores any agency that women have in sex work to determine what sexual acts they will and will not do, and with whom they will or will not do them. This argument fails to consider that the labour of all individuals is



commodified in their workplaces and that bodies are regularly used and broken, physically and mentally, to earn money in conventional workplaces as well.

In the very identification of the people who the Bill is meant to protect, many of the witnesses have eliminated the agency of sex workers, constructing them as helpless. Rick Hanson from the Calgary Police Service tells the Committee that, “Research shows that many prostitutes were the victims of exploitation as children and youth, are currently the victims of exploitation, or are otherwise vulnerable to exploitation because of drug dependency, FASD, emotional problems or mental illness, or economic disadvantage” (JUST 35). Hanson has specified who are the exploited persons that Bill C-36 attempts to protect and establishes all of them as unable to make their own decisions. Others, such as Gunilla Ekberg, point out that Aboriginal women and girls make up a large portion of the people who do sex work (JUST 38). Some witnesses argue that the Bill is a move toward women’s equality and a refusal to accept women’s oppression, calling sex work synonymous with violence against women (Natasha Falle, JUST 34; Kim Pate, JUST 36). Janine Benedet, an Associate Professor from the University of British Columbia praised Bill C-36 for moving toward “an understanding of prostitution as a practice of sex inequality and a form of violence and exploitation against women and girls” (JUST 33). Some expand further to argue that this Bill reinforces a more general commitment to the rights of women and girls, letting them know that they cannot be mistreated by men without consequence. The witnesses who use this tool, identifying marginalized and oppressed constituencies, and arguing that they need support are not completely incorrect. Aboriginal women and girls, people with mental illness, drug dependency, and who are economically disadvantaged do more frequently enter sex work, but it is vital to consider why sex work was their chosen option and what other options were available to them. Legislation that punishes

people who buy sexual services might deter people from buying sexual services, but a lot more will be needed to end systemic racism, halt someone's drug dependency, provide financial security, improve acceptance of mental illness and make treatment accessible. Hanson acknowledges the need for support services and counselling, but these measures are not in place to offset the impact of Bill C-36.

Cassandra Diamond, Program Director of BridgeNorth, a program run through Grace Church Newmarket, describes the extensive effects of sex work in the following way: "A country cannot be a true democracy if its citizens are treated as commodities, nor can a true democracy flourish when women who enter this lifestyle as a result of oppression or force are criminalized" (JUST 35). In this way, Diamond describes sex work as an all-encompassing ailment affecting society as a whole and not only the people directly involved in the buying or selling of sexual services. It is interesting that the acts of individuals are perceived in this case to be so effective; that those individuals who purchase or sell sex can be held accountable for the overall treatment of women and the human rights situation of all women.

Many witnesses conflate and combine sex work and sex trafficking to make a more compelling argument against sex work and any inclination that someone could make a conscious choice to do sex work. I argue that this conflation of acts and identities is a rhetorical tool. Conflating these two acts serves to silence narratives of sex work that do not regard sex work as inherently exploitative, and performs the function of establishing the acceptable parameters of sexuality as discussed by Foucault (1978:28). I do not attribute the conflation of sex work and trafficking to a misunderstanding of the criminal law surrounding both prostitution and trafficking because all witnesses and Committee members are deemed to be experts, in some sense of the word, on the topic of prostitution. It is unlikely that so many of these experts would

mistakenly refer to prostitution and trafficking interchangeably. Furthermore, each of these activities are dealt with differently in the *Criminal Code* and are separately defined. The *Criminal Code* defines “trafficking in persons” as: “Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence...” (CCC 279.01.1). In this definition, the guilty party is the person who has trafficked, rather than the person who has been trafficked, and it is acknowledged further in the *Criminal Code*, that no consent given within the context of human trafficking is considered valid (CCC 279.01.2). Prostitution does not have a definition in the *Criminal Code*, but in prostitution charges it is the person selling sexual services who is charged, not the person who has coerced someone else into doing the same. The fact that they are separately defined confirms that they are distinct activities. Examining the definition and application shows that the primary difference is the agency of the person whose services are being bought and sold. That prostitution and trafficking may happen in the same spaces or that it is at times difficult to distinguish between the two is likely, but criminal law is not always simple, and this should not result in interpreting the offences interchangeably. Christine Bruckert, a professor in the Department of Criminology at the University of Ottawa, referred to the problem of combining sex work and trafficking as one and the same and stated: “Yesterday and today, we heard youth prostitution, trafficking, and adult sex work being casually conflated. This is frankly surprising if not disingenuous, given that the law criminalizing the procuring, living on the avails of youth, and human trafficking was neither challenged nor struck down” (JUST 37).

Establishing all sex workers and people involved in prostitution as exploited also permits boundaries of sexuality to be delineated, in the process identifying sexual deviants and maintaining family, relationship, and sexual categories. It is in these ways that exploited persons are defined and created and individual's agency is denied. Dismissing sex work as a credible type of work denies both the agency of power that sex workers may be exerting when choosing non-conventional work and sexual practices, and the agency of intentions of sex workers who have projects, goals, and desires that may be achieved because they do sex work (Ortner 2001). Sheri Kiselbach, a sex worker from PACE Society in Vancouver, which advocates for safer working conditions for sex workers, opposes the narratives of victimization and states that, "These discriminatory views, moral values, and judgments discredit sex workers. It marks us as other, as being in some very significant way not like us" (JUST 40). Some witnesses who are, and were, sex workers described sex work as a means of avoiding homelessness and starvation, indicating that limited choices were available (JUST 33), while others advocated that sex work is a choice and could even be empowering but did not delve into the ways in which sex work could be found to be empowering. That sex work can be an exertion of an agency of power and of an agency of intentions though, is more clearly articulated in works by Bernstein (2005, 2007a, 2007b), Ray (2007), Chapkis (2000), Oakley (2008), Rich and Guidroz (2000), Jenkins (2006), Doring (2009), Chin (2013), and Brennan (2004). Bernstein (2007a) and Ray (2007) include accounts of sex work that challenge social expectations of acceptable sexual behaviour, fulfilling the requirements of Ortner's concept of an agency of power. Others, such as Chapkis (2000) and Jenkins (2006), outline sex workers' desire to attain education or spend time doing activist work as motivators for the entrance into sex work, identifying an agency of intentions that relies on

different, and perhaps less urgent, structural constraints than those associated with survival sex work.

***Who is to Blame? The Social Context and the “Perpetrators”***

Defining all sex workers and people involved in prostitution as exploited and positioning buyers of sexual services as the exploiters removes the onus on legislators to acknowledge their involvement in exploitation. This tactic alleviates the need to address systemic violence that perpetuates poverty, under-education, unemployment, racism, and sexism among other social ills that influence entrance into sex work. Sex work happens in a social and economic context that most witnesses agreed provides limited opportunities, and that social factors such as inadequate housing, racism, sexism, and poverty disproportionately affect specific groups in Canada.

Leonardo Russomanno claims that sex work is a “complex social issue” and that the *Criminal Code* is not the appropriate tool for providing solutions (JUST 33). Many witnesses, including Naomi Sayers, argue that prostitution is one of few viable options for income generation when people are dealing with a lack of social services, education, and housing and that attempting to abolish prostitution does not address these needs (JUST 33). Professor John Lowman notes that “Race, class, and gender structures mean that sexual capital is the only capital available for some people” (JUST 33). Structural violence ensures that individuals who do not belong to the dominant race, class, or gender will experience more difficulty accessing social, political, and economic capital. As Anthropologist Paul Farmer explains it, “Structural violence is violence exerted systematically—that is, indirectly—by everyone who belongs to a certain social order” and results in the oppression of specific groups of people (2004:307). Without dismantling the inequitable systems that limit the capital available to some people, attempting to abolish sex work is futile.

Bill C-36 frames all sex workers as victims of exploitation, primarily at the hands of buyers (and peripherally third parties who receive money from sex workers), and aims to “teach a lesson” to the buyers of sexual services while ignoring the systemic exploitation and violence that inhibits individuals’ ability to survive without doing this work and providing no alternatives. The goal of this legislation appears to be to get everyone out of sex work and then hope that they will all get jobs, a formal education, buy houses, and be happy, without adequately considering how any of those things will happen. As Professor John Lowman states: “Focusing on demand means that the state will not have to address the factors that produce supply, we just blame the men. So colonialism, poverty, substance addiction, unemployment, gender employment structures, economic opportunity structures, and a culture that produces sexual capital will be left as they are” (JUST 33). Addiction and mental health services are imperative to ensuring that people are safe and have options, and these are severely lacking and require funding.

Along with Bill C-36 the government promised \$20 million that would be distributed over five years to front line organizations that offer exit services (programs that assist sex workers to stop doing sex work), yet the names of organizations or the kinds of exit services to be supported remained unclear. Witnesses from all sides of the discourse (including Pivot Legal Society, Jeanne Sarson, Exploited Voices Now Educating, Vancouver Rape Relief and Women’s Shelter, Canadian Association of Sexual Assault Centres, Defend Dignity the Christian and Missionary Alliance, Concertation des luttes contre l'exploitation sexuelle, Calgary Police Service, Canadian Association of Elizabeth Fry Societies, Sisters Inside, Canadian Women's Foundation) agree that \$20 million to support exit services is not adequate (JUST 34, 35, 36, 37, 40, 41, 42). These objections highlight the disconnect between the stated goal of the Bill and the actual expected outcome, but they also provide insight into the kind of statements that are useful

when trying to engage support for Bill C-36 without any basis in realistic potential impact. While the promise of \$20 million was included in the introduction provided by Peter MacKay and the representatives from the Department of Justice, the amount of money that was being promised for exit services was not being debated by the Committee and the Committee had no purview to impact the amount of money budgeted for this purpose. The promise of \$20 million in this context could only serve to provide credibility to the Minister of Justice's claims and originally stated intentions about Bill C-36. Those in favour of the Bill could then also rely on this promise as proof that sex workers would receive the support and protection they need. Those in favour of the Bill spoke at great length about wanting to help sex workers exit prostitution and punish those who purchase sexual services, but they also spoke about providing alternatives and giving sex workers more career choices. Despite their desire to offer other viable employment options to sex workers, these statements are not accompanied by any acknowledgement of why these opportunities do not exist in the first place.

The Bill assumes that the population that is currently involved in sex work is trying to get out and ignores that different people are entering on a regular basis for a plethora of reasons. Julia Beazley argues that, "It's also important to address poverty and affordable housing as underlying social issues that drive individuals to prostitution or make them vulnerable to exploitation, because preventing entry into prostitution is just as important as helping with exit from it once they're in" (JUST 34). For many, sex work is a means of survival and taking away clients does not help them survive. Monica Forrester is a sex worker of 25 years and says "For many years I was homeless. I had no other options but to do sex work to survive and to get the basic necessities of life and access community" (JUST 34).

Despite the overall assumption that sex workers are in the process of getting out, some

witnesses situated sex workers' choice to generate income via sex work in the context of the availability of other viable options. Emily Symons clearly articulates the importance of choice when she says, "I think that you never, ever help someone by taking away an option, and I would never want to take away the option of sex work from someone. But I would want to create more options so that everyone can make the decision whether they want to do sex work or they don't want to do sex work, and so that people who do sex work can do it safely. I have no desire to see the sex industry flourish, and I have no desire to see it eradicated. I wish for people to be able to make their own choices" (JUST 35). Symons argues that when the buyers of sexual services are criminalized, the "good clients" who are more likely to fear legal retribution will go elsewhere. This will result in there being fewer and fewer clients, making it harder for sex workers to say "no" to a client to whom they would not have normally provided services (JUST 35). This argument is important because it underlines a belief shared by multiple witnesses that fewer clients does not result in sex workers finding different types of work and exiting the sex industry, but it merely makes it more difficult to make a living. Naomi Sayers shares Symons' concerns, stating that, "the criminalization of clients, in Bill C-36, has devastating impacts for indigenous women who rely on income generated from prostitution, particularly in the context of inadequate housing, social services, or education" (JUST 33). Reducing demand does not produce economic opportunities beyond sex work, and the violent structures that constrain choice remain in place prohibiting people from surviving by other means. Criminalizing the purchase of sex eliminates a source of income without providing another.

Criminalizing buyers assumes that sex workers only do sex work because they know someone will buy the service and would otherwise do something else. Unless someone is forcing another person to do sex work (which is trafficking), there are reasons other than "demand" for



the proliferation of sex work. There is a paternalistic assumption that sex workers (largely women) would be willing to do something for the sole reason that an unknown man is willing to pay for it. Arguments such as this forget that sex workers have a choice, even if it is constrained. John Lowman challenges this view and argues, “Demand causes prostitution, it is argued, so therefore if you get rid of demand, ultimately you will get rid of supply. It ignores economics 101. Supply and demand interact. We live in a culture that commodifies female and male sexuality at every turn. Explicit sexual imagery is only a few key strokes away, and our culture produces the demand for sex. It similarly produces sexual capital on which supply rests. Race, class, and gender structures mean that sexual capital is the only capital available for some people” (JUST 33). Sexual capital is not the only capital available for all sex workers though, and, for some, sex work is one of many options.

Committee members agree that something is wrong in society, but disagree about the cause. For supporters of the Bill, the cause seems to be perverse men who objectify women and promote gender inequality – the issue appears to be individual – for those opposed to the Bill, the cause is systemic, historical, and cannot be cured by punishing buyers of sexual services. Instead of acknowledging the social context within which sex work happens and taking meaningful steps to provide other opportunities to the people who do sex work so that those who are selling sexual services because of a lack of choice (or constrained choice) can exit, Bill C-36 creates a different villain: those who purchase sexual services. However, despite the shift in legislations in Bill C-36 whereby buyers would be criminalized, buyers were seldom discussed during the Committee meetings.

### *Protection*

When introducing Bill C-36 to the Committee, Peter MacKay, the Minister of Justice, states that "... faced with the Bedford decision and the one-year timeline, the government had a choice: condone the exploitation of vulnerable persons and harms to Canadian communities, or protect them" (JUST 32). This statement establishes two possible options where there were, in reality, many options, including diverse interpretations of what it means to protect vulnerable persons and Canadian communities. However, these two options appear to influence the basis of the discourse and logic employed by many of the witnesses and committee members, which necessarily limits discussion during the meetings. Foucault argues that understanding discourse on sexuality requires one to pay attention to the discourse that is acceptable and what is unacceptable and therefore silenced (1978:32). In the context of the Committee meetings surrounding Bill C-36, the initial statement of the Bill's intentions sets boundaries on the discussion that help to identify the dominant perspective of how protection should be defined and who should be considered an exploited person. Invoking the imposing deadline is an effective tool in limiting debate because there truly was not enough time before the deadline to draft a new Bill, restart the consultative process and have it passed by the House of Commons before the deadline. As such, Peter MacKay, has set up a strategic dichotomy where condoning exploitation or offering protection are the only options, thereby framing the flow of discussion. Offering these options establishes the parameters of the conversation and demands that others who participate in the Committee meetings adhere to these parameters or risk losing their credibility.

At the very least, these established parameters create more work for individuals who wish to provide contrary information, requiring them to work harder to ensure that the audience receives the information in the intended way, a key component of Goffman's theory on

communication (1981:10), and that members of the audience might agree to the facticity of the claim, another important aspect of communication, as identified by Habermas (1996:15). Despite the limitations placed on the discussion, letting the unconstitutional provisions of the *Criminal Code* fall was not unanimously agreed to be a poor decision. Indeed, those who argued in *R. v Bedford* would have liked those provisions to fall, for sex workers and people involved in prostitution to be completely decriminalized, and to allow other aspects of the *Criminal Code* related to trafficking, assault, and coercion to be used to address the existence of those crimes in the same space as prostitution.

I have identified communities, children, and sex workers as the bodies and individuals that are variously conceived of as in need of protection in the context of Bill C-36. Witnesses spoke of communities, children, and sex workers as tangible living beings at times, but they also spoke of communities, children, and sex workers as abstractions, ideas, and embodiments of moral norms and socially expected order. Witnesses speak of protecting these groups to varying degrees but the dominant constructs of protection revolved around saving sex workers and restoring or maintaining social order in communities by protecting them from sex workers.

### ***Criminalizing Buyers to Protect Communities and Sex Workers***

The primary means of protecting sex workers in Bill C-36 is in criminalizing the people who purchase sex without reintroducing the majority of the aspects of the *Criminal Code* that previously criminalized sex workers. Cassandra Diamond, with BridgeNorth, believes that “By criminalizing the johns, the law recognizes that men who solicit women for services are willingly, albeit perhaps unknowingly, engaging with organized crime to coerce and hold women in sex slavery. Clear laws like these, and the social commitment to implement and enforce them, will offer hope to women who are now trapped” (JUST 35).

When Peter MacKay introduced Bill C-36 to the committee, he stated that the Bill was drafted partly based on “the need to protect communities from prostitution's harmful affects [*sic*], including exposure of children; and the need to protect society from the normalization of a gendered and inherently exploitative practice. It infringes on values of human dignity and equality” (JUST 32). In this description of community protection, MacKay is not talking about individuals being affected by sex work, but is talking about normalizing ideas and social expectations that can impact individual behaviour. Some witnesses are predominantly concerned with protecting ideology rather than physically protecting sex workers.

While a number of witnesses discussed the negative impact of prostitution on families and communities, they did not necessarily specify the types of damage caused by prostitution and often emphasized the generally harmful impact of sex work. Julia Beazley, Policy Analyst with the Evangelical Fellowship of Canada, argues that this Bill helps to protect communities because it is not only the sex worker, but also the buyer and the buyer’s whole family that is impacted when they purchase sexual services (JUST 34). Natasha Falle, from Sex Trafficking Survivors United, further espouses the sentiment that families are broken when men purchase sex in her statement “Most violence we experienced in prostitution happened after the sex act was finished. Men spent their welfare cheques or their mortgage payments to have sex with me. They used money set aside for their children's birthday gifts or anniversary gifts.” (JUST 34). Katarina MacLeod provides another example of violence toward children and families in this quote: “I have taught in john schools across Ontario for many years. I can tell you that this fight is about changing the mindset of men. Men truly believe that prostitution is a case of two consenting adults. They have no clue why or how women enter to begin with, or the domino effect it has not only on the woman and her kids but on the john and his family” (JUST 36). The violence and

harm that is effected upon children and families is only ever explained by a lack of money (see Natasha Falle's comment above). It is interesting to note that spending is deemed superfluous when it is money spent on sex, and this spending is framed in terms of violence.

The idea of communities as discussed by some of the witnesses is undoubtedly founded on a Christian morality where sex is only permitted and acceptable in very specific circumstances and only within the confines of a very specific type of relationship: heterosexual marriage. Sex work is argued by Julia Beazly, of the Evangelical Fellowship of Canada, to undermine the "fundamental dignity of each person" and applauds the proposed legislation for its adherence to the "biblical principles that compel care for the vulnerable, the pursuit of justice, and inform the duty of care we owe one another as human beings" (JUST 34). A similar sentiment is shared by Cassandra Diamond, whose program aims to teach women about their inherent worth and value in an attempt to teach women that there are better options than sex work. It seems from Diamond's testimony that she does not denounce the idea that sex work is a choice, but she does not believe that women would make the choice to do sex work if they had more dignity and respect. Diamond then appears to be asserting that women's dignity and respect have been undermined and eliminated as a result of a corrupt society that has been poisoned by the cycle of sex work and the reinforcement of the devaluation of women.

Chief Eric Joliffe of the York Regional Police makes the following statement: "we support the government's approach to abolish prostitution, prosecute those involved in the exploitation of others, provide support to those who are victimized, and reduce the negative impact to communities" (JUST 38). Another police officer, Rick Hanson, expands on the impacts on communities arguing that he has witnessed an "increased perception of social disorder, public nuisances such as condoms and needles in public parks...; increased noise and vehicle traffic;

public sex; the unwanted sexual proposition of citizens; and public health concerns” (JUST 35).

This is the most concise evidence of material community harm and it remains anecdotal and cannot be attributed to sex work specifically. Beyond this, however, the definition of community is not provided and it is in no way clear how communities as a whole are being negatively impacted by prostitution.

### ***Protecting children***

The protection of children is identified as a distinct and important consideration in Bill C-36. Protecting children means protecting the children of sex workers, the children of people who purchase sex, and the innocence of the children who might be in the vicinity of someone soliciting sex, or might see condoms or other sexual paraphernalia, and be corrupted. Protecting sex workers is a real and tangible goal, yet the discussion during the meetings failed to adequately focus on protecting them from physical harm, assault, abuse, or harassment. Meanwhile, the protection of children was one of the central issues. Witnesses often discussed protecting children in terms of an abstract sense of children’s innocence and guarding children from the realities of a world where sex does not only happen when their parents love each other. Rather than discussing structural racism, sexism, and poverty that negatively affect the wellbeing of sex workers as well as children, protecting children was prioritized while sex workers’ safety and difficult work conditions were less frequently addressed.

Bill C-36 originally proposed criminalizing communication in places where children may “reasonably be expected to be present”, which can be seen as a contradiction to the overall purpose of the legislation or can be understood to establish a hierarchy wherein children’s protection is more valuable than the protection of sex workers (JUST 32). What locations would be included in the provision that prohibited sex work “where children could reasonably be

expected to be present”, was not initially defined and some witnesses, such as Josh Paterson from the British Columbia Civil Liberties Association, argued that such a broad description could be easily misapplied and provided no basis for a common understanding of how the Bill would be applied (JUST 40). Thirty out of 74 witnesses requested or suggested that the parts of the Bill that criminalize sex workers should be removed and when the Act was passed, the provisions related to children had been narrowed to apply only to schools, playgrounds, and day cares. This amendment indicates that changes were made, although few, based on the witness presentations and discussions during the Committee meetings. However, this amendment still protects children at the expense of sex workers and suggests that sex workers must have some choice in where they conduct their business, undermining the argument that sex work is always be entirely exploitative and can be equated with sex trafficking.

The big change that was introduced with Bill C-36 was moving the responsibility of sex work onto buyers and holding them accountable for exploiting sex workers. The Bill was created with the underlying assumption, and implicitly shared understanding, that sex work is inherently violent and degrading to those who sell sexual services, predominantly women. With such an underlying tenet, introducing new ways for sex workers to be criminalized raises important questions about who is being protected by Bill C-36. Peter MacKay, Minister of Justice, stated in his introduction to Bill C-36 that, “this approach accounts for the various interests at play, which include not only those of prostitution's primary victims—the prostitutes—but also those of children who may be exposed to prostitution and thereby placed at risk of being drawn into a life of exploitation, recognizing the vulnerability and the lack of maturity of children” (JUST 32). MacKay’s comments could imply that children are so impressionable that merely seeing sex workers in a public place would inspire them to become sex workers. If exposure is the way of

measuring children's future employment interests, one could safely assume that they will be more likely to aspire to do the same jobs as their parents or their teachers whom they see every day. This sentiment also marks sex workers as "others", as "nuisances", and as threats to public health and safety.

Some witnesses raise the important question of whether this Bill is about protecting sex workers or whether it is about hiding sex work by using the ideas of "protecting" communities and children. Regulating where sex work can happen appears to be a remnant of the previous legislation in which sex work was conceived of as a public nuisance. Janine Benedet, Associate Professor from the University of British Columbia, presented to the committee as an individual without affiliation to any organization and stated the following about the provision to criminalize communication in places where children could reasonably be expected to be present: "I think this provision is misguided. I do not think that the law should be making a distinction based on location if we understand the act of the purchasing of women to be an act of exploitation. It just punishes women for being exploited in the wrong location. It returns us to an approach rooted in nuisance. It's not really about protecting children because it doesn't criminalize women who are prostituted in front of children in a private place, only in a public place" (JUST 33). Protecting children from corruption is then a good excuse to keep sex work out of public places and appears to be more about visibility than about children. Cassandra Diamond states that, "Concealing prostitution behind doors is more socially accepted because it permits society to ignore the brutal reality that people are being destroyed by it. It allows people to romanticize the idea of prostitution, and to be blind to the degrading and dehumanizing treatment of women by the criminals who profit from it" (Meeting 35). Children are recognized to be a vulnerable group and it would be very difficult for anyone to argue against the need to protect children and so they are



the perfect group to use in the legislation to maintain aspects of criminalization and thus possibly disguise the intentions of the legislation.

The separation of exploited people from communities is a blatant acknowledgement of the desire to segregate sex workers and people involved in prostitution from the communities they live in. It raises the question: are they not members of their community? Communities are being protected by ensuring that the state sanctioned definition of morality and sexuality are upheld and that children's and upstanding citizens' sensibilities are not offended by seeing sex workers in public.

### ***Protecting Sex Workers***

As previously stated, Bill C-36 was drafted under the assumption that sex work is inherently violent and exploitative, and the idea of protecting sex workers must be understood in this context. Peter MacKay brilliantly captures the infantilizing premise of Bill C-36 when he states that "No one raises their children to be prostitutes. That's not something that people aspire to" (JUST 32). Initially this quote may appear to be about children, which would support my previous argument about the need to keep sex work out of the gaze of children, but he continues on to emphasize his desire to help individuals exit prostitution, making it clear that he is actually referring to the disappointment that sex workers have presumably caused to their parents and consequently themselves. Despite any arguments to the contrary, MacKay is certain that no one would aspire to do sex work. MacKay fails to account for the other aspirations that may be made possible by sex work - the agency of intentions that Ortner conceptualized, and also the desire for transgression that can be involved in sex work and that falls within Ortner's definition of an agency of power.

The number of witnesses who were in favour of Bill C-36, or in favour with suggestions for amendments, is the same number as those who espouse the idea that all sex workers are exploited and are victims. The sponsor of this Bill, Peter MacKay, was clear that the intention of the Bill was to abolish prostitution, what he considers to be an exploitative exchange that needs to be eradicated, and that more career options should be provided to sex workers (JUST 32).

Not all witnesses or Committee members agree with the assumptions upon which this legislation was based, or believe that sex workers will be protected by Bill C-36. Christine Bruckert comments on Bill C-36 in the following way: "...the law endeavours to protect individuals, presumed to be women, from becoming or remaining sex workers. This legal paternalism hinges on the assumption that no reasonable person would wish to engage in sex work. As such, it reifies a profoundly judgmental image of sex workers working with or for third parties as deluded, incompetent social actors and bestows upon them a disempowering identity of hyper-vulnerable victims." (JUST 37). Several witnesses argued that the Bill does not protect sex workers, but it further endangers them. As Leonardo Russamano from the Criminal Defence Counsel states: "Something that doesn't connect with me is that it's trying to protect sex workers by driving them underground, by pushing them into the dark alleyways, by pushing them away from public view" (JUST 33). Russamano further argues that, "The goal of public safety, the goal of encouraging sex workers to report incidents of violence to the police, is in no way going to be realized. The evidence is clear that when sex workers are not permitted to communicate—this is a primary mechanism that they use to protect themselves—for those who are most vulnerable, those who are in the street, that is going to contribute to the danger" (JUST 33).

At the same time, others, like Janine Benedet, praise Bill C-36: "I think the government has recognized correctly in my view the overwhelming evidence that the global prostitution

industry is not primarily a series of individual contractual exchanges between equal parties, but a profitable industry that profits from the outsourcing of sexual subordination of the most disadvantaged women and youth among us” (JUST 33). Of the 47 witnesses who were supportive of the Bill, 30 witnesses requested that the Committee amend the Bill to remove the proposed aspects of the Bill that criminalize sex workers in certain situations. Those who requested these amendments recognized the contradiction in establishing sex workers as victims without agency while simultaneously punishing them for doing sex work in specific places. Janine Benedet identifies the failed logic in punishing sex workers for “being exploited in the wrong location” (JUST 33). If sex workers have no choice, no agency, they should not reasonably be held accountable for doing sex work in any situation, even if children might be present.

Several witnesses examine the notion of protection in the context of sex work as a women’s rights issue and one that contributes to gender inequality. Cassandra Diamond states: “I want to live in a country that protects all of its citizens, and whose country's value system creates and provides laws that enshrine the safety, equality, and value of its people above all else, simply because they are human beings regardless of sex, class, race, and economic standing. I want to live in a country that prohibits the sale of its citizens as commodities to be bought and sold” (JUST 35). “Protection” here is discussed in an abstract sense, and is equated with gender inequality or human rights.

Meanwhile, other witnesses focus more specifically on protection by considering practical safety issues involved in sex work. Sex work advocates argue that Bill C-36 will make sex work less safe and will result in sex workers needing to rush negotiations and make poorly informed decisions about which clients they should provide services to (JUST 35, Emily

Symons, Prostitutes of Ottawa-Gatineau Work Educate & Resist). Concealing sex work and keeping sex work behind closed doors also maintains the distinction between private and public realms where sex should or should not happen, thereby primarily addressing the issues of sex and propriety in specified spaces rather than the violent and degrading act of selling sex.

Some argue that Bill C-36 is a direct violation and contradiction to the outcome of *R. v. Bedford*: “The decision was seen by many sex workers as a human rights victory because it was found that sex workers should not have to be unduly exposed to danger because of the criminal laws surrounding their work. Originally these laws took place in the name of combatting public nuisance. Now we are really seeing a re-creation, with many similar laws and going even further. Now it's under the name of protecting vulnerable communities, but these same laws that were used to combat public nuisance are really being brought back in to apply to sex workers again” (JUST 35, Robyn Maynard, Stella, L'amie de Maimie).

In addition to the provisions that criminalize sex workers when they are in places where children might be expected to be present, witnesses also criticized the Bill for limiting sex workers' access to hire third parties by criminalizing third parties. Third parties can be “receptionists, brothel owners, worksite providers, drivers, security persons, and mentors” who help sex workers to conduct their business, but third parties can also be “pimps, exploiters, and profiteers” as described by Christine Bruckert (JUST 37). Many witnesses specifically describe the detrimental effects of criminalizing any third party that advertises or permits the advertisement of sexual services, which arguably makes it impossible to promote sexual services without meeting clients directly and consequently promoting outdoor sex work that has been proven to be more unsafe for sex workers. The changes to the third-party provisions are in direct response to the overturning of the law that prohibited anyone from living off the avails of

prostitution and that was deemed unconstitutional in *R. v. Bedford*. The new provisions appear to have the same impact and so the question is raised once again about whether Bill C-36 will be found to be constitutional when it is brought before the Supreme Court again (and why, if the Department of Justice was interested in creating a constitutional law, the draft legislation would not have been presented to the Supreme Court for approval in advance instead of potentially forcing sex workers to initiate a new constitutional challenge). Christine Bruckert argues that: “the proposed receiving financial and material benefit provision is so broad that it will, like the living on the avails provision it replaces, certainly capture any sex workers who provide assistance to a third party. Any sex worker who answers the phone, books calls for an escort agency, locks up the massage parlour at the end of the night, or helps out another sex worker by renting her in-call location, would potentially be criminalized under Bill C-36” (JUST 37).

When considering safety issues involved in sex work, it is crucial to consider the difference between indoor and outdoor sex work. In addition, both of these contexts are quite vast and encompass a wide range of sexual services. Therefore, it is important to consider qualitatively different activities that are happening indoors or outdoors. The extent to which sex workers have autonomy to make decision about their work (how strong the constraints are on their decision making, and whether they are doing survival sex work or not) plays a larger part in determining from one situation to another whether indoor or outdoor work is safer. Witnesses, and even scholars, however, describe indoor and outdoor work without explaining either one and taking for granted many aspects of both types of work. Cassandra Diamond describes the difference between indoor and outdoor work in the following way: “If anything, working indoors offers even less choice to women. Unlike outdoor girls and women who are able to scan, see, and talk to a client before brokering a deal, an indoor woman or girl is lined up and then paraded

before being selected by the client. She does not have a choice to say no. Plying the trade indoors often means more pimp control, with no place for the person to turn to for help” (JUST 35).

Indoor work might prove to be overall safer, but if the indoor work happens in the way that Diamond describes, this is no safer and provides no more freedom or autonomy to the people doing sex work. In sum, then, despite the diverse sex work that occurs, the discussions during the Committee meetings did not emphasize the need to consider these differences and the impact of the Bill on the safety of sex workers.

## CHAPTER 5: CONCLUSION

While sex workers and people involved in prostitution provided extensive testimony on their lives and their needs for safety, and provided viable solutions to their dangerous working conditions, the decision about how they should be protected was established in the drafted legislation and directed the discussion during Committee meetings. The dominant perspective espoused during Committee meetings was that sex workers were unequivocally exploited and that sex work should be abolished. As such, protection was really only being offered if the individuals were seeking to exit sex work, and was not meant to be afforded to those who choose to do sex work without being coerced. As many of the witnesses who were opposed to the legislation have concluded, it is unlikely that anyone wishing to do sex work safely will be afforded that opportunity through this legislation. Bill C-36 was discussed based on the assumption that all sex workers and people involved in prostitution are exploited people, and sex workers and people involved in prostitution do not always agree with this view. The perpetual sexualization of women in everyday life is apparently an unwavering right, but the point at which women decide to capitalize on this inequity and challenge the limitations on their economic opportunities, they are victims.

The sex work that is considered in Bill C-36 is one of exploitation and victimization, and I have argued that this narrow focus has failed to protect sex workers who are not exploited or victimized due to trafficking or coercion and it fails to consider “the structural factors and social locations that incline women and men toward specific labour and consumptive practices and produce particular embodied subjectivities” (Bernstein 2007a:3). The narrative that dominated the Committee meetings examined in this thesis is a reductionist one that considers, almost solely, survival sex work and accounts for few of the possibilities that exist within the realm of

sex work and that were discussed in Chapter 2. The kind of sex work that was discussed in the Committee meetings was almost exclusively heterosexual sex where women were the sellers and men were the buyers. For this reason, sex workers were regularly described as women when, in reality, men, transgender, and gender non-conforming people are also involved in sex work and in sex trafficking. Bernstein (2007a, 2007b, 2005), Oakley (2008), Weitzer (2000), and Ray (2007), among others, study sex work that extends beyond heterosexual sex sold by women to men. Smith and Laing argue that while the scholarship on sex work has been expanding, the focus remains on sex sold by women to men and produced a special edition of the journal *Sexualities* in 2012 to highlight non-heterosexual sex work (2012:517). However, scholars rarely specifically focus on the diversity of sex workers in a single research project.

Similarly, the majority of the witnesses and Committee members have failed to acknowledge the diverse kinds of sex work, including pornography, telephone sex, live online performances, that have been described by scholars such as Day (2007), Ray (2007), and Weitzer (2000). The witnesses and Committee members, for the most part, also fail to consider the diverse reasons why individuals choose sex work, for example, to finance their education, to focus on pursuits outside of their work, to have more flexible work hours, to spend daytime hours with their children, or to profit from unconventional sexual ethics (Jenkins 2006, Bernstein 2007a, 2007b, 2005, Chapkis 2000, Chin 2013, Day 2007, Lantz 2004, Lever and Dolnick 2000). Of the witnesses and Committee members who were opposed to the abolition of sex work, even they did not broach the various reasons that people choose sex work other than the reasons issued from social and economic constraints (e.g. poverty, gender, class, race, sexuality) and that are commonly understood as contributing to survival sex work. The reasons that someone would



choose to do sex work when their choices are not severely constrained, were not discussed or considered.

The witnesses and Committee members in the Committee meetings used various devices, such as conflating sex work and trafficking, to discount the agency of sex workers. Sex workers' ability to make an intentional choice about their work, sometimes within a limited set of options and sometimes as an incredibly free choice, was not accepted by many of the participants in the Committee meetings and the resulting legislation is certainly not designed for sex workers with agency. The literature on sex work offers insight into the agency of intentions employed by sex workers to achieve goals, projects, and desires by doing sex work (in situations where sex workers experienced varying degrees of constraint on their potential choices), but this is not captured in the Committee meetings.

When sex work is considered within the context of a changing labour market, structural violence and power, and shifting models of intimacy, sex, and relationships, it becomes easier to comprehend and accommodate the diversity in sex workers' narratives. In Chapkis words: "the sex industry still offers workers greater flexibility and control than many other forms of available employment" (Chapkis 2000: 191). Additionally, she states that "free choice" is constrained for sex workers but this is no different than for most women, whose decisions are also made within power structures where women disproportionately fill low-paying and low-status jobs (Chapkis 2000:200). This idea fits well with Lantz' interview-based sociological study on student workers which concludes that "participants' choices to enter the sex industry are clearly made in response to the social and material realities of their lives" (2004: 45). The choice to enter sex work, and the degree to which that choice is constrained, is complicated and complex and is examined by researchers such as Jenkins (2006), Day (2007), Oakley (2008), Bernstein (2007), Chapkis

(2000), and Weitzer (2000). These scholars examine the ways in which sex workers view their bodies and in what instances sex workers view what they do as work. Indeed, Day states, “It is only if the focus on sex as a qualitatively distinct activity that it is possible to argue that prostitution is not comparable to other ways in which we use our bodies, brains, experiences and skills” (2007:102).

The Committee structure and what is being accomplished is a glaring example of structural violence. In this context, the rights of sex workers are limited and the process is being rushed by people who hold power. If sex workers believe that the Bill is unconstitutional and encroaches on their right to security, they will be forced to challenge the constitutionality of the Bill once again in order to make changes. The exercise of power in relation to sex is intricately intertwined within the debate and discourse on sex work where women, who form the majority of sex workers, and men, the majority of purchasers, share very different opportunities to access power. Social and legal structures define when, where, and with whom, sex can happen, while sex work is subject to even more strict legal and moral standards. The legislation in question and the arguments made in its favour should be examined by considering a long history of women’s disenfranchisement, poverty, neoliberalism, and sexual morality. I agree with Bernstein’s assertion that sex work can act as a “means of escape from even more profoundly violating social conditions” (2007a:3), and, for this reason, the attempt to abolish sex work without properly addressing those “violating social conditions” is an extension of structural violence.

My analysis of the transcripts from the Standing Committee on Justice and Human Rights supports the contention by Shore and Wright that the process by which law is created and implemented is increasingly alienating (1997:3). Shore and Wright define governance as a process that can “influence people’s indigenous norms of conduct so that they themselves

contribute, not necessarily consciously, to a government's model of social order" (1997:5). The committee meetings reviewed for this project exemplify how "policy language and discourse...provide[s] a key to analyzing the architecture of modern power relations" (Shore and Wright 1997:10). Not only was the agency of sex workers denied by the majority of the witnesses and Committee members, the structures that constrain choices and make sex work viable for individuals who would otherwise not be willing to do sex work were maintained. The commitment to offer \$20 million over five years to organizations intent on providing exit services does not come close to the need that would be required to adequately provide exit services and supports to sex workers in all of Canada. Glendyne Gerrard, the Director of Defend Dignity, makes the inadequacy of the \$20 million commitment quite clear when she notes that Manitoba alone spends \$8 million per year on the same issue already (JUST 42). Other witnesses, like Deborah Kilroy, from Sisters Inside, explain that it is not enough to invest in exit services alone, that "we need to look at social services across the board for all our members of society. So \$20 million wouldn't even touch the side" (JUST 36).

Rather than adequately addressing the structural violence that leads people to choose sex work, and adequately investing in social services and supports, Bill C-36 creates a different demon: the buyers of sexual services. The Bill's sponsors, and some witnesses and committee members argue that simply reducing demand will result in the eventual abolition of sex work. The purpose and effect of law is important to consider when analyzing the processes that lead to its adoption. DeKeseredy contemplates the ways in which governance models in Canada have moved from a welfare state to a penal state and how this has impacted policing, conviction, and sentencing (2009). In Bill C-36, the buyers of sexual services are the criminals, while those who provide sexual services are considered victims, except when they are selling their services near

schools, playgrounds, and daycares. While the previous model that resulted in conviction of predominately marginalized constituencies (e.g. indigenous people, women, racialized people) has been overturned, the focus is now on a wealthier and more privileged group, but who are construed as sexual deviants. Foucault discusses the construction of sexual deviance in *The History of Sexuality* and argues that sexuality is not repressed, it is discussed greatly, but what is actually discussed and where it is discussed establishes the parameters of acceptable sexual behaviour (1978:27). Foucault states that “these discourses on sex did not multiply apart from or against power, but in the very space and as the means of its exercise (1978:32). There are apparent power structures that determine the contexts where sex can happen or be discussed and standards of decency apply unequally to all participants.

This study of narratives about sex work involved in the adoption of Bill C-36 makes theoretical contributions to the study of sex work by addressing the complex interrelation between structure and agency in the experiences of sex workers. This study contributes to the work of scholars such as Dewey and Zheng (2010), Chin (2013), and Brennan (2004) who draw attention to the relationship between structure and agency in sex work and problematize perspectives that attribute sex work to either unobstructed agency or of solely structural constraint. Further, this research provides information on the Canadian context for sex work, which has received little attention in previous scholarship. The law as a structure that influences sex work in all locations has not been a primary focus of anthropological research on sex work, and while this study is focused more specifically on the narratives used in the context of a legal proceeding than on law itself, it can act as a foundation for future research on law as a structural force that impacts perceptions of sex work.

In this thesis, I have compared the narratives on sex work that were employed during the meetings of the Standing Committee on Justice and Human Rights and the academic discussions of sex work outlined in Chapter 2 to identify the means by which agency is permitted or denied to sex workers in the Committee meetings. Using Ortner's concepts of the agency of power and the agency of intentions has allowed me to highlight the varying degrees of agency that sex workers may exert in different circumstances despite restrictive and oppressive structural systems (2001). Ortner's concepts of agency permit sex workers to be agentic individuals even when their work and life choices may be severely restricted by positionalities such as race, class, or gender. Individuals who choose to do sex work, even when the choice is one of few options, can be understood to be exerting an agency of intentions whereby individuals have made a conscious choice to do sex work in order to achieve specific goals beyond their work choices, meet needs, or fulfill desires (Ortner 2001). Ortner's agency of power includes both exertions of power and resistance to power (2001). Even the narrow definition of sex work primarily employed by participants in the Committee meetings can be understood at times as an act of resistance toward inequitable structures of power that make survival difficult, and moral standards that construct sex work as an illegitimate work option. Ortner describes resistance as "everything from outright rebellions at one end, to various forms of what James Scott (1985) so aptly called 'foot dragging' in the middle, to – at the other end – a kind of complex and ambivalent acceptance of dominant categories and practices that are always changed at the very moment they are adopted" (2001:78). I argue that by choosing survival rather than adherence to dominant social and moral expectations, sex workers are exerting an agency of power in the form of resistance. The majority of witnesses who appeared before the Committee, however, denied sex workers' agency and refused to acknowledge opportunities for choice in sex work by

conflating sex work and sex trafficking, thereby establishing sex work as an act that happens necessarily under the direct coercion of another person. This means that the examination of sex work as work and the notion that individuals are deserving of protection when doing this work was not prevalent in the context of the Committee meetings.

The agency of power, as described by Ortner, is not only comprised of acts of resistance but also exertions of power as well in certain cases, though this was not described during Committee meetings. Power being an individual's "ability to act on their own behalf, influence other people and events, and maintain some kind of control in their own lives" (Ortner 2001:78). The literature on sex work describes various reasons for choosing sex work that do not rely on the individual being in a position of disempowerment. For example, Ray (2007) describes her choice to do sex work as a logical extension of her desire for casual sex, where she realized that she could get paid to do something she was already doing, and Bernstein's description of middle-class sex workers who embody an "ethic of sexual experimentation and freedom" (2007b:477). These experiences described by Ray (2007) and Bernstein (2007b) had no place in the Committee meetings. As I have pointed out in Chapter 4, participants in the Committee meetings often focused narrowly on sex work as a means of survival, or as a last resort for a person in poverty, and employed rhetorical tools to construct sex workers exclusively as victims of exploitation. Participants failed to offer legitimacy to the notion that sex work is not always a result of severely constrained choice, unlike some of the studies outlined in Chapter 2 (Chapkis 2000, Bernstein 2005, 2007a, 2007b, Ray 2000, Rich and Guidroz 2000). Most participants failed to consider that the choice to do sex work can be an exercise in the agency of power by some individuals who hold enough social, political, or material capital.

I should also note that participants in the Committee meetings framed sex work almost exclusively as work done by women and girls without recognition of sex work performed by men, transgender, and gender non-conforming individuals. Sex work is identified as violence against women by many witnesses, including Janine Benedet (JUST 33), Julia Beazley from the Evangelical Fellowship of Canada (JUST 34), Natasha Falle from Sex Trafficking Survivors United (JUST 34), Kim Pate from the Canadian Association of Elizabeth Fry Societies (JUST 36), Michelle Miller from Resist Exploitation Embrace Dignity (JUST 39), Trisha Baptie from Exploited Voices Now Educating (JUST 40), Larissa Crack from Northern Women's Connection (JUST 40), Sheri Kiselbach from PACE Society (JUST 40), Keira Smith-Tague from Vancouver Rape Relief and Women's Shelter (JUST 41), who have disparate affiliations and interests. It is true that the majority of sex workers are women, but the experiences of people of other genders who do sex work should be a consideration when reviewing legislation that will impact all sex workers.

In addition to the above theoretical contributions I have made regarding the interactions between agency and structure by the theory of structural violence employed by Farmer (2004) and Galtung (1969) and using Ortner's concepts of agency (2001), I have also attempted to expand the anthropological literature on sex work as an important public issue. I have highlighted discursive trends that appeared during the Committee meetings and identified the biases and assumptions about sex work that were a driving force in the review and adoption of Bill C-36. The Committee meetings that acted as the site of this research were a location of conflict where the rights of sex workers and people who wish to purchase sex were delineated and the obligations of the government were defined. Important decisions were made in the context of the Committee meetings about who is considered to be a valuable and valid individual

in society and when and how sex workers should be afforded protection. Furthermore, the analysis of these meetings in this thesis revealed what constitutes “protection” for sex workers in the adoption of the new legislation. Understanding the kinds of discourse around sex work that are credible and validated in these Committee meetings sheds light on the assumptions and social norms and expectations that contribute to the public’s understanding and acceptance or rejection of sex work and sex workers. Further, this research provides information about the importance of protecting communities and children from the purported social ills associated with sex work rather than protecting sex workers from real and tangible threats in their daily lives. Further research could be done on these Committee meetings, and the legislative process more entirely, to shed light on the ways by which legislation and bureaucracy create, uphold, or break social and moral boundaries on work and sexuality. As the new provisions for the *Criminal Code* from Bill C-36 are enforced, there will be more research to be done on the effects of the legislation on the livelihood of sex workers and on the people who purchase sexual services.

Bill C-36 attempts to disrupt the normalization of male desires for sexual commerce, but the discourse upholds the concept that there is a problem in women’s individual psychopathology if they should choose to do sex work without being forced to do so. Bernstein argues that women who sell sexual services receive more scrutiny than those who are otherwise involved in the sale and purchase of sexual services (2007:11). Bernstein also notes that sex work has been viewed from a lens whereby sex work has been considered, since the beginning of the 20<sup>th</sup> century, as a “necessary evil” where men’s desires are normalized but that women who do sex work are demonized and pathologized (2007:9-10). The Bill’s sponsors, and some of the Committee members and witnesses act as the saviors of sex workers who are without agency and often incapable of recognizing their own exploitation and victimization. In addition to the



reasons I have already provided, I have also argued throughout this thesis that communities, and specifically children, have been prioritized in this legislation. Communities and children are susceptible to degradation or devaluation by the presence of sex workers and the legislation attempts to protect them from these effects. Identifying communities and children as needing protection from the ills of sex work also performs the function of separating sex workers from the communities in which they live. By criminalizing the purchase of sex, the legislation enforces the notion that purchasing sex is not credible or acceptable behaviour and is, in fact, an act of violence, thus establishing and reinforcing the boundaries of acceptable sexuality. Kyle Kirkup, a lawyer, researcher, and witness to the Committee, argues that Bill C-36 fits into “a long and misguided history of criminalizing sexual activities on the basis of morality” and that “Canada has a long history of using the criminal law to regulate sexual practices that take place between consenting adults” (JUST 43). Kirkup’s comments on Bill C-36, support my analysis that the Committee meetings that discussed the adoption of the rejection of Bill C-36 prioritizes protecting communities rather than the ability of sex workers to do their work. Based on the meetings that formed the basis of this research, I cannot agree that Bill C-36, the *Protection of Communities and Exploited Persons Act*, will adequately protect all sex workers.

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