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Sex work and biopolitics: a Foucauldian analysis of Bill C-36 discourse in the Parliament of Canada

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ABSTRACT

This paper is a study of the discourse in the Parliament of Canada during the passage of Bill C-36. Introduced in June 2014, Bill C-36 was the Canadian government's response to a Supreme Court of Canada decision that struck down Criminal Code provisions that prohibited certain activities associated with sex work. The Supreme Court found that the provisions unconstitutionally violated sex workers' right to security of the person by imposing dangerous conditions on the profession. With Bill C-36, the Canadian government embraced an abolitionist approach to sex work regulation that further criminalized the practice by, among many things, making the purchase of sexual services illegal. To structure the discourse analysis, this paper relies heavily on Michel Foucault's first volume of *The History of Sexuality*. Foucault posited that states use specific discursive strategies to regulate citizen's sexual interactions to achieve biopolitical goals. This paper reveals that the discursive strategies proposed by Foucault were present in parliamentary debate over Bill C-36, and their presence provides insight into the capitalist and settler colonial objectives of Bill C-36.

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Introduction

On December 20, 2013, the Supreme Court of Canada pushed the issue of sex work regulation on to the political agenda with its decision, *Canada v Bedford*. The decision invalidated three *Criminal Code* provisions that prohibited certain sex work-related activities. The landmark case was a product of three sex workers, Terri-Jean Bedford, Valerie Scott, and Amy Lebovitch, who initiated the constitutional challenge in 2009 (Alcoba 2009). Relying on an abundance of social science evidence, the three applicants successfully demonstrated how the provisions deprived sex workers of their right to security by unjustifiably exacerbating harms in the profession. The Supreme Court gave the Canadian government one year to enact new legislation.

On June 11, 2014, the Minister of Justice, Peter MacKay, responded to *Bedford* with the introduction of Bill C-36, titled the *Protection of Communities and Exploited Persons Act*. During his testimony at the Standing Senate Committee on Legal and Constitutional Affairs, Minister MacKay made the Canadian government's intentions apparent:

Let us be clear about Bill C-36's ultimate objective: that is to reduce the demand for prostitution with a view towards discouraging entry into it, deterring participation in it, and ultimately abolishing it to the greatest extent possible. (Meeting No. 37, 2014)

Instead of addressing the harms of criminalization acknowledged in *Bedford*, Minister MacKay's testimony revealed that certain normative perspectives on sex work would instead drive the Canadian government's new approach. The subsequent parliamentary debate on Bill C-36 elucidated these perspectives and demonstrated how the government's discourse on sex work was predicated on protecting gendered and capitalist norms while also maintaining settler colonial power structures.

These perspectives on sex work, and their underlying norms, have been fiercely debated over the past four decades by feminist scholars. Feminist scholars who study the issue of gender inequality ultimately study the power disparities between those with different gender identities. Often, scholars examine how women, or individuals with feminine, queer, and trans identities, disproportionately experience subordination, marginalization, and oppression in comparison to cisgender, heterosexual men. Because this gendered power imbalance is pervasive, almost every facet of our social relations can be subject to feminist analysis. The issue of sex work is a pertinent topic for scholars of gender inequality because it relates to various forms of social relations. Sex work encompasses issues pertaining to gendered violence, sexual norms and practices, family dynamics, and economic relations, which all have important implications in how society distributes power to people of different gender identities.

Sex work is a deeply contentious issue within feminist theory. Feminist debates over sex work ultimately stem from a larger disagreement over how to think about sex. On one side of the issue are radical-cultural feminists, such as Andrea Dworkin, who view heterosexual sex as a major source of cisgender women's subordination. In her work, *Intercourse*, Dworkin writes:

A human being has a body that is inviolate; and when it is violated, it is abused. A woman has a body that is penetrated in intercourse: permeable, its corporeal solidness a lie. The discourse of male truth ... calls that penetration violation. This it does with some consistency and some confidence. Violation is a synonym for intercourse. At the same time, the penetration is taken to be a use, not an abuse; a normal use; it is appropriate to enter her, to push into ("violate") the boundaries of her body. She is human, of course, but by a standard that does not include physical privacy. (1987, 154)

Here, Dworkin explains how the vagina symbolizes an opportunity for cisgender men to "occupy," and thus violate cisgender women's bodies. This occupation occurs during heterosexual sex and is characterized by violence and female subordination. It is because Dworkin understands heterosexual sex as always occurring within a context of male supremacy that she, like most radical-cultural feminists, opposes sex work. This view is made evident when Dworkin argues, "Rape and prostitution negate self-determination and choice for women; and anyone who wants intercourse to be freedom ... had better find a way to get rid of them" (1987, 182). Radical-cultural feminists' opposition to sex work contributes to their support for an abolitionist model, such as those found in Nordic countries, which seeks to eradicate sex work through the criminalization of sex worker clients.

In opposition are feminists from a range of theoretical backgrounds, such as radical-libertarian feminism, postmodern feminism, and critical race feminism, who challenge

the radical-cultural feminist perspective. For instance, Gayle Rubin provides an early radical-libertarian feminist critique. Rubin argues that, for individuals who engage in queer (or non-normative) sexual relations, feminism is an insufficient method of analysis. In her view, feminism fails to “locate particular varieties of sexual persecution within a more general system of sexual stratification” (1999, 157). Although sexuality intimately relates to gender as a unit of analysis, Rubin posits that there are distinct forms of oppression towards queer sexualities that patriarchy alone cannot explain. Such queer sexualities include the practice of consensual sex work.

Postmodern feminists similarly reject radical-cultural feminists’ idea that patriarchal violence is all-encompassing against women. Many postmodern theorists derive their understanding of violence from Michel Foucault’s conceptualization of power where domination constitutes only one of many types of power relations in society (1994, 283). For instance, the postmodern feminist Judith Butler emphasizes the role of subversion as a method to resist larger structures of domination. In her work, *Gender Trouble*, Butler writes how individuals can “locate strategies of subversive repetition” that ultimately work to contest identities that maintain one’s subordination (1990, 147). Consequently, whereas radical-cultural feminists take patriarchal violence as ubiquitous, postmodern feminists emphasize localized contexts, such as sex work, in which agentic resistance against hegemonic norms is possible.

Critical race feminists use an intersectional approach to study how racism and sexism work in conjunction to harm people of color. For example, critical race feminist Cheryl Nelson Butler rejects the notion that there is an “essential” female perspective, and instead argues that racial identities create distinct experiences among women (2015, 107). Butler explicitly emphasizes that the perspectives of white women dominate other feminist theories, and thus fail to accurately explain women of color’s lived experiences (104). In the context of sex work, critical race feminism acknowledges that the practice can be emancipatory but is often exploitative for sex workers of color who engage in the practice in response to structural racism that denies adequate economic assistance to racialized communities (113–114). Critical race feminists also highlight the sex industry’s frequent use of racial stereotypes that promote long-standing tropes against women of color (130). Many of these tropes originate from discursive strategies used in the nineteenth century to promote the enslavement of Black women and settler colonial genocide against Indigenous women and two-spirit people (125–128).

Inspired by radical-libertarian, postmodern, and critical race feminist thought, I subscribe to Carisa Showden’s concept of “sex-positive queer feminism.” Showden argues that sex-positive queer feminism attempts to locate specific acts of sexual resistance within localized contexts (2012, 4). Therefore, unlike radical-cultural feminists, sex-positive queer feminism does not assume that, because sex work exists within larger power structures of patriarchy, the presence of heterosexual men immediately makes sex work harmful (4). As Showden argues, sex-positive queer feminism asks us to think about “prostitution specifically as multiple” (15).

For sex-positive queer feminists, an emphasis on contextualization avoids the perpetuation of two harmful ideas about sex work. First, sex positive queer feminists avoid the assumption that sex work always involves commodification or coercion. This assumption leads to the “marginal legal status” of sex work in many countries, which ultimately harms people in the sex trade (Showden 2012, 15). Second, sex-positive queer feminists’

adherence to context promotes resistance to prohibitive sex work laws that normatively attempt to demarcate “good” and “bad” people by criminalizing a form of promiscuity (15). Awareness of this demarcation allows for an awareness of the racialized impacts of sex work policing. It also encourages contextualized assessments of whether sex work is a positive or negative experience, with particular attention to racial power dynamics.

Showden writes that sex-positive queer feminists aspire for a legal model that “insists on attention to women’s knowledge of sex from their own experiences of it” (2012, 17). Under this legal model, there would be an acknowledgement that selling sex itself is not the problem. Rather, the problem is the economic coercion, violence, or drug addiction that *can be*, but is not always, associated with the sex trade (17). In my view, this legal model most closely resembles a decriminalization approach, such as the one found in New Zealand. Decriminalization models remove criminal liability from most sex work activities, except those involving children, and develop health and safety regulations for the practice (Abel et al. 2010, 77). Such a model recognizes the multiplicity of sex work contexts by permitting the practice except when the practice becomes exploitative or unsafe.

This paper will use tenets of sex-positive queer feminism to critique Bill C-36’s regulation of sex work. To establish this critique, I divided this paper into three sections. The first section of this paper will explain how Bill C-36 changed the legal framework for sex work in Canada. The second section of this paper will be a discourse analysis that examines how the parliamentary debate over Bill C-36 perpetuated certain discourses that originated in the nineteenth century. In this analysis, I will locate four discursive strategies outlined in the first volume of Foucault’s *The History of Sexuality* that he argues were foundational to the emergence of modern understandings of sexuality. In the third section of this paper, I argue that the continued presence of these discursive strategies suggests that the Canadian state maintains similar biopolitical goals that were present in the nineteenth century. As a result, this paper elucidates how patriarchal, capitalist, and settler colonial power relations continue to manifest themselves through Canadian sex work regulation today.

The Canadian context

In 2013, the Supreme Court of Canada unanimously ruled in *Canada v Bedford* that sections 210, 212 (1)(j) and 213 of the *Criminal Code* were unconstitutional as they violated sex workers’ section 7 right to security of the person under the *Canadian Charter of Rights and Freedoms* (para 164). Although the sale and purchase of sex was legal, these *Criminal Code* provisions criminalized certain activities associated with sex work. Section 210 banned the “keeping or living in a bawdy-house,” which effectively prohibited the use of houses, apartments, or hotels to perform sex work (para 34). Section 212 (1)(j) criminalized “procuring and living on the avails of prostitution” (para 34). Section 213 forbade “communication in a public place to offer or obtain sexual services” (para 34). The Supreme Court provided Parliament with a year to enact a new legal framework to regulate sex work before the invalidation of these *Criminal Code* sections (para 169).

In *Bedford*, the Court wrote that “the prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing *dangerous*

conditions on prostitution” (2013, para 60). In reference to section 210, the Court established that “the prohibition prevents prostitutes from working in a fixed indoor location, which would be safer than working on the streets” (para 64). In reference to section 212(1)(j), the Court asserted that the law “prevents a prostitute from hiring bodyguards, drivers and receptionists” and thus prevents them “from taking steps to reduce the risks they face” (para 66). In reference to section 213, the Court argued that “the law prevents prostitutes from screening clients and setting terms for the use of condoms or safe houses” (para 74). Because these three *Criminal Code* provisions created conditions that harm sex workers’ security of the person, the Court established that the case engaged section 7 of the *Charter*.

To determine whether the government violated sex workers’ section 7 rights, the Court examined whether these *Criminal Code* provisions complied with the principles of fundamental justice. The Court recognized three grounds on which a law violates fundamental justice: arbitrariness, overbreadth, and gross disproportionality (*Bedford* 2013, para 123). The Court defines a law as arbitrary when “there is no connection between the effect and the object of the law” (para 98). Overbroad legislation appears when “the law goes too far and interferes with some conduct that bears no connection to its objective” (para 101). The Court considers legislation grossly disproportionate when the law’s effects on life, liberty, or security of the person are too severe relative to its purpose (para 120).

With these established definitions, the Court proceeded to analyze whether sections 210, 212(1)(j), and 213 of the *Criminal Code* violated the principles of fundamental justice on these three grounds. The Court concluded that section 210 and 213 were grossly disproportionate, and section 212(1)(j) was overbroad (*Bedford* 2013, paras 134, 140, 159). Consequently, the Court found these sections in violation of section 7 of the *Charter*. Moreover, the Court briefly analyzed whether section 1 of the *Charter* could uphold the constitutionality of the *Criminal Code* provisions. Section 1 permits the state to infringe on *Charter* rights if the infringement “can be demonstrably justified in a free and democratic society” (para 16). Because the Court concluded that the *Criminal Code* did not minimally impair the rights of sex workers, section 1 could not save the legislation (para 162). As a result, the Court invalidated the *Criminal Code* provisions.

To justify the invalidation of the *Criminal Code* provisions, the Court used the applicants’ sociological evidence that demonstrated how these laws exacerbated the level of violence sex workers experienced. For example, sociological literature on the experiences of indoor sex workers in Canada provides an overview of some of the problems associated with the pre-*Bedford* criminalization approach. The distinction between indoor and outdoor sex work primarily refers to where the initial interaction between the sex worker and the client takes place. For indoor sex workers, the initial interaction and the transaction with clients appears indoors. In contrast, for outdoor or street-based sex workers, the initial interaction with clients is outside, and the transaction can occur either indoors or outdoors (Raphael and Shapiro 2004, 131). The sociological literature establishes that a stark difference exists between the violence experienced by outdoor sex workers and indoor sex workers. In one study, 67% of indoor sex workers claimed they never experienced violence, in comparison to two per cent of outdoor sex workers (O’Doherty 2011, 218). These safety disparities are partially attributed to the greater criminalization of

activities associated with street-based sex work, such as section 213's prohibition on public solicitation. Criminalization has the effect of forcing sex workers to work in closer proximity with other crime (Lowman 2000, 1007). Sex workers also become unable to contact the police or access other measures to maintain their safety due to fears of arrest and prosecution (1007).

Instead of addressing the concerns identified in sociological literature, the Canadian government maintained a criminalization approach with Bill C-36. First, the bill created section 286.1 in the *Criminal Code*, which prohibited the purchase of sexual services for the first time in Canadian history. Second, the bill repealed section 212, but added section 286.2 and 286.3 which continued to criminalize those receiving a "material benefit" from sexual services and the procurement of sexual services. Third, the bill maintained section 213's prohibition on public communication for the purposes of selling sexual services if the communication impedes traffic or occurs near a school, playground, or daycare. Fourth, section 210 remained intact and maintained the prohibition on "bawdy-houses," although this was subsequently repealed in 2019. Fifth, the bill created section 286.4 which prohibited the advertisement of sexual services. These five components of Bill C-36 reflected the Canadian government's desire to minimize the prevalence of sex work through its continued criminalization.

Analysis of parliamentary discourse

(i) Methodological approach

The purpose of this paper is to elucidate the power dynamics that currently exist for sex workers under Bill-36's legal framework. To do so, this paper relies on three foundations: feminism, Foucauldian theory, and discourse analysis. At its core, feminist scholarship is interested in applying a gender-based perspective to modern social issues. As stated previously, I subscribe to sex-positive queer feminism because it prioritizes contextualization and opposes the use of generalizations. Context-specific inquiries not only validate the agency of sex workers and the emancipatory potential of the practice, but also allows for an intersectional analysis that considers how sex work impacts cisgender men, racialized women, and queer and trans folks. This will be particularly important when examining how Bill C-36 influences the power dynamic between the Canadian state and Indigenous women.

In conjunction with feminist theory, this paper relies heavily on the theorization of Michel Foucault. In his work, Foucault largely uses discourse analysis as his methodological approach. For Foucault, "discourse is ... a framework and a logic of reasoning that, through its penetration of social practice, systematically forms its objects" (Alvesson and Sköldbberg 2009, 242) Therefore, our verbal and written words provide the basis for how we create knowledge, which shapes our understanding of social occurrences. As a part of his discourse analysis, Foucault incorporates Nietzsche's genealogical approach that examines "the roots of societal practices" (251). Foucault rejects the historian's tendency to make a "singular event into an ideal continuity" (1971, 88). Instead, using genealogies, Foucault seeks to emphasize how discourses do not act as "homogenous expressions of initial thought," but rather slowly evolve overtime to match changing power dynamics (Alvesson and Sköldbberg 2009, 251).

Foucault's application of the genealogical method appears in the first volume of *The History of Sexuality*. In his book, Foucault conceptualizes sexuality not as a "natural given" but a "historical construct" that led to the "incitement of discourse [and] the formation of special knowledges" (1978, 105). For Foucault, human sexuality should not be viewed as a concept to objectively understand, but rather as a contested area of socially constructed ideas that attempt to prescribe meaning and norms to humans' activities. This contested area of knowledge was "deployed" in Western society where its purpose was to "penetrat[e] bodies in an increasingly detailed way, and [control] populations in an increasingly comprehensive way" (106-107). Foucault comes to this conclusion with the use of his genealogical method, where he traces historical discourse that demonstrates a shift in how society discusses sex. According to Foucault, in the nineteenth century, four distinct discursive methods appeared that attempted to deploy sexuality as a method of social regulation. These four strategies were: (1) the hysterization of women's bodies, (2) the pedagogization of children's sex, (3) the socialization of procreative behavior, and (4) the psychiatrization of perverse pleasure (104-105).

Firstly, the hysterization of women's bodies was the process where the "feminine body was analyzed ... as being thoroughly saturated with sexuality" (Foucault 1978, 104). Consequently, women's bodies became increasingly subject to medicalization. As a part of this process, physicians regulated women's bodies in a manner that emphasized its role in population maintenance, the family, and child rearing (104). Second, the pedagogization of children's sex involved anxiety over the belief that "all children indulge or are prone to indulge in sexual activity" and that such activity "posed physical and moral, individual and collective dangers" (104). Because children's sexual activity was viewed as dangerous, it became expected for parents, teachers, and physicians to restrict children from expressing any form of sexual behavior (104). Third, the socialization of procreative behavior involved applying new "social and fiscal measures" to the concept of human fertility. Foucault argues that couples went through a process of "responsibilization" where their sexual activity had to be considered in the context of the larger social body. The consequences of private, intimate relations between heterosexual couples gradually became a matter of public concern (105). Finally, the psychiatrization of perverse pleasure involved the development of "sexuality" as a separate area of analysis within the field of biology and psychiatry. In this field, sexual actions underwent an analysis where scientists would determine what constituted normal or pathological behavior (105).

These four strategies outlined by Foucault serve as the theoretical framework that underpins this analysis. This paper seeks to determine whether these four strategies that ensured the "deployment of sexuality" in the nineteenth century appear in modern political discourse on sex work in Canada. Whether these four strategies continue to appear in political discourse is significant because it demonstrates some form of continuation of the biopolitical framework. To understand Foucault's conception of biopower, we must look at his lecture series, *Society Must Be Defended*, where he stated:

And we also have a second technology which is centered not upon the body but upon life: a technology which brings together the mass effects characteristic of a population, which tries to control the series of random events that can occur in a living mass, a technology which tries to predict the probability of those events (by modifying it, if necessary), or at least to compensate for their effects. This is a technology which aims to establish a sort of

homeostasis, not by training individuals, but by achieving an overall equilibrium that protects the security of the whole from internal dangers. (1997, 249)

Biopower focuses on the regulation and normalization of populations. Sexuality is one of the many mechanisms by which the state attempts to normalize and constrain its population to prevent the emergence of “internal dangers.” Consequently, the four discursive strategies on sexuality represents an attempt to produce and enforce sexual norms on the population. It becomes important to understand whether this biopolitical framework continued to appear during the creation of Bill C-36, because this framework prioritizes the normalization of sexual behavior and subsequently reinforces patriarchal, capitalist, and settler colonial power dynamics.

To determine whether these discursive strategies remain present, I engaged in a qualitative, discourse analysis of the parliamentary debates that occurred over Bill C-36. During the analysis, I used different indicators to determine the continuation of each discursive strategy. For the hysterization of women’s bodies, I located discourse that emphasized the vulnerability of women. In the pedagogization of children’s sex, I identified speech that underscored the need to limit children’s exposure to sexual expression. To determine where the socialization of procreative behavior emerged, I located discourse that framed certain sexual relations as a threat to society. Finally, to locate the psychiatrization of perverse pleasure, I looked for discourse that attempted to delineate what constituted “normal” and “abnormal” sexuality.

The reasoning behind using a discourse analysis as my methodological approach stems from its epistemological underpinnings. Proponents of discourse analyses argue that “through language people engage in constructing the social world” (Foucault 1997, 232). This process of construction has three important features. First, individuals create ideas “on the basis of previously existing linguistic resources” (232). Second, because multiple words and methods of framing exist, the words individuals use demonstrates a rejection of certain conceptualizations (232). Third, an individual’s chosen words “has an effect” or produces consequences (232). Discourse analysis therefore becomes a valuable methodological approach as it shares epistemological principles with this paper’s Foucauldian theoretical framework. This paper attempts to identify how Canadian politicians construct norms and reinforce power dynamics that interfere in the creation of sex work policy. To identify where this social construction appears, we must look to political discourse.

(ii) Bill C-36 parliamentary debate

Hysterization of women’s bodies

When Foucault describes his understanding of the hysterization of women’s bodies, he focuses on the medicalization of women’s bodies, and their role in reproduction and child-rearing that appeared in the nineteenth century. In a modern context, I contend that hysterization remains present, but manifests itself differently to match current norms. The remnants of hysterization appear in the emphasis over the vulnerability of women’s bodies, especially in the context of sexual intercourse. This discourse matches historical anxiety over women’s participation in sexual relations that do not comply with their normative role of having children and supporting the family. In the

debate over Bill C-36, Conservative Party politicians made it evident that they saw sex work as purely a form of bodily commodification. In Minister MacKay's introduction of the bill, he stated:

Also in the preamble is recognizing the social harm caused by prostitution's normalization of sexual activity as a commodity to be bought and sold; and protecting the human dignity and equality of all by discouraging prostitution, which we know disproportionately impacts women and children. (Canada 11 June 2014)

In these remarks, MacKay uses this discursive strategy by homogenizing the nature of sex work. Regardless of whether the sex work includes informed consent, safe practices, and expressions of freedom and pleasure, MacKay continued to view it as a "social harm" towards women.

Within the discourse around sex work and bodily commodification, two major themes appear. The first major theme is the violence inherent in the practice of commodification. One Conservative legislator, Royal Galipeau, stated:

We have heard much about the proposed prostitution reforms of Bill C-36. These reforms reflect a fundamental paradigm shift toward treatment of prostitution for what it is: a form of sexual exploitation of, primarily, women and girls. We know that those who suffer socio-economic disadvantage are targeted by prostitution. We know that prostitution involves high rates of violence and trauma. (Canada 26 September 2014)

In this context, Galipeau asserts unequivocally that sex work is inherently exploitative and violent against women. In his view, female sex workers are solely victims of sex work, rather than agentive individuals who *use* sex work as a means for economic stability. Another Conservative legislator, Joy Smith, continued this focus on victimization, as she argued:

We have to change our language around prostitution. It is modern-day slavery, for the most part. There are very few people who choose to go into something like this. When we stop to think about it, what woman would get beaten, give all of her money to somebody, and then keep silent about it? (Canada 22 September 2014)

Smith's comparison of sex work to slavery is meant to underscore the idea that sex workers are solely exploited and lack agency. Instead of understanding sex work as another form of labor, Smith suggests that sex workers are a form of property. Under Smith's paradigm, female oppression is inherent to sex work.

The second theme within the discursive focus on women's bodily commodification was a negative representation of women's participation in frequent, non-normative sex. For example, in two different instances Joy Smith reiterated this judgement, as she stated:

Today there are over 400,000 prostitutes filling brothels located along the borders of [Germany]. Brothels openly advertise "sex with all women as long as you want, as often as you want, any way that you want," "sex, oral sex, oral sex without a condom, three-ways, group sex, gang bang." Women are reduced to a sexual commodity to be used by sex buyers and disposed of when they are done. (Canada 12 June 2014)

In this country right now it has been accepted that the buying of sex is just fine, because that is what women do. However, women do not want to service up to 40 men a night. (Canada 3 October 2014)

In her attempt to demonize the sex work industry, Smith uses the idea that the variation in sexual services provided by sex workers, and the number of clients a sex worker services, is a negative aspect of the work. This viewpoint relies on the logic that women who have sex this frequently, and who participate in multiple sexual behaviors, must be oppressively commodified, rather than freely willing to do so. Such discourse suggests that female sex workers *always* want alternative forms of employment, and prefer to participate in vanilla, monogamous sexual behavior. This logic shares similar ideas with nineteenth-century hysterization discourse where one assumed women's sexual capacities and desires were solely centered on reproduction.

Pedagogization of children's sex

To determine where remnants of the pedagogization of children's sex appeared in the parliamentary debates over Bill C-36, I located examples where legislators voiced anxiety over children's exposure to sex work. For clarity, in locating pedagogization, I did not include excerpts where legislators voiced concern over children's participation in sex work. Pedagogization is primarily a discursive anxiety over children's discovery of sexual pleasure and its apparent threat to broader social norms. In response, pedagogization suppresses children's exposure to, and knowledge of, sexual activity. Concerns raised by children's capacity to consent to sex work address important, valid issues that differ from those raised by pedagogization.

To begin, Bill C-36 itself legislates anxiety over children's exposure to sex work by amending the *Criminal Code* to create section 213(1.1) that prohibits communication for the purposes of selling sexual services next to a school, playground or daycare. By prohibiting sex work in locations where children are often present, the Canadian government demonstrated a clear desire to shield children from exposure to sex work. This was further exemplified by one of the leading proponents of the legislation, Joy Smith, who stated that, "The police also emphasized the need to have in place the necessary tools to protect our communities from the harms of prostitution so that parents do not have to sweep away syringes and condoms from the school grounds of their children" (Canada 22 September 2014). In this speech, Smith claims that other social issues like drug use are inherent to sex work, which justifies the need to restrict children's exposure to areas where sex work occurs.

The prioritization of shielding children appeared again in Robert Goguen's speech, as he stated:

When it comes to protecting the most vulnerable, obviously our children, we have struck a balance and made it an offence to sell sexual services in areas where children could be available, because we do not want to expose them to used condoms or to an otherwise unacceptable social activity. (Canada 26 September 2014)

In this excerpt, Goguen makes his perspective on the relationship between children and sex work clear. Like Smith, Goguen frames all children as the "most vulnerable," which necessitates that their exposure to "used condoms" or other "unacceptable social activities" be avoided. In doing so, Goguen argues that the social harms associated with children's exposure to sex work is more important than the negative repercussions associated with the criminalization of sex workers. In this discourse, children remain a focal point of concern, and require new legal protections regardless of its implications on vulnerable sex workers.

Likewise, Conservative legislators' desire to shield children from sex work became even clearer when Bob Dechert rhetorically questioned whether the leader of the Green Party of Canada, Elizabeth May, believed it was a "good idea" for children to potentially witness sex work:

Apparently [Ms. Elizabeth May] does not know that there was an amendment proposed and passed at the House justice committee on that very point that would restrict the communication in a public place provision to the schoolyard, the playground, and the daycare centre. I wonder if she could tell the House if she thinks it is a good idea that prostitutes be allowed, and perhaps encouraged, to communicate for the purposes of prostitution in those three places? (Canada 22 September 2014)

In this manner, Dechert frames the idea of children being exposed to sex work as *clearly* a bad idea. Such discourse around the protection of children relates to the pedagogization of children's sex because it illustrates an attempt by legislators to continually prevent children from witnessing sexual actions. This anxiety is reminiscent of the idea that children's exposure to sexual relations is a social harm because of its potential to encourage or normalize sexual behavior among children.

Socialization of procreative behavior

The "socialization of procreative behaviour" constitutes the third discursive strategy, and focuses on the implications of sexual actions on the larger social body. In the nineteenth century, this discursive strategy prioritized the regulation of birth control methods to avoid overpopulation, particularly among racialized communities. In a modern context, this discursive strategy is less specific, and instead broadly focuses on the impacts of sexual relations on society. To locate this strategy, I focused on speech that emphasized the relationship between sex work and society, and specifically speech that warned of the social consequences associated with sex work. Timea Nagy, the founder of an anti-human trafficking organization Walk With Me Canada, used this discursive strategy clearly when she posited in her committee testimony that, "This is a debate about where Canada as a society will go next" (Meeting No. 33, 2014). Such rhetoric politicizes sex work by framing the action as, not only worthy of societal attention, but significant enough to shift the trajectory of society.

Most of the parliamentary discourse centered on the significant negative social implications associated with the normalization of sex work. For example, Minister MacKay stated:

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. (Meeting No. 32, 2014)

By asserting that sex work has the power to "victimize" society, MacKay reaffirms the notion that private sexual encounters have a profound significance on society. In MacKay's view, this significance stems from sex work's ability to enact violence against communities, which ultimately justifies its criminalization. Similar rhetoric appeared among other witnesses at the committee. Thai Truong, a detective for the York Regional Police, stated, "I say that a society that allows the purchase or sale of the human body is a broken one. The ripple effect this could have on the future of our

girls, boys, and society is unimaginable” (Meeting No. 38, 2014). Truong’s testimony reiterates the idea that sex work is ultimately worthy of social critique and control. Again, the discourse frames sex work as being powerful enough to “break” society.

In the committee testimony, some critics of sex work argued that the negative social consequences of the practice come from its supposed “damage” to the family. One of the witnesses, Ed Smith, who was an anti-sex work advocate, stated:

I see men who are buyers of sex openly admit that their use of prostitutes is doing great damage to themselves and their families as they try to hide this dark secret they are living with. Many of the men tearfully ask for forgiveness as they realize the harm they are doing to the women they are abusing. (Meeting No. 37, 2014)

In this testimony, Smith emphasizes how participation in sex work ultimately leads to significant familial harm. Because the nuclear family acts as a hegemonic foundation for Western societies, such as Canada, sex work’s ability to supposedly “damage” this structure leads the private act to become a public concern.

Psychiatrization of perverse pleasure

The fourth discursive strategy, which Foucault describes as the “psychiatrization of perverse pleasure,” describes certain sexual acts as either *normal* or *abnormal*. In other words, society delineates between which expressions of sexuality are deemed “healthy,” and which sexual expressions suggest the presence of illness. To locate this discursive strategy, I examined speeches and testimony where individuals framed sex work, or, more specifically, the clients of sex workers, as perverse, abnormal, or unhealthy. Multiple examples appeared. One of the earliest references to the abnormality of sex worker clients appeared in Joy Smith’s speech in the House of Commons. In her speech, Smith uses universalistic language to assert that:

In [the john’s] mind, he wants to buy sex because he has been taught that it is acceptable to buy people to be used at his disposal. That is why we want to target johns. (Canada 12 June 2014)

With this type of rhetoric, Smith clarifies that Bill C-36 specifically intends to change the sexual ethics of sex worker clients, as the Canadian government views their behavior as unacceptable. Sex worker clients therefore become a primary regulatory target for the law.

The continued emphasis on the unacceptableness of purchasing sex continued to appear throughout the testimony presented to the Standing Committee on Justice and Human Rights. During the committee hearings, the discursive strategy became more apparent as Canadian legislators more actively described sex worker clients as abnormal. For example, Joy Smith sarcastically stated to one of the testifying sex workers:

Tell me about the johns. We’ve heard all week that the nice guys, the johns, have their needs. I can understand that, but, by the same token, the picture is that this is normal behaviour and that these johns are nice people who have a need that they need for a little while and that they’re very respectful in every way. (Meeting No. 39, 2014)

Here, Smith uses the concept of the “nice guy” with sarcasm, as she implies that sex worker clients are *not* nice people. Smith makes it clear that she views sex worker clients as violent, and their behavior as abnormal. This sentiment was reiterated by

Minister MacKay who called sex worker clients “perverts.” In response to this characterization, the legal scholar, Kyle Kirkup, stated that:

When we hear the Minister of Justice make reference to “the perpetrators, the perverts, [and] the pimps,” he is indeed proposing criminal laws that rely upon disgust instead of sound, evidence-based public policy. (Meeting No. 43, 2014)

Kirkup argued that the moralistic terminology used by the Minister of Justice reveals how the government’s normative understanding of sexuality influenced the creation of Bill C-36. The discourse clearly reinforced the notion that purchasing sex workers’ services was an abnormal, “perverted” expression of sexuality that the Canadian government disapproved of.

According to Foucault, a defining attribute of this discursive strategy is an emphasis on “corrective technology” that seeks to eliminate “perverse” or non-normative sexual expressions (1978, 105). This attribute appeared during witnesses’ testimony at committee. For example, in multiple instances, witnesses testified to the merits of “john school” that teach individuals about the harms associated with participation in the sex work industry. Manitoba’s Minister of Justice, Andrew Swan, stated:

The prostitution diversion program, operated by the Salvation Army, and paid for by the diversion program for the buyers of sex, commonly known as john school, will continue and hopefully be enhanced. Victims of sexual exploitation will pursue change if we give them reasons and the opportunity to do so, not by holding the threat of prosecution over their heads. (Meeting No. 34, 2014)

Likewise, Julia Beazley from the Centre for Faith and Public Life stated:

In prostitution, everyone is robbed, including the buyer, and certainly any family they may have. Our interest is that all parties to prostitution be restored and we feel that john schools play an important role in this. (Meeting No. 34, 2014)

The emphasis on john schools reinforces the notion that sex work clients are abnormal, and require a form of rehabilitation. In doing so, the witnesses continued to assert that purchasing sexual services was a form of non-normative sexual expression that is unhealthy, and requires elimination through methods of criminalization and rehabilitation.

Critical discussion

Foucault argued that the four discursive strategies of hysterization, pedagogization, socialization, and psychiatrization demonstrated a “deployment of sexuality” in which the state used discourse on sexual behavior as a method to regulate and control populations. With this emphasis on regulation, sexuality became an expression of state biopower. The continued remnants of these strategies in the parliamentary debate over Bill C-36 suggests that sex work, and sexuality more broadly, in Canada remains governed by the biopolitical regulatory approaches used in the nineteenth century. Although all legal frameworks for sex work constitute a form of biopolitical regulation, Bill C-36’s approach embraces long-standing criminalization strategies that prioritize the paternalistic protection of women’s bodies, the repression of children’s sexuality, the promotion of “responsible” sexual relations, and the pathologization of non-normative sexual

dynamics. The fact that Bill C-36, and the discourse that surrounds it, reiterates discursive strategies from the nineteenth century suggests that power dynamics from the era remain present, but manifest themselves differently to reflect modern contexts.

Prior to outlining how the presence of these four discursive strategies in Bill C-36 discourse represent modern manifestations of nineteenth century gender, capitalist, and colonial biopolitics, it is useful to reiterate how these discursive patterns can suggest the presence of these power relations. As established in the methodological section of this paper, the use of a discourse analysis reflects a critique of the “realistic view of language,” which treats “utterances as relatively unambiguous entry points to the understanding of actions, ideas, or events” (Alvesson and Sköldbberg 2009, 230). An analysis of discourse recognizes that one’s use of language exists within larger systems of power, and specifically systems of power where individuals contest over what constitutes “truth.” Therefore, one’s reiteration of certain discourse, overtime, allows for ideas to become culturally intelligible, and then potentially legitimated as “true” knowledge through mechanisms of power (Davidson 2001, 80). The ability for discourse to shape knowledge reveals its power, as we understand that what is considered factual, valid, and comprehensible knowledge shapes our construction of social reality (Alvesson and Sköldbberg 2009, 230). As a result, when I examine sex work discourse, I examine what ideas are legitimated, how this legitimation contributes to our understanding of sex work, and whether these ideas follow historical patterns and contribute to larger power dynamics.

(i) Gender and capitalist biopolitics

Foucault argues that the four discursive strategies, and their contribution to the emergence of biopower, were “indispensable in the development of capitalism” in the nineteenth century (1978, 140–141). Because capitalism requires the presence of a productive labor force, states had to condition its population in a manner conducive to capitalist economic processes. These discursive strategies became “techniques of power” used by various social institutions to promote docility, and an acceptance to the uneven distribution of capital among individuals (140–141). For Foucault, this period reflected a transformation where the state’s power became defined by its capacity to sustain and manage life, rather than its capacity to end it (142–143). The hysterization over women’s bodies became the primary biopolitical measure directed towards women to advance capitalist goals. The state used hysterization as a discursive strategy to maintain the hegemony of the nuclear family, and to ensure that women’s bodies remained in a condition most conducive for the reproduction of children who would become future members of the labor force (146–147).

The gender scholar Jemima Repo incorporates Foucault’s idea of the capitalistic biopolitical regulation of women’s bodies in her work and argues that modern governments continue this biopolitical goal under the façade of “gender equality” discourse. Repo explores how, beginning in the 1990s, the European Union (EU) began to implement policies to advance “gender equality,” with the intention of achieving neoliberal goals (2016, 154). For example, Repo outlines how childcare and parental leave policies became framed as necessary methods to undo gender inequality, but such policies also incentivized reproduction and female participation in the workforce to counter a declining labor population (154). As such, Repo asserts that, although these policies discursively appear to provide women with “freedom” and “choice,” they primarily seek to

achieve “biopolitical and neoliberal governmental imperatives” (155). This power dynamic demonstrates a continuation of Foucault’s idea that women’s bodies are a central target of biopolitical regulation to advance capitalist goals.

Based on the discourse that emerged during the parliamentary debate over Bill C-36, it is clear the Canadian approach to sex work incorporates a level of hysterization over women’s bodies. In this context, hysterization centers largely on the idea that women’s bodies are susceptible to violence in sex work, and that such susceptibility justified the criminalization of all *potential* instigators of violence. During this discursive process, parliamentarians argued that the existence of sex work normalized a form of gender inequality. In addition, the reiteration of the discursive frameworks of pedagogization and socialization continued this biopolitical desire to protect children, and maintain the hegemony of monogamous, nuclear families. The theorization of Foucault, coupled with Repo’s association of gender equality discourse with neoliberal biopolitics, suggests that the continued presence of these discursive strategies demonstrates the Canadian state’s desire to promote normative family structures, sexual behavior, and gender responsibilities, that, in the view of the state, provides conducive conditions for a healthy childhood. In doing so, the Canadian state uses criminalization to protect norms that will sustain the health of its future labor force, and thus maintain capitalist economic processes.

Although the presence of these four discursive strategies alone suggests the continued desire to tie biopolitical sexual regulation of women to capitalist objectives, one exchange in the Senate’s Standing Committee on Legal and Constitutional Affairs clearly elucidates this dynamic. In the exchange, Senator Jaffer questions Larissa Crack, the founder of the religious-based women’s group Northern Women’s Connection, about programs for sex workers funded by the government to accompany Bill C-36:

Senator Jaffer: We’re looking at putting in programs. What kind of programs? ... I don’t know what word you use, but aftercare takes some time and then helps the women get proper jobs so they’re not snared again.

Larissa Crack: ... I was lucky enough to receive my help in Calgary, where they have an amazing program called Servants Anonymous that looks at a holistic model, life skills programming, employment training and education. They have funds available to help women go back to school. They allow women to keep their children with them and teach them how to become parents so you can stop the intergenerational trauma and abuses that happen. (Meeting No. 37, 2014)

This exchange describes the nature of social programs that the Canadian state desires sex workers to engage with. These programs prioritize female sex workers’ transition to respectable, “proper” employment and value their capacity to care for children. Consequently, it becomes clear that some parliamentarians want women to occupy contexts that maintain their reproductive and child-rearing capacity, while also participating in formal, recognized employment. The state-funding of these programs transform these services into biopolitical mechanisms to achieve capitalist objectives.

(ii) Colonial biopolitics

According to Statistics Canada, Indigenous women are disproportionately more likely to enter sex work in comparison to non-Indigenous Canadians (2016). Moreover, once in

the sex trade, Indigenous women are more likely to experience violence. In 2014, Indigenous people were six times more likely to be victims of homicide in comparison to non-Indigenous people and represented 34% of all female sex worker victims of homicide in Canada (Statistics Canada 2016). Therefore, when we discuss the implications of sex worker marginalization and criminalization, we must also acknowledge that Indigenous women are at the forefront of this violence. When we analyze Bill C-36, its associated discourse, and the power dynamics created, we ultimately are examining how a settler colonial state is regulating the bodies and sexual expressions of Indigenous people.

To describe Canada as a settler colonial state is to acknowledge that Canadian colonialism emerged with the intention “to replace the natives on their land” (Wolfe 2001, 868). Unlike extractive colonialism, scholars characterize settler colonialism by the presence of European settlers who invade Indigenous territory with the intention to occupy the land forever. Instead of using Indigenous labor to produce surplus value for private profit like in extractive colonial contexts, settler colonial states produce a “logic of elimination,” where the primary biopolitical objective is land acquisition through a process of Indigenous displacement (868). Because this displacement is ongoing in modern contexts, scholars emphasize that settler colonialism is an existing power structure, rather than a historical event from the past. Under this conceptualization, Canada remains a settler colonial state, and its laws and policies continue to biopolitically regulate Indigenous populations within its borders.

In *The History of Sexuality*, the role of colonial encounters in the development of European sexual discourse remains notably absent. In response to this absence, the critical anthropologist Ann Stoler argues that the concept of sexuality emerged on an “imperial landscape” and was “shaped through contrasts forged in the politics and language of race” (1995, 5). More specifically, Stoler argues that sexual discourses “mapped the moral parameters of European nations,” and created “exclusionary cultural principles” that determined who could gain full access to citizenship (7-8). The gender scholar Scott Lauria Morgensen uses Stoler’s placement of Foucauldian biopolitics in colonial settings to highlight how these regulatory mechanisms became a tool to eliminate Indigenous expressions of queer sexuality (2011, 31). British and French colonial officials imposed patriarchal and heteronormative structures on Indigenous people to eliminate instances of accepted same-sex intimacy, polyamory, and female leadership (38). For Morgensen, this process of using biopolitical mechanisms to eliminate queer Indigenous sexuality contributed to a broader settler colonial desire to eliminate Indigenous populations in general (42).

With these discursive strategies properly contextualized as a product of settler colonial, racist logics, their continued presence in Bill C-36 discourse suggests that the Canadian state continues to impose normalizing biopolitical regulations on Indigenous people. One Indigenous sex worker, Monica Forrester, voiced this perspective at the Standing Committee when she stated:

[Indigenous women] face added stigma within their communities because of ongoing colonization. Colonialism already silenced them about sex, and sex work adds another layer of stigma and more isolation from their community ... Bill C-36 will silence sex workers who experience violence ... I have seen all these situations first-hand. When there is more policing and surveillance, sex workers get isolated from people providing essential services, and that isolation leads to vulnerability ... Together, all of this will increase violence, murder, and HIV/AIDS against our community. (Meeting No. 34, 2014)

Here, Forrester acknowledges colonialism's legacy of creating power dynamics that erases Indigenous sexuality, and couples this critique with an acknowledgement that Bill C-36 establishes a legal framework for sex work that would exacerbate Indigenous oppression under Canada's settler colonial regime. The presence of the four discursive strategies in the parliamentary debate on Bill C-36 reflects the biopolitical priorities of the Canadian state. The supposed protection of women's bodies, the sheltering of children from sexual expression, the promotion of hegemonic sexual norms, and the demonization of non-normative sexual expressions, rather than the lives of Indigenous sex workers, become the primary concern of Canada's approach to sex work. As a result, Canadian sex work policy continues the settler colonial tradition of denying Indigenous people self-determination, and exacerbating gender-based violence against Indigenous women.

Conclusion

Many important questions lie at the center of the sex work debate. These questions include: Who has power during sex work? What conditions constitute exploitation? How does sex work regulation play into larger power relations? Who gets to decide the best approach? Because these questions intersect topics that include sexuality, gender relations, economic survival, colonialism, familial structures, and criminal justice, it is clear that a society can provide a variety of different answers.

At the epistemological level, this paper interpreted discourse as method for legislators to legitimate certain ideas surrounding sex work, and in the process, solidify certain power dynamics. Michel Foucault's *The History of Sexuality* provided a theoretical foundation to conduct the discourse analysis. Foucault's work outlines the four nineteenth-century discursive strategies of hysterization, pedagogization, socialization, and psychiatrization that European states used to biopolitically regulate the sexual relations of its citizens. To see whether these biopolitical frameworks remained, I examined whether similar discursive patterns appeared in Bill C-36 parliamentary debate.

This paper ultimately elucidated that the nineteenth century discursive strategies outlined by Foucault remain present in modern Canadian sex work discourse. In the discourse, parliamentarians and committee witnesses continued to prioritize the paternalistic protection of women's bodies, the shielding of children from sex work exposure, the implications of sex work on the social body, and the demonization of sex worker clients. Because of the continued presence of these discursive strategies, I suggested that the biopolitical objectives from the nineteenth century remain present. These sex work discourses and regulations continue to advance patriarchal and capitalist goals of ensuring women's sexuality prioritizes reproduction, while also advancing settler colonial power dynamics that perpetuate violence towards Indigenous people.

While these long-standing biopolitical objectives remain enmeshed in Canadian sex work discourse, sex workers continue to challenge these priorities and conceptualizations. Unable to achieve the legislative repeal of Bill C-36, sex workers have once again looked to the judiciary to protect their constitutional rights. Two lower court decisions from Ontario have already ruled some of Bill C-36's provisions unconstitutional (*R v Anwar* 2020, para 216; *R v NS* 2021, para 211). In February 2021, the Canadian

Alliance for Sex Work Law Reform, representing 25 sex work advocacy groups across the country, filed a constitutional application in Ontario to challenge the majority of Bill C-36 (Dubinski 2021). The outcome of the litigation may yet again provide the Canadian government with an opportunity to reassess its approach to sex work regulation and move away from the harmful discursive strategies of the nineteenth century.

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