

Sex Work and the City: Bill C-36 and the Policing of Indigenous Women's Sexual Autonomy

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Abstract

Bill C-36, or the Protection of Communities and Exploited Persons Act, which was introduced in Canada in 2014, made the purchase of sexual services illegal. To the end of eliminating sex work, Bill C-36 rests on the premise that sex work is inherently exploitative, and that sex workers and their communities are harmed by the exchange of sexual services. Considering that Indigenous women are overrepresented among sex workers and disproportionately victims of severe violence, this paper examines the goals of Bill C-36 in conversation with Canada's ongoing project of colonialism. This paper demonstrates that Bill C-36 upholds the systemic devaluation of Indigeneity by which Indigenous women's bodies are rendered deserving of violence, and by which this violence is normalized and invisibilized. Rather than protect 'victims' of sexual exploitation, Bill C-36 relies on the colonial stereotypes of the Indigenous prostitute to reimagine sexually autonomous Indigenous women as inherent threats to (white) Canadian society and themselves, and thereby justify state regulation in both public and private spaces.

In 2014, Bill C-36, or the Protection of Communities and Exploited Person Act, was brought into the Canadian Criminal Code to criminalize the purchasing - as opposed to selling - of sex (Goodall 2019, 233). The three goals of Bill C-36 are as follows: "protecting prostitutes, considered to be victims of sexual exploitation, protecting communities from the harms caused by prostitution and reducing the demand for sexual services" (Casavant and Valiquet 2014). Taking into account the system of settler colonialism that stems from historical European settlement and uses legislation, discourse, and policies to continually redefine all aspects of Indigenous life-including land and people, as "natural resources" that can be re-appropriated by the settlers who come to permanently occupy Indigenous land (Tuck and Yang 2012, 4-5), Bill C-36 is not simply a piece of legislation that protects sex workers from abuse. Rather, Bill C-36 is a political tool to "police [...] the borderlands of [Canadian] possession and [Indigenous] dispossession" (Dhillon 2015, 3). Considering that Indigenous women and girls comprise the majority of sex workers and a disproportionate number of human trafficking victims compared to Canadians in general and that Indigenous sex workers are disproportionately killed while employed in sex work (Goodall 2019, 237), Bill C-36's aims to eliminate sex work (234) by positing sex work as inherently harmful to the sex worker, the community where they work, and society at large (Casavant and Valiquet 2014). In this way, Bill C-36 constitutes a colonial regulation of Indigenous women's bodily autonomy. First, I will argue that Bill C-36 upholds the

stereotype of Indigenous women as inherently sexually deviant as part of a project to protect white society from the non-white prostitute. Second, I will explain that Bill C-36 disregards some Indigenous women's entrance to sex work as an autonomous choice made within the constraints of interlocking systems of oppression. Ultimately, I will demonstrate that the conflation of Indigenous women's sexual agency with victimhood normalizes and erases violence against Indigenous women, thereby rendering Indigenous women's bodies as dangerous and disposable. Reclaiming Indigenous women's sexual agency - defined here as the freedom to define one's own body and control one's own reproductive capacities - is inseparable from the history of colonial oppression in what is now Canada.

Before examining the effects of Bill C-36 on Indigenous women, it is vital to understand how Indigenous women have been socially constructed as prostitutes through the Indian Act. The Indian Act, a law that took effect in Canada in 1876, had two purposes: first, to terminate Indigenous sovereignty over Indigenous lands (and effectively render them "empty lands" (Dhillon 2015, 6); and second, to impose the sovereignty of the Canadian state in its place (Bourgeois 2018, 383- 384). As the foundation of political, social, and economic organization, Indigenous gender roles were the key for diminishing not only the Indigenous sovereignties that threatened the dominance of the Canadian state but "all things Indigenous" (Dhillon 2015, 7) that could endanger the hierarchy of colonial society. While colonial society relied on heteropatriarchy, or dominance by "heterosexuality and patriarchy, the rule by men" (Simpson 2016), Indigenous women had the same degree of political, social, economic, and bodily autonomy as Indigenous men prior to the implementation of the Indian Act (Dhillon 2015, 9-10). However, as producers of life, Venne (1997) relays that Indigenous tradition elevates the status of women beyond that of men to be level with the Creator and "Mother Earth". In effect, Indigenous women are the keepers of the land and its resources, and thus determine how it can be used and by whom (191).

As such, with Indigenous women as full participants in both public (political) and private (domestic) spheres of life, Indigenous communities fundamentally opposed the economic and sociopolitical frameworks of colonial society that rely on the subjugation of women to men and the confinement of their reproductive labour - defined here as sexual and domestic labour - to the private sphere. Therefore, it was by disciplining the bodies of Indigenous women that the colonial state could redefine the reproduction and organization of Indigenous communities, and thereby secure access to Indigenous lands. While Indigenous nationhood was traditionally defined matrilineally (that is, Indigenous women were political leaders) (Simpson 2016), Davies claims that the Indian Act imposed a democratic band council system, and prohibited all women members from running or voting in these elections. In addition to systemically disenfranchising Indigenous women, the Indian Act reconfigured Indigenous women's identities and Indigenous nationality as dependent on the citizenship status of the man they each married (Davies 2015, 85). As such, the Indian Act imposed a patriarchal and gendered power system where Indigenous women existed merely as extensions of their husbands, with no political decision-making power or identity of their own. The removal of political power from Indigenous women not only erased them from public life but also symbolically suppressed the continuity of Indigenous sovereignties, as Indigenous

women's bodies represented the political and reproductive force of Indigeneity (Simpson 2016). While the Indian Act raised the power and status of the white settler-colonial state, it also redefined and devalued the social status of Indigenous women.

The constructed relationship between Indigenous women and prostitution works alongside the Indian Act's regulation of "Indianness" (Dhillon 2015, 9) to legitimize the devaluation of Indigenous women and bodies by colonial society. Known as the Squaw stereotype, Indigenous women's autonomy over their body and sexuality was discursively reframed as innate hypersexuality (Burns 2020, 32). The Squaw stereotype sustained the systemic devaluation of Indigenous women by the colonial state by collectively constructing Indigenous women as prostitutes who were inherently immoral, dangerous, and inferior (Bourgeois 2018, 382). While prostitution was a punishable offence for both white and Indigenous people, it was introduced to the Indian Act as a special provision (384), which encouraged the disproportionate regulation of Indigenous men and women involved in the exchange of sexual labor (Davies 2015, 86). In this context, Bill C-36 not only demonstrates a colonial entitlement to manage Indigenous bodies but does so on 'moral' grounds, thus implying that Indigenous women are innately "fit for the worst kinds of use and abuse" (Davies 2015, 85-86) and must be protected from the consequences of their nature.

Bill C-36's broad definition of women sex workers as "victims of sexual exploitation" (Casavant and Valiquet 2014) conceptualizes sexual autonomy from a colonial - that is, heteropatriarchal - perspective, and rejects the possibility that sex workers are free agents who enter into fair labour contracts. Bill C-36's position on sex work reveals the idea that sex work is exploitative because it commodifies that which is assumed to be, according to colonial traditions, most central to a woman's identity. Reflected in this colonial perspective are the ideas that women's bodies, positioned subordinate to men in the gender hierarchy, exist to pleasure men, and that this pleasure should occur in private and within the confines of marriage. Similar to the Squaw discourse, this perspective relies on the construction of Indigenous women as nothing more than "victims devoid of agency" (Burns 2020, 32). By criminalizing the perpetrators of sexual violence, who are constructed in the colonial imagination to be men who purchase sex work from women sex workers, Bill C-36 rests on men's ability to resist making a transaction with sex workers. According to Goodall, the presumption is that the desire of white men to "obtain exclusive sexual access" to hypersexual Indigenous women is so strong that mitigating it requires the full force of the state. But rather than advancing the idea that men should avoid inflicting sexual violence against women, or ensuring that the labour contract between the two parties is fair, Bill C-36 upholds a moral "colonial male entitlement" (Goodall 2019, 238) to control the bodies of Indigenous women.

While Bill C-36 claims to criminalize sex work on the basis that it commodifies women's bodies, it conceptualizes sexual violence against Indigenous women as inevitable (Burns 2020, 32), and in turn perpetuates the colonial desire to "protect Indigenous women and girls from abuse" (Bourgeois 2018, 380). Bill C-36 adopts a position of "shielding prostitutes from criminal sanctions for having engaged in prostitution" on the assumption that the purchase of sex work is inherently exploitative to the sex worker (Casavant and Valiquet 2014). Knowing that sex workers are

disproportionately Indigenous women, Bill C-36 not only assumes that Indigenous women are incapable of making 'good' choices on their own, as if sex work cannot involve a fair contract between consenting adults, but also that Indigenous women's choices are not constrained by layers of systemic oppression. Knowing that the colonial economy is inherently unequal, with non-white women in Canada as "the most poorly paid and precariously employed in the labor force" (Burman 2019, 362), sexual labor offers a path to economic security.

Moreover, the prevalence of economic hardship among Indigenous women can be explained not by individual behavior, but by the systemic dispossession inflicted upon Indigenous women by the Indian Act. For instance, the loss of traditional women's roles in Indigenous community economies as a result of land theft and the imposition of the capitalist market (Davies 2015, 82) has led some Indigenous women to sell their sexual labour as "survival sex work" in order to afford to live (Goodall 2019, 260). To enact state protection for Indigenous women from inevitable sexual exploitation is to imply that Indigenous women are "innately promiscuous and sexually available" (Bourgeois 2018, 373) and therefore incapable of saying 'no' to sex, rather than being free agents who are motivated by economic necessity and choose to exchange their labour for money. The protector role created for the state in Bill C-36 relies on the idea that Indigenous women are "dehumanized sex objects" who are incapable of safely exercising their sexual autonomy (Burns 2020, 32). And yet, despite claiming to protect victims of sexual exploitation, Bill C-36 only further marginalizes these 'victims'.

Bill C-36's intent to protect communities (Casavant and Valiquet 2014) reveals a commitment to protect white spaces from the pathologizing influence of Indigenous women, rather than the protection of Indigenous women from sexual violence. Casavant and Valiquet's legislative summary on Bill C-36 indicates as much; not only does Bill C-36 situate the sex worker as the victim of sexual exploitation, but because it applies only to sex work occurring in the public sphere (referenced as "street prostitution" and "out-calls"), it poses the community they work in - particularly the women and children who reside there - as harmed by extension. Moreover, Bill C-36 generalizes the harm caused by sex work and deems it "irreparable" (Casavant and Valiquet 2014). In the discursive construction of Indigenous women as inherently degenerate, impure, and unrespectable sex workers (Bourgeois 2018, 385), rather than autonomous agents, society is conceptualized as white, colonial, and respectable. Rather than utilize police force to protect sex workers from sexual violence, Bill C-36 stereotypes Indigenous women as sex workers, and then publicly pathologizes sex work, leading to a stigma that evokes public disapproval and further marginalizes the vulnerable 'victim' it purports to shield.

In this way, despite the homogenizing and marginalizing view of Indigenous women flowing from Bill C-36, other state-led initiatives to regulate Indigenous women's bodies have also had serious effects on their public lives in some areas. In some instances, police have profiled Indigenous women in public space as prostitutes, even when they are simply engaged in the "ordinary activities of life" with the mere suspicion of prostitution as justification enough for detainment (Davies 2015, 86). This power relationship - where police officers can choose to intervene to stop sexual violence, look the other way, or punish suspected prostitutes - normalizes violence, even from the people intended to protect against it. The process by which police officers

uphold colonial legislation to unjustly limit Indigenous women's political freedoms also echoes the logic of the Indian Act. The mere existence of Indigenous women in public space shows that despite the legal theft of Indigenous land and sovereignty, the colonial state has failed in its project to "eliminate, contain, hide and in other ways 'disappear' [...] Indigenous political orders" (Simpson 2016). Ultimately, by naturalizing violence against Indigenous women, Bill C-36 supports a larger colonial project of devaluing and discarding Indigenous bodies.

Rather than recognize how sex work can be an exercise of Indigenous bodily sovereignty despite colonial oppression, Bill C-36 perpetuates the framework of colonial domination that dispossesses Indigenous women from their identities and experiences, and by extension, their lands. Since the establishment of the Indian Act, prostitution has been used by the colonial state to legitimize the superiority of colonial institutions and eliminate Indigenous sovereignty over what is now Canadian land. Likewise, Bill C-36 uses the stereotype that Indigenous women have inherent "promiscuity, ugliness, and inferiority" (Smiley 2016, 310) to both naturalize and dismiss real - rather than assumed - cases of sexual violence. For instance, in the media, violence against Indigenous women is portrayed as a result of their "high risk lifestyles" (Smiley 2016, 310), which suggests that the circumstances they face are not features of systemic oppression, but results of the choices they made, and the inherent deviance that underlined those choices. Considering that Indigenous women comprise only about four percent of women yet twenty-four percent of women murder victims in Canada (National Inquiry into Missing and Murdered Indigenous Women and Girls 55), and that 1,182 Indigenous women and girls have disappeared or been murdered between 1980 and 2014 across Canada (Burman 2016, 366), the prevalence and scale of violence faced by Indigenous women and girls are not coincidental, but systemic.

While discourse about violence against Indigenous women "has overemphasized the actual or perceived involvement of these women and girls in the sex trade" (Bourgeois 2018, 373), the murder rate for Indigenous women is six times higher compared to non-Indigenous women, pointing to a disproportionate risk of violence for all Indigenous women, not only those who perform sex work (Smiley 2016, 309). The creation of Bill C-36 allows colonial state regulation of Indigenous women's bodies in a way that constructs them as both the victims and perpetrators of their violence, based on the assumption that their sexual deviancy both attracts violence and is reason enough to dismiss their harm. This narrative allows the colonial state to recognize that violence does occur, but to criminalize individuals rather than assume responsibility for the underlying structure that perpetuates it. Ultimately, the dehumanization of Indigenous women by virtue of their sexual autonomy, as shown by Bill C-36, only perpetuates the belief that Indigenous women are "killable, able to be raped without repercussion, [and] expendable" (Burman 2019, 366).

While Bill C-36 details only a small portion of the interlocking systems of oppression - including systemic land theft, discursive colonization, and sexual violence - that suppress Indigenous self-determination in Canada, the bill exemplifies a colonial effort to remove the power of Indigenous women to define their bodies, exercise their traditional gender roles, and enjoy political power. By assuming sex workers - which are disproportionately Indigenous women- are inherent victims of sexual exploitation by virtue of their sexual autonomy, Bill C-36 relies on the

figure of the “abject Aboriginal prostitute” (Davies 2015, 87) to replace Indigenous women’s agency with colonial state ‘protection’. Bill C-36 assumes that Indigenous women are not moral or rational actors who enter into labour contracts, but rather inherently deviant individuals who must be protected from the consequences of their actions.

Yet, Bill C-36 does not protect Indigenous women. Rather, it collectively criminalizes Indigenous women as supposed prostitutes, and this idea is upheld through the arbitrary use of police force and dehumanizing public discourse to further marginalize and control Indigenous women. But Bill C-36 also posits Indigenous women as both the victims and perpetrators of the violence they face, which obscures the colonial structure that systemically devalues their “Indianness” (Dhillon 2015, 9), encourages violence, delegitimizes their victimhood, and consequently naturalizes their deaths. Ultimately, without the restoration of Indigenous women’s bodily sovereignty - of which the re-installation of Indigenous sovereignties, return of stolen lands, and protection of traditional rights are necessary conditions - Bill C-36 is another piece of the framework that devalues Indigenous bodies for the “land, reproduction, indigenous kinship, and governance, [and] an alternative to heteronormative and Victorian rules of descent” (Burman 2019, 366) that they represent.

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