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Gendering Disposability

Sherene H. Razack

En 2011, Cindy Gladue, une femme crie de trente-six ans, est morte d'une hémorragie dans la baignoire d'une chambre d'hôtel à Edmonton, en Alberta, au Canada. Le soir de sa mort, Gladue avait fourni des services sexuels pour de l'argent à Bradley Barton, un homme blanc qui travaillait comme routier. En 2015, Barton a subi un procès pour le meurtre de Cindy Gladue. Le fait qu'il y a plus de 1 200 filles et femmes autochtones disparues ou assassinées, fournit une raison incontestable pour se pencher sur la violence que Barton a infligée à Gladue et comprendre qu'elle s'inscrit dans une histoire de brutalisation sexuelle et de tentative d'anéantissement des femmes autochtones. Pour montrer que la mort de Gladue et le procès pour meurtre de Barton font partie d'une histoire de terreur colonialiste, il faut déconstruire le cadre utilisé par les tribunaux, qui tourne autour des idées de consentement et de contrat. Je propose que nous utilisions plutôt un cadre visant le caractère jetable des femmes autochtones, plus spécifiquement, leur caractère sacrificable aux yeux du colonialisme de peuplement. La violence sexualisée est centrale au caractère jetable, et la chair devient le site où le pouvoir racial et sexuel est inscrit. Je me penche sur la violence excessive infligée aux femmes autochtones comme preuve du pouvoir colonialiste gravé sur leurs corps.

In 2011, thirty-six-year-old Cindy Gladue, a Cree woman, bled to death in a hotel bathtub in Edmonton, Alberta, Canada. On the night she died, Gladue had contracted for sexual exchange with Bradley Barton, a white man who worked as a trucker. In 2015, Barton was tried for the murder of Cindy Gladue. With more than 1,200 missing and murdered Indigenous women, there is compelling reason to focus on the violence Barton inflicted on Gladue, understanding it as a part of a history of the sexual brutalization and attempted annihilation of Indigenous women. To show that Gladue's death and the trial of Barton for her murder are part of a history of colonial terror, it is necessary to unpack the framework utilized by the court, a framework that revolved around the ideas of consent and contract. I propose that we utilize a framework of disposability instead, focusing on the Indigenous woman's expendability in settler colonialism. Sexualized violence is key to disposability, and flesh is the site at which racial and sexual power are both inscribed. I emphasize the excessive violence that is meted out to Indigenous women as evidence of colonial power imprinted on their bodies.

Introduction

The fabrication of disposable peoples throughout history points to the permanence of a specific construction of otherness, in which the excess of enjoyment is expressed through the transformation of a human being into matter.¹

In 2011, thirty-six-year-old Cindy Gladue, a Cree woman, bled to death in a hotel bathtub in Edmonton, Alberta, Canada. Bradley Barton, a white man who worked as a trucker had purchased her sexual services on at least two occasions, including the night she died. In 2015, Barton was tried for the murder of Cindy Gladue. The defence maintained that Cindy had bled to death from a tear that occurred during an episode of consensual “rough sex” when Barton inserted his fists into her vagina. The Crown argued that the eleven centimetre wound had been caused by a knife used by Barton. In a bid to demonstrate its theory about the knife, and on the advice of the senior pathologist in the case, the Crown introduced as evidence Cindy Gladue’s vagina, tissue apparently severed from the rest of her body. The judge permitted the severed part of the pelvic area to be viewed on a screen behind which the pathologist testified as he pointed to the actual tissue. Barton was acquitted of all charges, and the case is on appeal.²

In the initial reporting of the murder, Gladue’s Indigenous origin did not merit a mention, and media coverage was sparse.³ Few seemed to notice the death of an Indigenous woman in the context of prostitution.⁴ In 2015, however, the outcry over introducing the body part as evidence in the trial of Barton for her murder was vociferous, and several commentators considered the implications of such a move when the woman in question was Indigenous and working in prostitution. The trial touched a nerve that for many had to do with Canada’s 1,200 missing and murdered Indigenous women. News outlets ran headlines similar to the one in the country’s leading national newspaper: “Cindy Gladue was reduced to a

The author thanks Leslie Thielen Wilson for her insightful comments on the draft; Stephanie Latty and Megan Bertasson for outstanding research assistance; and Laura Laderinger for her careful attention to the footnotes.

1. Françoise Vergès, “The Age of Love” (2001) 47 *Transformation: Critical Perspective on Southern Africa* 1 at 11, cited in Ranjana Khanna, “Disposability” (2009) 20 *Differences: A Journal of Feminist Cultural Studies* 181 at 193.
2. *R v Gladue*, [1999] 1 SCR 688.
3. Jeff Cummings, “Murder Charge in City’s 27th Homicide of 2011”, *Edmonton Sun* (27 June 2011).
4. I use the term prostitution instead of the term sex trade in order to emphasize the violence that is involved and to problematize the notion that prostitution is merely a form of work.

body part.”⁵ Many felt that Gladue was dehumanized as much by the Court as by Barton himself, notwithstanding that the tissue was introduced in order to show his culpability. The decision to bring the actual tissue into the courtroom seemed to horrify people, even provoking comparisons to what happened to bodies at Auschwitz.⁶ No one was in sympathy with the chief medical examiner, Graeme Dowling, a pathologist with twenty-nine years of experience, when he told the Court that he recommended that the actual body part be used as evidence because the autopsy pictures fell short of demonstrating the injuries. Dowling reasoned that the jury would be better educated about the role of the knife if he could demonstrate the nature of the injuries with the actual tissue.

Barton’s legal team also objected to the introduction of the body part as evidence. Defence lawyers Dino Bottos and Evan McIntyre maintained that introducing the body part would have “extreme prejudicial effect” and that such “grisly evidence” would interfere with Barton’s right to a fair trial.⁷ Presumably, if the jury saw the injuries to the pelvic region in sensational detail, they would be horrified by it and would be more inclined to accept the Crown’s argument that a knife had indeed caused Gladue’s injuries. For their part, Indigenous commentators and many others saw the introduction of physical evidence as a further dehumanization of Cindy Gladue. Christa Big Canoe, Indigenous lawyer and legal advocacy director of Aboriginal Legal Services of Ontario, expressed the hope that Cindy could be made whole and receive the proper ceremonial death rites. Imagining the pain and trauma felt by the family, Big Canoe observed that the justice system does not address Indigenous concerns and protocols and that “the justice system is not resolving the sociological phenomenon of missing and murdered Indigenous women.”⁸

As the reaction to the introduction of physical evidence grew, the unanimity struck me as strange. I was unsure what it meant in a country that has long ignored

5. Elizabeth Renzetti, “Cindy Gladue Was Reduced to a Body Part”, *Globe and Mail* (6 April 2015) <<http://www.theglobeandmail.com/opinion/reduced-to-a-body-part/article23790508/>>.

6. See Ryan Cormier, “‘This Was Demeaning’: Body Part as Evidence in Cindy Gladue Murder Trial Comes under Fire”, *National Post* (30 March 2015) <<http://news.nationalpost.com/news/canada/this-was-demeaning-body-part-as-evidence-in-cindy-gladue-murder-trial-comes-under-fire>> (reporting that “Shannon Prithipaul, president of the Criminal Trial Lawyers Association, said the legal move reminded her of a visit to the museum at the former Auschwitz concentration camp. There, human body parts are not allowed to be photographed to preserve a victim’s dignity. ‘I think this was demeaning to Cindy Gladue’”). See also Christa Big Canoe, “Cindy Gladue Suffered Her Last Indignity at Murder Trial”, Editorial, *CBC News* (2 April 2015) <<http://www.cbc.ca/news/aboriginal/cindy-gladue-suffered-her-last-indignity-at-murder-trial-1.3019500>>.

7. Cormier, *supra* note 6.

8. Big Canoe, *supra* note 6.

the issue of missing and murdered Indigenous women. In particular, the defence's position that the evidence was grisly and extremely prejudicial to Barton gave me pause. I wondered what they were worried about. Did they anticipate that a focus on wounds to the body's sexual organs would elicit strong feelings and that Gladue's murder would no longer remain an abstraction? Certainly, the physical evidence of an intimate body part made it difficult for Gladue to remain abstract, something the defence may have wanted to avoid by de-emphasizing the locus of her injuries.

The dehumanization named by Indigenous observers seemed to be of a different order than the reaction of Barton's lawyers. In noting that the justice system was failing Indigenous peoples and not resolving the phenomenon of missing and murdered Indigenous women, Big Canoe named Gladue's death and the display of her vagina as a form of collective, cultural, and historical injury against Indigenous peoples:

Cindy died four years ago. Her body is not whole in its resting place. In any other context this could be seen as *desecration of her remains*, but in this judicial process it is called preservation of evidence . . . It appears that the court did not contemplate Cindy's dignity, death rites, or any indigenous perspective on caring for the dead.⁹

The observation that the introduction of a body part could be seen as a desecration of remains brought the colonial past into the present. For instance, the display of a body part brought to mind the well-known example of Sarah Baartmann, an African (Khoisan) woman, who had been exhibited in London and Paris in the early nineteenth century where her breasts, buttocks, and labia generated considerable public interest. Upon her death, Baartmann, who in life had attracted the attention of the world-renowned French naturalist (and Napoleon's physician) Georges Cuvier, was dissected, and her skeleton and dissected genitalia were exhibited in a Paris museum until the 1990s when a post-Apartheid regime demanded that they be returned to South Africa for burial.

In Baartmann's case, as with Gladue, the body parts in question reveal that race is inextricably linked to public sexualized objectification. As Sander Gilman writes, "[t]he figure of Sarah Baartmann was reduced to her sexual parts. The audience which had paid to see her buttocks and had fantasized about the uniqueness of her genitalia when she was alive could, after her death and dissection, examine both."¹⁰ Commentators on the Barton trial reminded the Canadian public that

9. *Ibid* (emphasis added).

10. Sander Gilman, "Black Bodies, Whites Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth-Century Art, Medicine, and Literature" (1985) 12:1 *Critical Inquiry* 204 at 212.

“Indigenous peoples bodies have been treated as specimens for centuries.”¹¹ We might go further and recall the cutting out of Indigenous men’s and women’s body parts—typically genitals—as trophies during colonial massacres.¹² Recalling this colonial history and the history of the enslavement of Africans in the transatlantic slave trade and its afterlives, I propose that the presence of an Indigenous body part in the courtroom, and especially a vagina, serves as a “memorialization of terroristic death,” as Robyn Wiegman suggests of a lynch rope left hanging for decades from a bridge in the American South.¹³ In Gladue’s case, the evidence memorialized a terrible, sexualized violence directed at an Indigenous woman. Crucially, the visual imprint of power on her body was displayed in a courtroom, the very place where that violence has for too long gone unacknowledged.

If it was hard to deny terroristic death, there were nonetheless complex investments in naming the source of terror. Had Gladue endured the violence so forensically charted because she was a woman, a racialized woman, or an Indigenous woman or because she was a woman engaging in prostitution? Responses to the introduction of physical evidence hinted at all three. Big Canoe, for instance, felt that “[w]hat is most horrific is that a Canadian court allowed the most intimate part of a woman’s body to be evidence in a jury trial,” adding that fathers, brothers, and sons would be horrified by such a display of their loved ones.¹⁴ Others felt that had Gladue been white, her vagina would never have been displayed.¹⁵ Naomi Sayers observed that Gladue was only displayed in this manner because she was a “sex worker.”¹⁶ As these comments suggest, the event that so galvanized Canadian public opinion raised the issue of prostitution and of the historic sexual dehumanization of Indigenous women, although it often did so spectrally, a ghost haunting the indignity to the body that so many acknowledged.

Whether a knife or fists, Gladue endured and died from extreme violence. I propose that we understand this violence as colonial terror and the introduction of

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11. Sarah Hunt & Naomi Sayers, “Cindy Gladue Case Sends a Chilling Message to Indigenous Women”, *Globe and Mail* (25 March 2015) <<http://www.theglobeandmail.com/globe-debate/cindy-gladue-case-sends-a-chilling-message-to-indigenous-women/article23609986/>>.
 12. See eg Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Durham, NC: South End Press & Duke University Press, 2015) at 15; Susan Brooks Thistlethwaite, *Women’s Bodies as Battlefield: Christian Theology and the Global War on Women* (New York: Palgrave MacMillan, 2015) at 137.
 13. Robyn Wiegman, “Whiteness Studies and the Paradox of Particularity” (1999) 26:3 *Boundary 2* 115 at 119.
 14. Big Canoe, *supra* note 6.
 15. Kathryn Carlson, “More Than a Tragic Headline: Cindy Gladue Dreamt of a Happy Life”, *Globe and Mail* (15 May 2015) <<http://www.theglobeandmail.com/news/national/the-death-and-life-of-cindy-gladue/article24455472/>>.
 16. Naomi Sayers, “The Case of Cindy Gladue Tells Indigenous Sexworkers That Some Lives Matter More Than Others” (23 April 2015), *Kwe Today: Fierce Indigenous Feminism* (blog) <<http://kwetoday.com/2015/04/23/the-case-of-cindygladue-tells-indigenous-sexworkers-that-some-lives-matter-more-than-others/>>.

her vagina as evidence in the courtroom as a memorialization of terroristic death. The terrorizing features of Gladue's death originate in Barton's assumption that he was entitled to insert his fists as forcefully as he did. That terror is sustained when Barton's actions are rendered legitimate in the eyes of the law and when Indigenous women continue to be violated in this way. Gladue's death at the hands of a white man brings to mind the death of other Indigenous women who were sexually violated and then killed. Take, for example, the murder of Pamela George, a Saulteaux woman killed by two white men who hired her for sex, then drove her to an isolated area where she was killed. Boasting of having killed an "Indian hooker," the men were not apprehended for a month and during their trial, the idea that George worked as a prostitute served to diminish the men's culpability for her death.¹⁷ Gladue's death also brings to mind Helen Betty Osborne, an Indigenous schoolgirl killed in The Pas, Manitoba, by four white men. Although many in the town knew of the murderers, they remained free for twenty years. The Aboriginal Justice Inquiry concluded:

It is clear that Betty Osborne would not have been killed if she had not been Aboriginal. The four men who took her to her death from the streets of The Pas that night had gone looking for an Aboriginal girl with whom to "party." They found Betty Osborne. When she refused to party she was driven out of town and murdered. Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism and indifference. Those who knew the story and remained silent must share their guilt.¹⁸

With more than 1,200 missing and murdered Indigenous women, there is a compelling reason to focus on the violence Barton inflicted on Gladue, understanding it as a part of a history of the sexual brutalization and attempted annihilation of Indigenous women.¹⁹

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17. Sherene Razack, "Gendered Racial Violence and Spatialized Justice" in Sherene Razack, ed, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 121 at 149.
 18. Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol 2 (Winnipeg: Province of Manitoba, 1999), ch 10 <<http://www.ajic.mb.ca/volumell/chapter10.html>>.
 19. Royal Canadian Mounted Police (RCMP), *Missing and Murdered Aboriginal Women: A National Operational Overview*, Catalogue no PS64-115/2014E-PDF (Ottawa: RCMP, 2014) at 3 <<http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>>. It is of note that most observers consider 1,200 to be far below the actual numbers. See Monique Muise, "4000 Missing and Murdered Women? Minister Can't Say", *Global News* (16 February 2016) <<http://globalnews.ca/news/2520542/are-there-4000-missing-and-murdered-indigenous-women>> (Indigenous Affairs Minister Carolyn Bennett commented that anecdotal numbers from families suggest far greater numbers).

To show that Gladue's death and the trial of Barton for her murder are part of a history of colonial terror, it is necessary to unpack the framework utilized by the Court, a framework that revolved around the ideas of consent and contract in the context of prostitution. I propose that we utilize a framework of disposability instead and that we begin with the marks on her body that so engaged the law. As the reaction to the physical evidence suggests, the injuries that Gladue sustained told a story and one that many struggled to understand.

In the first part of this article, I consider the excessive violence that is meted out to Indigenous women, arguing that in the colonial imagination, the goal is to destroy the figural unity of the body of the Indigenous person and to transform it into waste. I explore the gendered pattern of this attempted annihilation, uncovering the scopic regime that anchors it. When Indigenous women's bodies are destroyed in the extreme way that we see in murdered Indigenous women, the value of their bodies in the social order is made clear. I suggest that the scopic regime of sexualized violence is key to disposability. The violence that is written on the flesh tells the colonial story of whose bodies have value. The wounds and injuries are pedagogical; they teach us the limits of the human, a lesson that Barton learned when he inflicted the injuries and that the public was taught when they were invited to view them at the trial.

In the second part of this article, I consider more broadly the economies in which Barton's encounter with Gladue, and his infliction of her wounds, are embedded. I suggest that it is a visual inscription of terror that marks Indigenous women as disposable. The law participates in gendered disposability through the creation of legal gray zones where sexualized violence is permitted. In focusing on the role of sexualized violence in disposability, I suggest that flesh is the site at which racial and sexual power are both inscribed. It is imperative, then, to consider what is written on the flesh in the context of both terror and horror and to understand its central role in disposability.²⁰

In the third part of the article, I consider how the trial of Bradley Barton for the murder of Cindy Gladue effaced the ongoing colonial story largely through a focus on prostitution as contract. As the judge's instructions to the jury show, the prostitute's body occupies a special place in the law, a legal "gray zone" in Ranjana Khanna's words, that has everything to do with the place where life is transformed into matter, as Francoise Vergès describes.²¹ Gladue was injured to the point that her vaginal wall ruptured, but in accepting this violence as simply the outcome of a paid for sexual service, the law authorizes the existence of a class of women targeted for disposability. When the women who are targeted are

20. See generally Adriana Cavarero, *Horrorism: Naming Contemporary Violence* (New York: Columbia University Press, 2008) (for discussion of the use of the word "horror" to capture the experience of contemporary violence beyond words like "terrorism" and "war").

21. Khanna, *supra* note 1. See Vergès, *supra* note 1 at 193 and accompanying text.

Indigenous, we are witnessing colonial power inscribed on bodies, an extreme destruction that the law condones.

In Canada, there is a particular political urgency to understand the meaning of Gladue's body to Barton and to consider how colonial/racial power is sexually imprinted on bodies. The new Liberal government of Justin Trudeau has announced that it will call an inquiry into missing and murdered Indigenous women. The pre-inquiry discussions are a crucial time to articulate what produces and sustains the persistent sexual brutalization and attempted annihilation of Indigenous women. As advocates struggle to communicate an analysis that integrates race, gender, and coloniality, there appears to be a familiar stumbling block. If one approaches the deaths as the outcome of a generic male violence against women, then race and coloniality enter as mere complications. What is most often said, for instance, is that Indigenous women are more vulnerable to sexual violence because they are poor. Their poverty is said to drive them into so-called "high risk" lifestyles such as prostitution. Poverty exposes them to predators—for example, the young Indigenous women who have no safe means of transportation and who are forced to hitchhike along Highway 16, a strip of highway in British Columbia where more than forty girls and women have disappeared.²² The analytic of vulnerability is also applied to the issue of police violence in cases, for instance, where police officers themselves sexually brutalize.²³ In other words, police brutalize and violate knowing that they can get away with it because Indigenous women are one of the most vulnerable groups of women. Finally, the police and the justice system ignore these crimes because they view the violence as an outcome of a particular lifestyle, a way of life born of poverty.

All such explanations originate in an understanding of Indigenous women as doubly or triply vulnerable. While it is certainly critical to understand Indigenous women's vulnerability to violence, such an emphasis obscures the fact that Indigenous women are targets. They are valuable members of their communities, and their annihilation spells the annihilation of Indigenous communities. Utilizing an optic of vulnerability it is difficult to consider the perpetrators of the violence and to consider what sexualized violence has to do with colonialism. In order to get at the specific, persistent, and excessive sexualized violence directed at Indigenous

22. Organization of American States, Inter-American Commission on Human Rights, *Missing and Murdered Aboriginal Women in British Columbia, Canada*, Doc OR OEA/Ser.L/V/II.Doc.30/14 (2014) at para 88 <<http://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>>. See also Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013) at 32 <https://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf>.

23. See eg "Aboriginal Women's Claims of Police Sex Abuse under Investigation", *CBC News* (22 October 2015); "Montreal Police to Investigate Allegations of Police Abuse in Val d'Or", *CTV News* (23 October 2015).

women, and the widespread ignoring or minimizing of this violence, we will need to find ways to name the deeply embedded and systematized devaluing of Indigenous life in settler societies and the specific sexual brutalization of Indigenous women that runs through them, tracking the ways in which this brutalization and attempted annihilation is sustained through state practices and through law, in particular. An optic of vulnerability is unlikely to take us all the way there.

The Indigenous Woman's Body and the Stroll as Auction Block

Far from rough sex gone wrong, the violence that ended Gladue's life reveals the dehumanization and disposability that is at the heart of colonial/slave/white supremacist regimes. The Indigenous body on which coloniality is written has been fully described by Indigenous scholars. As Emma Larocque, Andrea Smith, and others have written, the Indigenous female is seen as licentious, sexually available, imbued with sexual sin, and inherently rapeable, a racial marking that effaces the sexual violence so routinely visited on Indigenous women and that attributes it to their own base natures.²⁴ The marking of the sexually licentious woman is intimately tied to dispossession, enabling Indigenous populations to be considered as primitive and barbaric and unfit owners of the land. The symbolic mark finds a material base when extreme poverty, sexual violence, and addiction drive many Indigenous women into prostitution.

As an important part of the colonial project, the sexualized violence meted out to Indigenous women must be made visible. The violence must establish that Indigenous women are collectively sexually violable and that Indigenous lands are occupied. To understand the role of the visual, and the collective aspect of sexualized violence, it is helpful to consider the role of sexualized violence in slave regimes. As Katherine McKittrick has theorized, the logic of visualization, which is vital to slave regimes, is evident in all of its geographies. McKittrick's "slave geographies" include the auction block where "sites of unprotected female flesh, which are sexually/violently accessible" produce protected white femininities, masculinities, and, in direct relation, their homes, fields, and kitchens.²⁵ The auction block "displayed and scrutinized black women's sexual bodies in response to the need to reproduce the slave population."²⁶ Buyers could poke and prod the nude body in

24. Smith, *supra* note 12 at 30. See also Kim Anderson, *A Recognition of Being: Reconstructing Native Womanhood* (Toronto: Sumach Press, 2000) at 99; Barbara Mann, *Iroquoian Women: The Gantowisas* (New York: Peter Lang Publishing, 2000) at 20; Sarah Carter, *Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West* (Montreal and Kingston: McGill-Queen's University Press, 1997) at 161.

25. Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (Minneapolis, MN: University of Minnesota Press, 2006) at 82.

26. *Ibid* at 80.

a pleasurable purchasing at a site that “economized sexual domination *and* black inhumanity.”²⁷ The social construction of black femininity as profitable, violable, and sexually available comes together in the moment of the auction block, a moment of display and humiliation of the bare black body.

The scopic regime that operates in the auction block is analogous to the everyday dynamics of the prostitution stroll where there is a display of Indigenous bodies, bodies that are available for sexualized violence. It is estimated that 50 percent to 80 percent of the street-based so-called “survival sex trade” on the Downtown East Side of Vancouver is Indigenous, and it is the women of this group who are most likely to disappear or be presumed murdered.²⁸ Further, as the Native Women’s Association of Canada reports, 40 percent of the cases of missing and murdered women remain unsolved, and Indigenous women are three times more likely than non-Indigenous women to be killed by a stranger.²⁹ Indigenous women and girls are presumed available for sexualized violence whether or not they are engaged in prostitution. Put another way, wherever they are—the space of the highway or a downtown street—these spaces/zones are imagined as a “stroll.”³⁰

The politics of prostitution disturbs Indigenous discussions about violence against Indigenous women. As Robyn Bourgeois has written,

Indigenous women organizing to address the violence that occurs in prostitution find themselves on terrain that is over-determined by the historical association of indigenous women with prostitution and by the historical and contemporary violation of indigenous women. In this arena, it is difficult to stress the individual agency of prostitutes without confronting the actual violence. At the same time, to acknowledge the violence is to repeat the association of indigenous women with prostitution, and to invite state control over their choices.³¹

27. *Ibid* at 81.

28. Ann Cotton, Melissa Farley & Jacqueline Lynne, “Prostitution in Vancouver: Violence and the Colonization of First Nations Women” (2005) 42:2 *Transcultural Psychiatry* 242 at 256 (for discussion of the over-representation of First Nations women in prostitution in Vancouver). See also Pamela Downe, “Aboriginal Girls in Canada: Living Histories of Dislocation, Exploitation and Strength” in Yasmin Jiwani, Candis Steenberg & Claudia Mitchell, eds, *Girlhood: Redefining the Limits* (Montreal: Black Rose Books, 2006) 1 at 10.

29. See Robyn Bourgeois, *Warrior Women: Indigenous Women’s Anti-Violence Engagement with the Canadian State* (PhD dissertation, Department of Social Justice Education, University of Toronto, 2014) [unpublished] at 204 <https://tspace.library.utoronto.ca/bitstream/1807/68238/1/Bourgeois_Robyn_S_201411_PhD_thesis.pdf>.

30. *Ibid* at 262–63.

31. *Ibid* at 277.

One way to negotiate this embattled terrain is to consider the ways that prostitution has been central to colonial and slave regimes, taking up the work of dehumanization and disposability even as these processes are given other names. We may not know specifically what brought Cindy Gladue to the hotel room with Bradley Barton, but we do know the colonial histories that bring Indigenous women to encounters in prostitution. As I traced through my analysis of the killing of Pamela George, I can imagine that Gladue was likely to have been pushed into prostitution through a combination of poverty and addiction. The by-product of colonial excess, her entrance into prostitution signals her desperate (state-induced) material status and the limited options available to her. We also know well, though we speak of it less, the colonial histories that brought Barton to the room. A white, married man and father of two children, Barton, a trucker, found it necessary to buy sex from an Indigenous woman to whom he would not otherwise have access. Barton's arrangements with Gladue, made possible through the sex trade industry and Canadian law, provided him with the opportunity for a sexualized racial mastery, the joining of political domination and sex. Gladue's body provides the raw material for the making of this colonial masculinity. I suggest that sex by contract contributes to the destruction of women and communities even as it affirms Barton's right to the occupation of bodies and the lands of the colonized.

The logic of visualization named by McKittrick, where display is central to how bodies are valued (the most valued body, that of the respectable white woman, is seldom displayed) underpins sexual encounters between Indigenous women and white men in the context of prostitution. When Gladue's body bears the visible imprint of Barton's power, their encounter reconstitutes a colonial relationship. Barton's power made visible on Gladue's body establishes his power. As Alexander Weheliye has shown with respect to the marking of power on the black subject, the visual is crucial to the moment when "thingness"—the reduction of a person to an object—and sensuality come together. The message written on the body in lacerations and wounds obscures desire. He writes: "[D]esire must remain invisible. The happening of desire takes place off the screen, off the map[,] off the charts, off the books, which is what renders the symbols etched into and written by the flesh indecipherable to the extent that they do not appear as desire."³² Returning to Barton, the wounds he inflicted on Gladue reassured him of his place in both a racial/patriarchal order. Simultaneously, his acts of violence convey that the encounter is not one of mutual pleasure but, rather, one of dominance. Pleasure has to be disavowed if the colonial relationship is to remain intact.

Sexualized violence is often a part of the context of Indigenous women's violent deaths and the brutalization has gone well beyond the grisliness described by Barton's lawyers when they referred to the body part in the courtroom. For example, in the

32. Alexander Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham, NC: Duke University Press, 2014) at 111.

most well-known case in Canada involving missing and murdered women, among them many Indigenous women working as prostitutes on the Downtown East Side of Vancouver (a place that is often described in terms of legal and social abandonment), Robert Picton, a white pig farmer, was convicted of the murder of several Indigenous women.³³ Picton brought the women to his farm, killed and dismembered them, and then disposed of their body parts by feeding them to the pigs, an example of disposability.

Until recently, the social and legal response to Indigenous women's violent death has been one of indifference and/or a determined looking away from colonialism. A provincial inquiry on missing and murdered women, the Oppal Inquiry, examined the responses of the police to Picton's victims, among others, concluding that the police failed to investigate adequately and systemically performed "faulty stereotyping of street-involved women." The inquiry did not link these failures to racism or colonialism.³⁴ The Harper government staunchly refused calls for a public inquiry into missing and murdered women and declared that it was not a problem at all or that it involved Indigenous men's violence against Indigenous women.³⁵ The justice system often fails to take these murders seriously, with police and judges routinely arguing that the violence is simply a by-product of a "high-risk" lifestyle of prostitution.

Terror and Horror

Sexualized violence, as a part of the attempted reduction of a population to human waste, incorporates elements of terror and horror. Writing of the sexual torture and killing of Tamil women in Sri Lanka, Suvendrini Perera suggests that "the acts of rape, torture, murder and mutilation visited on conquered bodies reduces them to

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33. Dara Culhane, "Their Spirits Live within Us: Aboriginal Women in Downtown East-side Vancouver Emerging into Visibility" (2004) 27:3 *American Indian Quarterly* 593 at 598–99. See also Sherene Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015) at 52–55 [Razack, *Dying from Improvement*].
 34. Missing Women Commission of Inquiry, *Forsaken: The Report of the Missing Women Commission of Inquiry*, by Wally Oppal, vol 2b (Victoria: Distribution Centre-Victoria, 2012) at 238 <<http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-2B-web-RGB.pdf>>. See also Bourgeois, *supra* note 29 at 310–12 (for a discussion of the problematically narrow scope of this inquiry).
 35. See "Harper Rebuffs Renewed Calls for Murdered, Missing Women Inquiry", *CBC News* (21 August 2014); Tanya Kappo, "Stephen Harper's Comments on Missing, Murdered Aboriginal Women Show 'Lack of Respect'", *CBC News* (19 December 2014); Max Paris, "RCMP Says 7 of 10 Female Aboriginal Homicides Committed by Aboriginal Offenders", *CBC News* (10 April 2015).

a state of so much waste, shapeless matter to be disposed of.”³⁶ Describing the horrific nature of sexualized violence in Sri Lanka, Perera invokes Adriana Cavarero who has written of horrorism, a violence “that, not content merely to kill . . . aims to destroy the uniqueness of the body, tearing at its constitutive vulnerability.”³⁷ Violence that has this component of horror has a scopic dimension that enables the torturer/killer and all others to share in the pleasure of domination at the same time as others are terrorized by it. The scopic regime of which these murders are the core—the ways in which the visual experience of seeing the body’s unity destroyed shapes perception of the value of the body in the social order—requires the display of the brutalization, something that happens not only at the site of the killing but also possibly in the courtroom, as those objecting to the introduction of the vagina perhaps anticipated. The knife/fist marks and the vagina severed from the rest of the body horrify us even as they confirm the destruction of the body as a figural unity.

In Juarez, Mexico, a context in which there are many missing and murdered women who are Indigenous, several analysts have noted the “savaging of the body as body,” as described by Cavarero.³⁸ Here, however, the savaging of the body, its rape and mutilation, is accompanied by practices of waste disposal. Bodies are literally left in places where garbage is dumped. There is a cartography that emphasizes disposability: victims live and work in areas where there are few services, including lighting and proper transportation (already abandonment); if their bodies are found, they are in empty lots and arranged to emphasize that they are garbage to be disposed of. The women’s bodies, often displayed in sensational news coverage, are highly sexualized in political discourse (in contrast to the many men who are killed in Juarez). The women’s bodies are often not so much dumped as arranged to show their degradation.

The scopic regime in Juarez is also one of a horrifying absence, a visible invisibility, of missing and murdered Indigenous women. Gonzalez Rodriguez, in *Huesos en el desierto (Bones in the Desert)*, which is an account of the murders, describes where the women’s bodies are left as an organized absence, “a geography of forgetfulness.”³⁹ The victims are ghosts, their bodies identified only by the symbols such as shoes or individual body parts.⁴⁰ Such scenes are scenes of horror,

36. Suvendrini Perera, *Survival Media: The Politics and Poetics of Mobility and the War in Sri Lanka* (New York: Palgrave Macmillan, 2016) at 99.

37. Cavarero, *supra* note 20 at 8.

38. *Ibid* at 9.

39. Alice Driver, *More or Less Dead: Femicide, Haunting and the Ethics of Representation in Mexico* (Tucson: University of Arizona Press, 2015) at 86. Gonzalez Rodriguez, *Huesos en el desierto (Bones in the Desert)* (San Pedro Garza Garcia: Anagrama, 2002) at 87.

40. Canadian artist Jaime Black, in her installation The REDress Project, commemorates missing and murdered Indigenous women through red dresses on hangers. See the Red Dress Project <<http://www.theredressproject.org>>.

the horror conveyed by the absence of the whole body and by its unique destruction. Gendered waste disposal is made obvious both by the spatiality of the murders of women and by their treatment by police and the justice system. The women's bodies are seldom found or properly identified. The police participate in the regulation of women through these acts of violence by ignoring the murders and disappearances and issuing warnings to women not to dress provocatively. Aware that the state pays limited attention to crimes that are presumed to occur against prostitutes and that the police put the blame on women for their "high risk lifestyles," many victim's families are anxious to point out that their daughters are not prostitutes, a pattern we see in organizing on the issue of Canada's missing and murdered women. It is well known that anyone considered to be a prostitute is considered violable.

What does this kind of sexualized disposability do? Noting the "wars over the interpretation of death," Melissa Wright draws on Achille Mbembe's concept of necropolitics to argue that in Juarez and other parts of northern Mexico governments protect the lives of some (drug cartels and organized crime) by justifying the death of others, namely women and girls of the working poor.⁴¹ Seeking to gender the concept of necropolitics, Wright argues that the killing of these women amounts to a "a kind of public cleansing" in which men's right to occupy public space is reaffirmed.⁴² The gendering of public space "creates the social and political context that gives rise to the rational man, whether in soldiers' units or *narco* gangs, who carry guns as evidence of social and political stability."⁴³

Such masculine subjects come into existence through the brutalizing of women. The dead women of northern Mexico sustain the state's politics of violence: "The dead provide the raw materials for this politics; their bodies, their gender, their location, and their scars and mutilations are the basis for weaving tales of public women and rational drug lords."⁴⁴ The emphasis that Wright places on the masculinities produced by sexual violence, and the role of sexualized violence in the operation of a particular kind of state, explains both the persistence of the violence and the fact that it occurs with impunity. When we focus on what is produced by the violence—a particular state and masculinity—we get closer to the "savaging" and the attempted reduction to waste that are the hallmarks of what happens to Indigenous people in settler colonialism. I have been arguing that a framework of disposability puts the sexualized violence and attempted annihilation of Indigenous women into one frame: a settler colonial frame where Indigenous women's bodies are available for consumption and annihilation. In the second part of this article,

41. Melissa Wright, "Necropolitics, Narcopolitics, and Femicide: Gendered Violence on the Mexico-U.S. Border" (2011) 36:3 Signs 707 at 708.

42. *Ibid* at 713.

43. *Ibid* at 725.

44. *Ibid* at 726.

I consider how law participates in gendered disposability through the creation of legal gray zones where sexualized violence is permitted.

Disposability, Law, and the Sexual Contract

One way to think more broadly about sexualized violence against Indigenous women is to reflect on the economies in which Barton's encounter with Gladue was embedded—that is, to consider Gladue's disposability in a patriarchal and settler colonial context. Within the settler colonial imagination, Gladue is likely to be characterized as part of a throwaway population, used up in colonialism and used up in prostitution, on her way to illness, addiction, and the kind of death she ultimately endured. For the court, too, Gladue was seen as being expendable, her death merely accidental in the course of “rough sex” gone too far. That she could die from the terms of the contract, and did die, is not part of how we are urged to understand the encounter. The fact that both colonialism and prostitution use up Indigenous women's bodies remains outside the framework of contract. In contrast, the focus on disposability brings into view the existence of a class of women who may be violated with impunity and whose violation secures patriarchal and colonial regimes. In creating legal gray zones where sexualized violence is permitted, the law contributes vitally to the settler colonial project.

In contrast to feminist scholars (as I discuss below), it is common to understand disposability broadly without differentiating the category by gender. Slaves and refugees are the two populations that most often come to mind. In *Wasted Lives*, Zygmunt Bauman proposes the following:

The production of “human waste”, or more correctly wasted humans (the excessive and “redundant”, that is the population of those who either could not or were not wished to be recognized or allowed to stay), is an inevitable outcome of modernization, and an inseparable accompaniment of modernity. It is an inescapable side-effect of *order-building* (each order casts some parts of the extant population as “out of place”, “unfit” or “undesirable”) and of *economic progress* (that cannot proceed without degrading and devaluing the previously effective modes of “making a living” and therefore cannot but deprive their livelihood).⁴⁵

In *Dying from Improvement*, I drew on Bauman to understand Indigenous people as being disposable in settler colonialism. Specifically, the relentless policing of Indigenous peoples in settler cities in Canada has as its goal the eviction from the white city those who are understood to be waste and surplus.⁴⁶ As Laura Hudson

45. Zygmunt Bauman, *Wasted Lives: Modernity and Its Outcasts* (Cambridge: Polity Press, 2004) at 6.

46. Razack, *Dying from Improvement*, *supra* note 33 at 168.

remarks, those viewed as surplus are penned in (to spaces such as the prison or to the spaces of poverty and marginality in and outside of the city, spaces where vigorous policing and social abandonment unfold).⁴⁷ Marked for death, cast out as excess, and as the detritus of modern society, Indigenous people, among other disposable populations, are, as Vinay Gidwani and Rajyashree Reddy make clear, that which cannot be improved and that which cannot contribute to the modern.⁴⁸

There are gender differences, however, in the settler's strategies of "waste disposal." Wright has argued, for instance, that third world women are turned into a form of industrial waste when they are used up in factory work and considered worthless after a short time and at a young age.⁴⁹ While both Indigenous men and women in contemporary Canada are surveilled, pushed, prodded, and violently evicted from settler space, Indigenous women are likely to encounter these same colonial forces of waste disposal most directly in circumstances involving sex, whether it is forced or contracted. Sexualized violence, in other words, is key to how colonial regimes engage in gendered disposability. Understanding how this operates through the creation of a class of women identified as being available for sexual exploitation and disposable brings us closer to a reckoning of the violence Cindy Gladue endured and moves us towards understanding the legal and social responses to her person, including the responses of those who objected to the use of her tissue as evidence.

Ranjanna Khanna offers an analytical framework for understanding how disposability operates in the sexual contract. Urging us to "read differentiation into the term *disposable*," Khanna notes two references to excess in the word "disposable": something you throw away after use because it becomes excessive or wasteful (as in a disposable camera) and something that is available for use or consumption "in excess of notions such as need" (as in disposable income to be used or thrown away as one wishes).⁵⁰ There is a third meaning, which is less used, that indicates something more active, as in when one is disposed to do something or one disposes of, or gets rid of, something. Discussing Christopher Marlowe's sixteenth-century play *Tamburlaine* as incorporating all three meanings, Khanna proposes that, in it, "[p]rostitutes, both as part of the infrastructure of any mobile army and as disposable—available for libidinal excess as well as being discardable objects—constitute an interesting early case of disposable people."⁵¹ In the play, the emperor Timur demands that the "harlots" of the opposing Turkish army be brought

47. Laura Hudson, "A Species of Thought: Bare Life and Animal Being" (2011) 43:5 *Antipode* 1659 at 1660.

48. Vinay Gidwani & Rajyashree Reddy, "The Afterlives of 'Waste': Notes from India for a Minor History of Capitalist Surplus" (2011) 43:5 *Antipode* 1625 at 1653.

49. Melissa Wright, *Disposable Women and Other Myths of Global Capitalism* (New York: Routledge, 2006) at 2.

50. Khanna, *supra* note 1 at 194, 184 [emphasis added].

51. *Ibid* at 186.

to his tent, announcing that he would dispose of them as he wished. (Note that for a fee a john can dispose of a prostitute as he wishes, becoming Timur for a night, or, in Judith Butler's term, a "petty sovereign."⁵² The contract provides the right of disposability.) Khanna identifies the "three strands of thought that emerge from the term *disposable*: the throwaway (object) in production, the available (income) in reproduction, and the sovereign commandment (over life and death and sexual access)."⁵³

Khanna observes that it is hard to determine which meaning of disposability is in operation in the case of the prostitute. She writes:

Can she be killed? Thrown away as an expendable object? Exiled, made into refugee or asylum seeker? Can she be the source of investment, an embodied form of affective labor? Is disposable labor capable of the reproduction of capital and is the reproduction of the labor force any longer a viable or important category? ... Could there be a sovereign decision to make her live or let her die if she is deemed excessive at any point?⁵⁴

Referencing Giorgio Agamben's notion of naked or bare life (*Homo Sacer*)—life that Agamben describes as a life that does not deserve to be lived—Khanna points out that the inhabitants of concentration and detention camps in Agamben's work are people kept out of the polis.⁵⁵ Integrated as a disposable class within a war economy and marked for sexual disposability, the "harlots" that Timur disposes of do not fit easily into Agamben's concept of bare life.⁵⁶ They are inside the polis. However, their status is nevertheless the status of those marked for disposability. Drawing on the ideas of Françoise Vergès, who considers the legal

52. See Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004) at 65 (for use of the phrase, but not applied to prostitutes).

53. Khanna, *supra* note 1 at 186.

54. *Ibid* at 186.

55. *Ibid* at 186. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, translated by Daniel Heller-Roazen (Palo Alto, CA: Stanford University Press, 1998) at 122.

56. Feminist scholars have long considered whether prostitutes are bare life. These arguments stress their legal abandonment. See Lisa Sanchez, "The Global E-rotic Subject, the Ban and the Prostitute-Free Zone: Sex Work and the Theory of Differential Inclusion" (2004) 22:6 *Environment and Planning D: Society and Space* 861 (arguing that the prostitute is the "truly excluded outlaw," "the figure of feminine excess" (at 864) and also maintaining that any woman who contests the patriarchal order can be put into the category of prostitute); Sherene Razack, "Race, Space and Prostitution: The Making of the Bourgeois Subject" (1998) 10:2 *Canadian Journal of Women and the Law* 338 [Razack, "Race, Space and Prostitution"] (for my similar argument). In this sense, prostitute's bodies, or the bodies of women contesting patriarchy become camps, places where law had decreed its own abandonment. For me, the difficulty with Agamben lies in his not seeing bodies as camps.

status of the category of human beings who are transformed into disposable matter, Khanna concludes:

Modern slavery creates, then, gray zones in which life becomes matter—where no form of law seems to offer any protection, where a blind eye is actively turned, and where the disposability of peoples becomes not exceptional, but the by-product of capitalist excess. In this formulation, capitalism's excess is manifest in, on the one hand, the enjoyment by those of us who can consume with our disposable income, and on the other, by the way others are turned into matter or throwaways.⁵⁷

Race and gender, operating through each other, mark colonized and racialized women (although not exclusively) as being disposable and available for consumption in prostitution. We could also say that women so marked are all automatically racialized; white women in prostitution are evicted from their race and do not enjoy its advantages in law.⁵⁸

It is not hard to see how Cindy Gladue was treated as disposable. Barton entered the arrangement likely believing that the contract entitled him to use Gladue for his own pleasure, a pleasure that must nevertheless be disavowed. This is an arrangement that the law usually condones.⁵⁹ The contract is time limited. That is, Gladue was purchased for sexual services for the night, after which her relationship with Barton was over, at least until the next contract. As a disposable object of property (his for the night), it is hard to see the limits of the arrangements. As I show below, it is the property feature of the prostitution contract that creates the gray area between a too vigorous thrusting with fists and the use of a knife. In that gray area between human and matter, nothing committed against Cindy Gladue can be considered to be a crime, as Agamben describes for the inmates of the camp.

The Trial or How Much Force Is Too Much Force?

Bradley Barton hired Cindy Gladue for sexual services on two occasions, the second one ending with her death. On this fateful night, Barton claimed that Gladue was injured when he thrust his fingers into her vagina, something he had done the night before without incident. He acknowledged that on the night of her death his fingers

57. Khanna, *supra* note 1 at 193.

58. Razack, "Race, Space and Prostitution", *supra* note 56 at 355.

59. Of note is that Barton had violent pornography on his computer, a fact that the jury was not told. See Ryan Cormier, "Jury Not Told of 'Disturbing' Pornography Evidence in Edmonton Hotel Room Murder Trial", *National Post* (26 March 2015) <<http://news.nationalpost.com/news/canada/jury-not-told-of-disturbing-pornography-evidence-in-edmonton-hotel-room-murder-trial>>.

had penetrated Ms. Gladue's vagina more deeply than before and that his thrusting was both harder and for a longer time than the previous night. Barton said that Gladue appeared to be enjoying herself. He denied that he used a knife, and none was found. Barton claimed that after sex, he went to sleep and when he woke six hours later he found Gladue dead in the bathtub. Panicking, he attempted to clean up the blood and deposited blood-stained towels in a garbage can near the hotel. He then called 911 explaining to the operator that Gladue had knocked on his door asking for a shower and that he had let her in and gone to sleep, only to wake and find her dead.⁶⁰ He explained in Court that he lied because the night's activities had left him in shock and he did not know whom to trust. The Crown believed that Barton had used a knife, disposed of it, and carried a bleeding Gladue to the bathtub, later covering his tracks when she died.

The knife was seen to be pivotal to the case. In his instructions to the jury, the judge explained that there could only be a finding of first-degree murder if the wound was caused by a sharp instrument.⁶¹ The legal process that the jury ought to follow should begin with whether this was an incident of sexual assault with a weapon, whether the weapon caused her death, and whether the assault and the weapon were part of the same series of events.⁶² The jury would also have to consider whether Barton intended to apply force, whether Gladue did not consent, whether he knew that she did not consent, and whether he carried, used, or threatened to use a weapon when he committed sexual assault.⁶³ The issue of consent, however, was moot if Barton used a knife since Gladue should be deemed not capable of consenting to the introduction of a knife in her vagina.⁶⁴ Without the knife, Barton could still be convicted of manslaughter, the judge advised the jury, if he sexually assaulted Gladue—that is, “if her sexual integrity was violated” (that is to say, if she did not consent to being sexually used in this manner) and if the sexual assault caused Gladue's death.⁶⁵

If the jury doubted that Barton intended to assault Gladue, then the jury had to consider whether Gladue consented to the application of some force and whether she had the capacity to consent. Since Gladue's blood alcohol level was four times the legal limit, the issue was whether she was not merely intoxicated but also impaired.⁶⁶ The judge summarized the two scenarios from which the jury had to

60. Janice Johnston & Scott Lilwall, “Bradley Barton Trial in Killing of Cindy Gladue Enters Jury Deliberations”, *CBC News* (17 March 2015). See also *R v Barton*, 2013 ABQB 673 at paras 9–12 [*Barton*].

61. *Barton*, *supra* note 60 at paras 107–08 (Graesser J, transcript, jury instructions).

62. *Ibid* at para 97.

63. *Ibid* at para 99.

64. *Ibid* at para 109.

65. *Ibid* at para 145–49.

66. *Ibid* at para 151–54, 160–66.

choose. Scenario 1, the Crown's theory, involved four steps: Barton hired Gladue; Gladue became overcome with alcohol; Barton inserted a knife and/or his fists for excessive thrusts; and he carried her to the bathtub when Gladue began bleeding profusely.⁶⁷ Scenario 2, the defence's theory, involved two steps: Barton had Gladue's consent to do manual stimulation of her vagina, and, in doing so, Barton inserted his knuckles further than the night before, accidentally perforating Barton's vaginal wall and causing her to bleed to death.⁶⁸

In the framing of the issue as one between the knife or fists and in focusing on consent, what is eliminated is the possibility that Barton may be guilty of murder or manslaughter simply by virtue of having thrust his fists to the point that he ruptured the vaginal wall. A thrusting of this force is not considered suspicious from the outset, as the knife is. The violence of the thrusting is mitigated, if not annulled altogether, by the fact that Gladue was paid for providing Barton with the opportunity to do so. A conventional fee for a service contract frames the two scenarios outlined for the jury. In prostitution, what is expressly permitted is the use of a woman's body for the duration of the contract with few, ill-defined limits. In this legal gray zone, it is possible for Barton to inscribe his power on the flesh of Gladue and for her injuries and ultimately her death to be considered an unfortunate, but not illegal, outcome of sexual services by contract. The scopical regime of colonial terror, where flesh bears the imprint of colonial power, becomes part of the everyday routines of sexual commerce.

Enjoyment

The slave contract can shed some light on the legal difficulties that arise in the prostitution contract when the issue of limits to violence arises. In *Scenes of Subjection*, Saidiya Hartman offers an original and compelling argument that in slavery enjoyment defined the meaning of subjection.⁶⁹ Slavery gave whites the right to use a slave in any capacity that pleased. Hartman shows that the three aspects of the dictionary definition of enjoyment—to use, to take delight in, and to possess—are all inextricably linked.⁷⁰ The object of property, Hartman adds, is expected to endure and enjoy what has been made legally possible, namely the use of the captive's body and the common insistence in slavery that the captives enjoyed their condition effaces the violence.⁷¹ Since the prostitution contract entails the

67. *Ibid* at para 205.

68. *Ibid* at para 206.

69. Saidiya Hartman, *Scenes of Subjection: Terror, Slavery and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997).

70. *Ibid* at 23.

71. *Ibid* at 24.

use and enjoyment of another's body, it imports some of the features of the slave contract. Notably, the contract provides the buyer with the right to use the body. The paradox for Hartman, however, is that the element of possession and enjoyment contained in the contract dispenses with the will or desire of the body's owner and obscures the line between what is and is not permitted/desired.⁷² Prostitution is a place/practice where no form of law seems to offer protection, to use Khanna's words, because it incorporates aspects of dehumanization (the use of a body, the person's will/desire notwithstanding), and disposability (the use of a thing).

Transforming a human being into a thing or even a service creates a legally fraught zone, as scholars of slavery have long recognized. Hartman shows how the rape of slave women became an impossibility, disappearing in law through the idea of seduction.⁷³ She writes: "The despotic ravages of power made violence indistinguishable from the full enjoyment of the thing."⁷⁴ Hartman's careful delineation of the legal position of the captive slave woman shows us how the question of how much force is too much force becomes impossible in the context of a sexual exploitation that has been legally permitted. What is the legitimate use of property? As she crucially asks: "What limit must be exceeded in order that the violence directed at the black body be made legible in the law? In the case of slave women, the law's circumscribed recognition of consent and will occurred only in order to intensify and secure the subordination of the enslaved, repress the crime, and deny injury, for it asserted that the captive female was both will-less and always willing."⁷⁵

It is difficult to identify the extremity of power that is operating in prostitution, but we see some of the tensions and contradictions of slave codes, as noted by Hartman. The idea of contract conceals the extremity of power and endows the prostitute with the will that the slave is more often deemed to lack, but, as in the slave contract, the will that is granted is a paradox, if not a fiction, because the contract gives the right to possess another. As in the slave context, how would we identify the limit point of force? Another framework is called for to understand the nature of the extreme violence that is often seen in prostitution and to consider the gray zones in law where colonial/racial and sexualized violence can disappear. Disposability offers one way to consider why racial and sexual power must be marked on the body in a scopic regime that law authorizes.

72. *Ibid* at 110.

73. *Ibid* at 87.

74. *Ibid*.

75. *Ibid*. The captive's will was paradoxically recognized only when it concerned submission to the master. A captive who refused to submit defied the law.

Conclusion: Scopic Regimes

The law has a place for a human being transformed into matter, a gray zone where contract annuls the violence and theft, just as it did in slave regimes. As in Juarez, Mexico, the settler colonial state of Canada also has a use for sexualized violence against Indigenous girls and women. While the hundreds of missing and murdered women are assumed to confirm Indigenous pathology (a minister of justice and the Royal Canadian Mounted Police have concluded that Indigenous women are being killed by Indigenous men or are engaging in high risk lifestyles that expose them to danger),⁷⁶ the violence instead confirms a collective settler pathology that is specific to settler colonial contexts. The bodies of Indigenous women are the raw material for the settler state's investment in disappearing Indians (and in Indians who are made to disappear), subjects who are considered to be dying from their own incapacity to thrive in modernity and not from state violence. It only makes sense to take the lands of those who are disappearing.

If, as I have proposed, we understand what happened to Cindy Gladue as a colonial "branding" of the "flesh," a visible inscription of power on Gladue's body, when the vagina is brought into the courtroom, we are brought face to face with colonial terror.⁷⁷ As Sarah Hunt and Naomi Sayer conclude, "the wound to her vagina was displayed as proof of her dehumanized status." The dehumanization was not solely that Gladue was turned into a specimen through the display, however. It is also that the wounds reveal what is actually written on flesh in life: her status as less than human and her annihilation.

Perniciously, it was the lethal inscriptions on Cindy Gladue's flesh that risked being obscured if her vagina was not introduced as evidence. The pathologist feared that if we did not see it, we would not believe that a knife had made those marks. This inscription of Barton's power on Gladue's body can also be obscured by the outrage that surrounded the introduction of the body part as evidence, enabling what happened to Gladue to be written as an act of disrespect (for her culture and for her body in death). The brutal violence directed at Gladue and the collective attempted annihilation of Indigenous women may not come into full view as being systematized if the focus remains too narrowly aimed on indignity to one woman's body.

76. Douglas Quan, "Most Murdered and Missing Aboriginal Women Victims of Indigenous Perpetrators: RCMP", *National Post* (10 April 2015) <<http://news.nationalpost.com/news/canada/most-murdered-and-missing-aboriginal-women-victims-of-indigenous-perpetrators-rcmp>>.

77. Hortense Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book" (1987) 17:2 *Diacritics* 64 at 67.

The exhibition of a severed vagina of an Indigenous woman makes it difficult to untangle the sexualized violence from colonial domination. The defence feared that these complicated entanglements would be the end of Barton's defence. However, if the vagina can trigger the memory of the intense, persistent sexual mutilation of Indigenous women's bodies, which is so central to colonial regimes, it also can inspire terror. Viewing these wounds, Indigenous women can be terrorized. Equally, the displayed tissue can give rise to pleasure, the raced and colonial pleasure in the mutilation and annihilation of the Indigenous body. Settler society has a compelling need to see visible inscriptions of colonial power on Indigenous bodies. Perhaps, buried deep in all of us is this terrifying truth that is so hard to name: sexualized annihilation remains core to the colonial project and to the making of colonizers.