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Colonial Exploitation: The Canadian State and the Trafficking of Indigenous Women and Girls in Canada

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ABSTRACT

This Article argues that because of its historical and ongoing investments in settler colonialism, the Canadian state has long been complicit and continues to be complicit in the human trafficking of indigenous women and girls in Canada. In addition to providing indigenous bodies for labour and sexual exploitation, Canada's trafficking of indigenous people has been essential not only to securing the indigenous lands required for the nation's existence, but also in facilitating the speedy colonial elimination of indigenous people—whether through assimilation, forced emancipation, or death. Human trafficking, as such, has been essential to securing domination of indigenous peoples and territories throughout Canadian colonial history. This Article pays particular attention to the Canadian state's uses of law to enable the trafficking of indigenous women and girls (and indigenous peoples, generally).

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INTRODUCTION[1]

For indigenous women and girls in contemporary Canadian society, exploitation and violence are disturbingly relentless and brutal social norms. For example, evidence suggests that indigenous families experience some of the highest rates of violence in the country,[2] with one study finding that 80 percent of its indigenous female participants had experienced some form of family violence.[3] Indigenous women and girls also experience extremely high rates of sexual violence, with 75 percent of indigenous females experiencing some form of sexual abuse before age eighteen, with 50 percent experiencing this violence before age fourteen, and 25 percent experiencing this violence before age seven.[4] Moreover, an operational overview conducted by the Royal Canadian Mounted Police (RCMP), Canada's national police force, also recently confirmed what indigenous women and their communities have been saying for decades:[5]

1. Throughout this Article, I use the term "indigenous" to refer to the groups commonly referred to as Aboriginal, Indian, Native, First Nation, Inuit, and Métis in Canada. Its decapitalization is intentional, signaling its use as an adjective and not a proper noun, as we as indigenous peoples and nations have our own proper nouns for ourselves, such as Nehiyawak (Cree) or Anishinaabe (Ojibwa). Moreover, I privilege the use of these indigenous names throughout this discussion while also indicating their common English language translation. When citing the work of others (whether titles or direct quotes), I have maintained the integrity of the reference by using the original terminology. Finally, Indian is intentionally used to signal those with official status under Canada's Indian Act.
2. *See, e.g.*, ANNE MCGILLIVRAY & BRENDA COMASKEY, BLACK EYES ALL OF THE TIME: INTIMATE VIOLENCE, ABORIGINAL WOMEN, AND THE JUSTICE SYSTEM 17 (1999); MICHAEL BOPP, JUDIE BOPP & PHIL LANE, JR., ABORIGINAL HEALING FOUND., DOMESTIC VIOLENCE IN CANADA 24–27 (2003), *available at* http://www.ahf.ca/downloads/domestic-violence.pdf; PUB. HEALTH AGENCY OF CAN., ABORIGINAL WOMEN AND FAMILY VIOLENCE 3 (2008), *available at* http://www.onwa.ca/upload/documents/aboriginal-women-and-family-violence.pdf.
3. *See* ONTARIO NATIVE WOMEN'S ASS'N, BREAKING FREE: A PROPOSAL FOR CHANGE TO ABORIGINAL FAMILY VIOLENCE 7 (1989), *available at* www.oaith.ca/assets/files/Publications/Breaking-Free-Report.pdf.
4. *See* JOHN H. HYLTON, ABORIGINAL SEXUAL OFFENDING IN CANADA 50 (2006), *available at* www.ahf.ca/downloads/revisedsexualoffending_reprint.pdf.
5. For examples of indigenous women's arguments about the high rates of missing and murdered indigenous women and girls, see generally, AMNESTY INT'L, STOLEN SISTERS: A HUMAN RIGHTS RESPONSE TO DISCRIMINATION AND VIOLENCE AGAINST INDIGENOUS WOMEN IN CANADA (2004), *available at* http://www.amnesty.ca/sites/default/files/amr200032004enstolensisters.pdf; BEVERLY JACOBS, NATIVE WOMEN'S ASS'N OF CANADA SUBMISSION TO THE SPECIAL RAPPORTEUR INVESTIGATING THE VIOLATIONS OF INDIGENOUS HUMAN RIGHTS (2002); NATIVE WOMEN'S ASS'N OF CAN., VOICES OF OUR SISTERS IN SPIRIT: A REPORT TO FAMILIES AND COMMUNITIES (2d ed. 2009), *available at* http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009FINAL.pdf; NATIVE WOMEN'S ASS'N OF CAN., WHAT THEIR STORIES TELL US: RESEARCH FINDINGS

Indigenous women and girls represent a disproportionate number of female homicide victims, and represent a disproportionate number of missing females in Canada.[6] The RCMP files showed 1017 indigenous-female homicides between 1980 and 2012, and 164 currently unresolved cases of missing indigenous females.[7] These numbers are stark for two reasons. First, despite representing only 4.3 percent of the Canadian female population,[8] indigenous females made up 11.3 percent of the total number of missing females in Canada[9] and 16 percent of all female homicides.[10] Second, RCMP statistics suggest that, on average, indigenous females were 5.5 times more likely to be murdered than nonindigenous females in Canada.[11]

The exploitation and violence indigenous females experience in contemporary Canadian society extends to the heinous crime of human trafficking. Formal statistics capturing the scope of the trafficking of indigenous females are limited for several reasons, including the clandestine and underground nature of this violence, the regularity of underreporting by victims (due to fear and coercion), the movement of trafficked individuals, and the lack of focus and clear understanding of the violence of human trafficking—particularly the Canadian political pattern of highlighting international trafficking while deemphasizing domestic trafficking.[12] According to the Urban Native Youth Association, an outreach group working with indigenous youth in Vancouver, British Columbia, approximately 60 percent of both female and male sexually exploited youth in that city are indigenous—a number that "has remained constant over the past few years, and threatens to climb even higher if we do not act now to stem the tide of Aboriginal child and youth sexual exploitation."[13] Researcher Anupriya Sethi points to indigenous female representation in the survival sex trade—the ex-

FROM THE SISTERS IN SPIRIT INITIATIVE (2010), *available at* http://www.nwac.ca/files/reports/2010_NWAC_SIS_Report_EN.pdf.

6. *See* ROYAL CANADIAN MOUNTED POLICE, MISSING AND MURDERED ABORIGINAL WOMEN: A NAT'L OPERATIONAL OVERVIEW 3 (2014), available at http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf.
7. *See id.* at 7.
8. *Id.*
9. *Id.* at 8.
10. *Id.* at 9.
11. *Id.* at 10. This average was calculated using the figures presented in Figure 5–Female homicide victimization rate. The average homicide rate for indigenous females between 1996 and 2011 was 5.5 per 100,000, and the average homicide rate for nonindigenous females during the same period was .95 (or 1.0 if rounded to the nearest whole number) per 100,000, making indigenous females, on average, 5.5 times more likely to be victims of homicide than nonindigenous females.
12. *See* Anupriya Sethi, *Domestic Sex Trafficking of Aboriginal Girls in Canada: Issues and Implications*, 3 FIRST PEOPLES CHILD & FAM. REV. 59, 65 (2007).
13. *See* URBAN NATIVE YOUTH ASS'N, FULL CIRCLE 6 (2002).

tremely visible, low paid, and highly violent street-based trade often engaged in to provide minimally for basic subsistence and, frequently, to support an addiction—as offering some insight into the potential numbers of indigenous women and girls being targeted for human trafficking for sexual exploitation.[14] In her study of the domestic sex trafficking of indigenous girls in Canada, Sethi found that young indigenous females make up anywhere from 14 to 60 percent of the survival sex trade in various regions across Canada.[15] In their 2005 interview study of prostitution in Vancouver, researchers Melissa Farley, Jacqueline Lynne, and Ann J. Cotton noted that indigenous females represented 52 percent of the sample.[16] As in the case of missing and murdered indigenous women and girls, these statistics suggest a disturbing overrepresentation of indigenous females in the sex trade in Canada and, therefore, a likely overrepresentation amongst those targeted for human trafficking. This probability is reinforced by the numerous studies suggesting that a concurrence of social factors—including the legacies of the residential school system, racism, urban migration, extreme poverty, involvement with state child welfare agencies, high rates of addiction and mental health issues, and high rates of interpersonal and family violence—make indigenous females extremely vulnerable to being targeted for human trafficking.[17]

Since becoming a signatory on the United Nations (U.N.) Protocol to Prevent, Suppress and Punish Trafficking in Persons (also known as the Palermo Protocol) in 2000, the Canadian state[18] has taken action—albeit painfully slow[19] and primarily through law—to address the issue of human trafficking. As part of its international commitment to prevent human trafficking, protect and assist victims, and prosecute traffickers, the Canadian government added a prohibition

14. *See* Sethi, *supra* note 12, at 58–59.
15. *Id.* at 59.
16. Melissa Farley, Jacqueline Lynne & Ann J. Cotton, *Prostitution in Vancouver: Violence and the Colonization of First Nations Women*, 42 TRANSCULTURAL PSYCHIATRY 242, 242 (2005).
17. *See* NATIVE WOMEN'S ASS'N OF CAN., SEXUAL EXPLOITATION AND TRAFFICKING OF ABORIGINAL WOMEN AND GIRLS: LITERATURE REVIEW AND KEY INFORMANT INTERVIEWS 11–16 (2014); PAUKTUUTIT INUIT WOMEN OF CAN., INUIT VULNERABILITIES TO HUMAN TRAFFICKING 6–26 (2013); ANETTE SIKKA, INST. ON GOVERNANCE, TRAFFICKING OF ABORIGINAL WOMEN AND GIRLS IN CANADA 6–11 (2009); Victoria Sweet, *Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada* 5–8 (Mich. State Univ. Sch. Of Law, Research Paper No. 12-01, 2014), *available at* http://ssrn.com/abstract=2399074.
18. For the purposes of this discussion, the Canadian state refers to the federal, provincial, and territorial governments and their institutions, including the criminal justice, health, and education systems.
19. *See generally* BENJAMIN PERRIN, INVISIBLE CHAINS: CANADA'S UNDERGROUND WORLD OF HUMAN TRAFFICKING 118 (2010) (explaining the glacial pace of Canadian state interventions on human trafficking).

against trafficking to the Immigration and Refugee Protection Act in June 2002, stating "[n]o person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion."[20] In November 2005, the federal government made "trafficking in persons" an indictable offense under the Criminal Code of Canada for the first time in the country's history.[21] Amendments to the Criminal Code in 2010 added special provisions with mandatory minimum sentencing for trafficking persons under age eighteen.[22] Another amendment in 2012 made it possible to prosecute Canadians for trafficking persons while outside of Canada. Since 2005, the RCMP has operated the Human Trafficking National Coordination Centre (HTNCC).[23] It serves as "a focal point for law enforcement in their efforts to combat and disrupt individuals and criminal organizations involved in Human Trafficking activities."[24] The HTNCC is structured around five priorities, which are to:

> (1) develop tools, protocols, and guidelines to facilitate Human Trafficking investigations; (2) coordinate national awareness/training, and anti-trafficking initiatives; (3) identify and maintain lines of communication, identify issues for integrated coordination and provide support; (4) develop and maintain international partnerships and coordinate international initiatives; and (5) coordinate intelligence and facilitate the dissemination of all sources of information/intelligence.[25]

Provincial governments in Canada have also established human trafficking responses, most notably the province of British Columbia's Office to Combat Trafficking in Persons (OCTIP) created in 2007. Both the federal and provincial/territorial governments have also partnered with and disseminated funding to nongovernmental organizations, social service providers, and community groups to implement a variety of initiatives responding to human trafficking.[26]

In 2012, the Government of Canada released its National Action Plan to Combat Human Trafficking through its Ministry of Public Safety. Presiding

20. *Id.* at 120; Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 118 (Can.).
21. *See* Perrin, *supra* 19, at xviii.
22. Bill C-268, An Act to Amend the Criminal Code (Minimum sentence for offences involving trafficking of individuals under age eighteen). Enacted by the 40th Parliament on June 29, 2010.
23. *See* Perrin, *supra* 19, at 138–139.
24. Royal Canadian Mounted Police, *Human Trafficking National Coordination Centre*, ROYAL CANADIAN MOUNTED POLICE, http://www.rcmp-grc.gc.ca/ht-tp/index-eng.htm (last modified Mar. 9, 2015).
25. *Id.*
26. *See* GOV'T OF CAN., NATIONAL ACTION PLAN TO COMBAT HUMAN TRAFFICKING 1 (2012), *available at* http://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf; PERRIN, *supra* note 19, 99–110.

Minister of Public Safety Vic Toews called human trafficking "one of the most heinous crimes imaginable" because it "robs its victims of their most basic human rights," and stated that "[a]s part of our Government's longstanding commitment to protect the vulnerable, tackle crime and safeguard Canadians and their families in their homes and communities, we are taking action against these terrible crimes."[27] The purpose of this action plan, he claimed, was "to consolidate all of the [existing national and international] activities into one comprehensive plan with an unwavering pledge to action" and to propose "strategies that will better support organizations providing assistance to victims and help[] to protect foreign nationals . . . from being subjected to illegitimate or unsafe work."[28] "I am confident," Toews concluded, "that as we move forward as a country, we will be able to effectively address this issue in Canada and in the international arena." By "releasing this National Action Plan, we are sending a clear message that Canada will not tolerate this crime, that victims will be given the help they need, and that perpetrators will be brought to justice."[29]

Yet as the Canadian state takes this hard stand against human trafficking, indigenous women, their organizations, and indigenous and nonindigenous researchers have begun raising significant concerns about how this stance impacts indigenous women and girls in Canada. The state's efforts, it is contended, fail to adequately or appropriately meet the complex needs of indigenous females and their communities when it comes to addressing human trafficking.[30] Indeed, "for indigenous peoples," indigenous legal scholar Victoria Sweet argues, "human trafficking is just the new name of a historical problem": colonization and ongoing exploitation by outsiders.[31] Significantly, scholars argue that because domestic trafficking has not received the same attention as international trafficking in mainstream Canadian society,[32] the trafficking of indigenous women and girls has remained largely invisible. The result is that, as legal scholar Anette Sikka points out, there is "a lack of services available to address the trafficking of Aboriginal women and girls and a general apathy from the criminal justice system towards the types of trafficking they face."[33]

27. GOV'T OF CAN., *supra* note 26, at 1.
28. *Id.*
29. *Id.* at 2.
30. *See, e.g.*, YVONNE BOYER & PEGGY KAMPOURIS, PUB. SAFETY CAN., TRAFFICKING OF ABORIGINAL WOMEN AND GIRLS 3–4, 50–56 (2014), *available at* http://www.iphrc.ca/assets/Documents/Boyer%20&%20Kampouris%20Report.pdf; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 29–30, 67; PAUKTUUTIT, *supra* note 17, at 3, 21–22; SIKKA, *supra* note 17, at 1–2; Sethi, *supra* note 12, at 65–68; Sweet, *supra* note 17, at 14–19.
31. *See* Sweet, *supra* note 17, at 2.
32. *See* Sethi, *supra* note 12, at 57; SIKKA, *supra* note 17, at 1.
33. SIKKA, *supra* note 17, at 1.

Change in the state response to domestic human trafficking, critics conclude, is critical, given the increasing numbers of indigenous women and girls being trafficked across Canada.[34]

Importantly, if we accept indigenous women's position that settler colonialism is a fundamental factor in the current vulnerability of indigenous women and girls in Canada as targets for human trafficking, then, as a settler colonial nation, it is critical to interrogate Canada's complicity in the trafficking of indigenous women and girls within its borders. As indigenous legal scholar Sarah Deer has argued, colonialism in the Americas has long relied on the trafficking of indigenous people to establish and secure settler dominance over indigenous peoples and, critically, indigenous lands.[35] While this contention has previously been raised in the Canadian context,[36] there has been limited scholarly analysis of the Canadian state's involvement in the trafficking of indigenous people. Thus, in this Article, I demonstrate that by its own legal and conceptual definitions of human trafficking, the Canadian state has been and continues to be directly complicit in the trafficking of indigenous women and girls. This Article examines not only instances of trafficking on the part of the Canadian state, but also how Canadian state actions—including through the laws it adopts—contribute to the current vulnerability of indigenous women and girls to trafficking. The goal of this Article is to not only expose the Canadian state's complicity with human trafficking, but also to demonstrate the centrality of human trafficking to the historical and ongoing settler colonial project of the Canadian nation state—both of which are essential to understanding and addressing the trafficking of indigenous women and girls in Canada.

34. *See* BOYER & KAMPOURIS, *supra* note 30, at 4; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 67; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 28; Sweet, *supra* note 17, at 7–8.

35. *See* Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621 (2010), 624–25.

36. *See* Sarah Hunt, *Colonial Roots, Contemporary Risk Factors: A Cautionary Exploration of the Domestic Trafficking of Aboriginal Women and Girls in British Columbia, Canada*, ALLIANCE NEWS, July 2010, at 27–28, *available at* http://www.gaatw.org/publications/Alliance%20News/Alliance_ News_July_2010.pdf.

I. FRAMING HUMAN TRAFFICKING

A. Canadian State Definitions and Conceptualizations of Human Trafficking

A necessary starting point for this analysis is defining its main term: human trafficking. To do so, I draw on how it has been defined by and for (in the case of international treaty obligations) the Canadian state through law. My reason for doing so is simple: This analysis hinges on demonstrating the Canadian state's complicity in human trafficking and, as such, using its own definitions and understandings of this violence validates this argument. By using the state's own standards for assessing the crime of human trafficking, I also make poignantly explicit how Canada is and has been operating in contravention of its own laws and international treaty obligations. Nevertheless, this is in no way intended to suggest that this conceptualization is the most accurate or even most desirable definition of human trafficking.

As noted in the introduction, Canada's first prominent pledge to address human trafficking was made as part of the U.N. Palermo Protocol. Article 3(a) of this protocol provides a detailed explanation of how human trafficking is to be understood by the international community:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.[37]

It also provides a basic definition for "exploitation": "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."[38]

To critically interrogate and map the Canadian state's involvement in the trafficking of indigenous women and girls both historically and in the contemporary, it is important to highlight some of the specific commitments for signatory nations within the Palermo Protocol. Particularly relevant is Article 6's dealing

37. United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, at 42 (Nov. 15, 2000).
38. *Id.*

with the "assistance to and protection of victims of trafficking in persons."[39] For example, Article 6, Subsection One commits signatory states to protecting the privacy and identity of the victims including "by making legal proceedings relating to such trafficking confidential."[40] Subsection Two commits each signatory to ensuring

> that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.[41]

Subsection Three impels nation states to "consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons" including such things as "appropriate" housing; counseling and information on "their legal rights in a language that the victims of trafficking in persons can understand"; "medical, psychological and material assistance"; and employment, educational, and training opportunities.[42] Subsection Four commits signatories to "tak[ing] into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children."[43] Finally, but perhaps most importantly, Subsection Five directs nation states to "endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory."[44] The Palermo Protocol reaffirms this goal by committing signatory states to "establish[ing] comprehensive policies, programmes, and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children from revictimization."[45]

Specific provisions within both the Criminal Code and the Immigration and Refugee Protection Act outline the state's conceptualization of this violence and its response to its commitments under these treaties. For instance, section 279.01 of the Criminal Code which deals with "trafficking in persons" states, "[e]very person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is

39. *Id.* at 43.
40. *Id.* at 43–44.
41. *Id.* at 44.
42. *See id.*
43. *Id.*
44. *See id.*
45. *Id.* at 45–46.

guilty of an indictable offence."[46] Importantly, the Criminal Code distinguishes human trafficking victims on the basis of age, requiring increased minimum sentencing terms for trafficking persons under age eighteen.[47] It also imposes the maximum sentence of life in prison if traffickers "kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence."[48] Finally, the Criminal Code invalidates claims of consent in cases of human trafficking.[49]

The Immigration and Refugee Protection Act also criminalizes human smuggling and trafficking: Article 117, subsection one states that "[n]o person shall organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act." [50] Article 118(1) states that "no person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion."[51] Finally, article 121(1) outlines "aggravating factors" to be considered by courts in assessing human trafficking penalties, including whether

> (a) bodily harm or death occurred, or the life or safety of any person was endangered, as a result of the commission of the offence; (b) the commission of the offense was for the benefit of, at the direction of or in association with a criminal organization; (c) the commission of the offense was for profit, whether or not any profit was realized; and (d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.[52]

Another prominent Canadian state response to human trafficking was a 2012 release by Public Safety Canada—a department of the federal government addressing such issues as emergency management, national security, border security, and crime prevention—of the National Action Plan to Combat Human Trafficking.[53] "While many initiatives are underway, both at home and abroad," notes Toewes in his foreword to the plan, "the time has come to consolidate all of

46. Canada Criminal Code, R.S.C. 1985, c. C-46, s. 279.01.
47. *See id.* s. 279.011.
48. *See id.* s. 279.01(1)(a); *see also id.* s. 279.011(1)(a) (same provision for the trafficking in persons under age eighteen).
49. *See id.* s. 279.01(2), s. 279.011(2).
50. Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 117 (Can.).
51. *Id.* s. 118(1).
52. *Id.* s. 121(1).
53. See Government of Canada, Nat'l Action Plan to Combat Human Trafficking.(Ottawa: Her Majesty the Queen in Right of Canada, 2012), available at http://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ntnl-ctn-pln-cmbt/ntnl-ctn-pln-cmbt-eng.pdf.

the activities into one comprehensive plan with an unwavering pledge to action."[54] In this plan, the government laid out its responses to this issue organized around four areas: (1) prevention; (2) protection and assistance for victims; (3) detection, investigation, and prosecution of traffickers; and (4) partnerships and knowledge. It also presented a state definition of human trafficking: "Human Trafficking involves the recruitment, transportation, harbouring and/or exercising control, direction or influence over the movements of a person in order to exploit that person, typically through sexual exploitation or forced labour."[55] The plan notes that is often described as a "modern-day slavery"[56] involving the absence of consent and ongoing exploitation that occurs transnationally, but also "within Canada's borders."[57]

Scholars and researchers have highlighted some key components of Canada's legal definitions and understandings of human trafficking. First, they note that between the Criminal Code and the Immigration and Refugee Protection Act, both nationals and internationals are not only guaranteed protection from human trafficking, but also subject to prosecution for engaging in human trafficking offenses.[58] Second, despite the common belief that trafficking necessarily involves transportation of trafficked persons, Criminal Code provisions do not require proof of movement in laying human trafficking charges but focus instead on the elements of coercion, exploitation, and abuse.[59] Third, in assessing exploitation, the Criminal Code requires proof that a trafficked individual feared for their safety if they failed to comply with the demands of their trafficker.[60] According to legal scholar and human trafficking expert Benjamin Perrin, this requirement not only makes Canada's laws distinct from the UN Palermo Protocol and other nations who have enacted criminal offences against human trafficking, but also creates problematic constraints:

> The *Criminal Code*'s definition of human trafficking centres on the victim's fear for safety or the safety of someone known to the victim. This is unfortunately too narrow because it fails to criminalize other means by which trafficking is routinely committed. It could be argued that "safety" should not be restricted simply to the physical harm but also should encompass psychological and emotional harm (i.e., blackmailing

54. GOV'T OF CAN., *supra* note 26, at 1.
55. *Id.* at 4; SIKKA, *supra* note 17, at 4–5.
56. GOV'T OF CAN., *supra* note 26, at 1.
57. *Id.* at 4.
58. *See* PERRIN, *supra* note 19, at 119–22.
59. *See* BOYER & KAMPOURIS, *supra* note 30, at 13; PERRIN, *supra* note 19, at 119; Sweet, *supra* note 17, 3–4.
60. *See* PERRIN, *supra* note 19, at 137–38; SIKKA, *supra* note 17, at 5.

> the victim). Yet the definition may fail to address insidious methods used by traffickers—deception, fraud, abuse of power/position of vulnerability, or payment of someone to control the victim—that should be included, as required by the *Palermo Protocol*. These methods are not clearly captured in Canada's *Criminal Code* definition unless they can be linked to the conception of "safety." As a result of this loophole, traffickers in Canada have been able to escape human trafficking charges.[61]

Furthermore, this definition places the burden of proof on victims with the result, Perrin argues, that only the most extreme cases of human trafficking—those involving severe physical violence or threats—are likely to be prosecuted in Canadian courts.[62] The police officers interviewed by Yvonne Boyer and Peggy Kampouris as part of their study on trafficking for the federal Public Safety Ministry confirmed Perrin's concerns: They "pointed out that, in many cases where indicators of human trafficking and exploitation are present, the victim often considers the trafficker to be a 'boyfriend,'" and "if a victim doesn't disclose, or isn't afraid for her safety or the safety of her family, then the threshold of the law is not met [and] [t]he police are then unable to lay human trafficking charges."[63] Finally, I would add that the Canadian state's conceptualizations of trafficking are focused on individual perpetrators and criminal organizations and not on nation states as possible perpetrators. Fortunately, Canada's commitment to the Palermo Protocol presents an international political pathway for possibly pursuing recourse against the Canadian state for its complicity in human trafficking.

In assessing Canada's complicity in the trafficking of indigenous women and girls, then, this analysis considers the following criteria culled from these conceptualizations of human trafficking in international and Canadian law: first, the use of deception, coercion, and manipulation by traffickers to exploit the bodies and labour of others for profit and personal gain;[64] second, the distinctly Canadian requirement that trafficking victims feared for their safety if they failed to comply with the requirements of the traffickers;[65] third, the criterion that the use of violence or causing death may be aggravating factors in the commission of the offense

61. PERRIN, *supra* note 19, at 137.
62. *See id.*
63. BOYER & KAMPOURIS, *supra* note 30, at 13.
64. *See* Canada Criminal Code, R.S.C. 1985, c. C-46, s. 279.01; United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, at 42 U.N. Doc. A/RES/55/25 (Nov. 15, 2000).
65. *See* PERRIN, *supra* note 19, at 137–38; SIKKA, *supra* note 17, at 5.

of human trafficking resulting in higher criminal penalties;[66] and finally, the enhanced penalty for engaging in the trafficking of those aged eighteen and under.[67]

Wherever applicable, the following analysis also draws on the other specific legal provisions outlined in the previous discussion.

B. Indigenous Women Theorize Human Trafficking

Indigenous women in Canada have developed strong theoretical understandings of the violence of human trafficking, including an understanding of the Canadian state's complicity in this violence. This privileging of the indigenous woman's perspective is intended to recognize their collective expertise and knowledge about their own lives. Indeed, this privileging also falls in line with efforts to decolonize and indigenize both Western research and academia.[68] While in no way wanting to homogenize or simplify either indigenous women or their experiences with human trafficking (not to mention the complex debates and responses indigenous women, their organizations, and communities have developed in response to this violence), this section will summarize some of the common definitions, positions, and recommendations made by indigenous women in addressing the trafficking of indigenous women and girls in Canada.

Indigenous women argue that indigenous females in Canada are highly vulnerable to being trafficked[69]—a perspective shared by nonindigenous scholars and researchers who have also examined this issue.[70] This extreme vulnerability, they contend, is the product of interlocking social factors including gender and

66. *See* Canada Criminal Code, R.S.C. 1985, c. C-46, s. 279.01(1)(a); *see also id.* s. 279.011(1)(a) (same provision for the trafficking in persons under age eighteen).

67. *See id.* s. 279.011.

68. For general discussions of both the colonizing and decolonizing/indigenizing of research and academia, see MARIE BATTISTE & JAMES (SA'KE'J) YOUNGBLOOD HENDERSON, PROTECTING INDIGENOUS KNOWLEDGE AND HERITAGE: A GLOBAL CHALLENGE, (Page Wood Publ'g Servs. Ed., 2000); INDIGENIZING THE ACADEMY: TRANSFORMING SCHOLARSHIP AND EMPOWERING COMMUNITIES (Devon Abbott Mihesuah & Angela Cavender Wilson eds., 2004); LINDA TUHIWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES (1999).

69. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2; CHERRY KINGSLEY & MELANIE MARK, SACRED LIVES: CANADIAN ABORIGINAL CHILDREN & YOUTH SPEAK OUT ABOUT SEXUAL EXPLOITATION 4, 11–12 (2000), *available at* http://www.gov.mb.ca/fs/traciastrust/pubs/sacred_lives.pdf; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 11–14; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 8–26; Hunt, *supra* note 36, at 28–29.

70. *See, e.g.*, PERRIN, *supra* note 19, at 95–96; Sethi, *supra* note 12, at 59; SIKKA, *supra* note 17, at 13–14; Melissa Farley, *Prostitution and the Invisibility of Harm*, 26 WOMEN & THERAPY 247, 254–55 (2003), *available at* http://dx.doi.org/10.1300/J015v26n03_06.

racial discrimination,[71] youth,[72] extreme poverty,[73] undereducation,[74] unemployment and underemployment,[75] inadequate and unstable housing,[76] homelessness,[77] high rates of mental health issues,[78] drug and alcohol use and addictions,[79] poor physical health,[80] involvement in dysfunctional or violent families and institutions (such as Canadian child welfare agencies and residential schools),[81] and high rates of physical and sexual abuse (as children and as adults).[82] And while the high rates of urban migration to Canadian cities (with a resultant dissolution of support networks) are a contributing factor to the vulnerability of indigenous women and girls to trafficking,[83] so too are the isolation, absence of resources, and normalization of violence in rural communities (especially in the northern regions of Canada).[84] In addition to these issues, the political organization Pauktuutit Inuit Women of Canada has argued that the particular economics of the northern regions of Canada (with their high inflation rates, inadequate employment opportunities, high unemployment rates, and low job vacancy rates),[85] suicide,[86]

71. *See, e.g.*, KINGSLEY & MARK, *supra* note 69, at 17, 24, 28; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13.
72. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 21; KINGSLEY & MARK, *supra* note 69, at 33; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 28.
73. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2, 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 15–18, 22; Hunt, *supra* note 36, at 28.
74. *See, e.g.*, KINGSLEY & MARK, *supra* note 69, at 14, 33; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13–14; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 23.
75. *See, e.g.*, KINGSLEY & MARK, *supra* note 69, at 33; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 15–18.
76. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 21.
77. *See, e.g.*, KINGSLEY & MARK, *supra* note 69, at 19–20.
78. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2, 21; KINGSLEY & MARK, *supra* note 69, at 23; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 19.
79. *See, e.g.*, PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 28.
80. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2; KINGSLEY & MARK, *supra* note 69, at 21–22.
81. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 19; KINGSLEY & MARK, *supra* note 69, at 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 25–26.
82. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2, 18–20; KINGSLEY & MARK, *supra* note 69, at 14–16; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 8, 10–12; Hunt, *supra* note 36, at 28.
83. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 19; KINGSLEY & MARK, *supra* note 69, 19–20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 29.
84. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 3, 15; KINGSLEY & MARK, *supra* note 69, at 19; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 28–29.
85. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 7; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 15–18.
86. *See* PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 19.

food insecurity,[87] limited availability of shelters and shelter spaces and services,[88] and the breakdown or absence of support systems (both familial and community)[89] contribute to Inuit vulnerabilities to trafficking. Notably, the organization also identifies the increasing use of technology, especially social media, as a particular gateway that influences Inuit vulnerability to predators.[90] Victoria Sweet's work also suggests that resource extraction and its resultant influx of predominantly male travelers to the north make Inuit and other indigenous women extremely vulnerable to human trafficking.[91]

1. Colonialism

The key factor that these indigenous female writers identify as contributing to their vulnerability to being trafficked, however, is colonialism.[92] Colonialism underlies many of the previously mentioned contributing factors. As Pauktuutit Inuit Women of Canada contends:

> There are many precursors to being victimized by human trafficking, and many situations that put Inuit in vulnerable positions. The impact of residential schools and the imposition of other assimilative government policies have negatively altered the Inuit traditional way of life and culture. This historical trauma has contributed to social issues that have resulted in increased crime, substance abuse, and the normalization of violence and sexual abuse in northern communities.[93]

Similarly, Cherry Kingsley and Melanie Mark argue in their report on the trafficking of indigenous children for the Canadian branch of the international nongovernmental organization Save the Children:

> The illicit nature of commercial sexual exploitation prevents 'hard' statistics, but there is a widespread consensus among community organizations, service providers, and front line agencies that Aboriginal youth participation in the sex trade is increasing . . . . This serious overrepresentation is directly linked to the unacceptable and continuing high level of risk factors which this population faces. The Aboriginal children and youth who participated in these consultations *are*

87. *See id.* at 19–20.
88. *See id.* at 21–22.
89. *See id.* at 25–26.
90. *See id.* at 24.
91. *See* Sweet, *supra* note 17, at 1–2, 12.
92. *See* BOYER & KAMPOURIS, *supra* note 30, at 5–7; KINGSLEY & MARK, *supra* note 69, at 8, 11–12, 15–17; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 11, 53; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 5–7, 28; Hunt, *supra* note 36, at 27–28.
93. PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 28.

> *perpetuating a vicious cycle which started hundreds of years ago. The negative impact of European colonialism on Native peoples and their cultures has been a decisive factor in creating and maintaining barriers of social, economic, and political inequality.*[94]

Indeed, they contend, "[w]e must realize that the physical and mental well being of all Canadian children and youth are profoundly political issues, and are inseparable from social and economic situations."[95]

Indigenous women have highlighted particular aspects of colonialism that contribute to making indigenous women and girls extremely vulnerable to being targeted for human trafficking. The enduring colonial racist and sexist stereotype of dirty, promiscuous, and deviant indigenous femininity (often termed the "squaw"), some claim, provides ideological confirmation that indigenous women and girls are sexually available and therefore sexually violable—which not only enables the trafficking of indigenous females, but all other forms of violence against indigenous women and girls.[96] "Stereotypes about the sexual availability and willingness of Aboriginal girls and women," writes Kwakwaka'wakw First Nation scholar and activist Sarah Hunt, "has resulted in generations of sexual violence and abuse continuing outside the law, as though it was not illegal to rape or batter an Aboriginal woman."[97] In their report on the trafficking of indigenous women and girls in Canada produced for Public Safety Canada, authors Yvonne Boyer and Peggy Kampouris claim that "[m]any women now face desperate circumstances in Canadian towns and cities, a situation many attribute to the sexist stereotypes and racist attitudes applied towards Aboriginal women and girls, as well as a general indifference to their welfare and safety."[98] Moreover, this devaluation of indigenous human lives stemming from colonial stereotypes, often compounded by their involvement in the sex trade, contributes to the failure of mainstream Canadian systems (such as health, justice, and social service) to respond adequately or appropriately to this violence.[99] For example, in interviews with service and frontline organizations, Boyer and Kampouris reported "that Aboriginal women experience racism in the health care system"[100]:

94. KINGSLEY & MARK, *supra* note 69, at 8 (emphasis added).
95. *Id.*
96. *See* Hunt, *supra* note 36, at 27–28; ANDREA SMITH, CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE 7–14 (2005) (this position is also the focus of Andrea Smith's book).
97. Hunt, *supra* note 36, at 28.
98. BOYER & KAMPOURIS, *supra* note 30, at 7.
99. *See id.* at 17, 22; KINGSLEY & MARK, *supra* note 69, 26–27; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 48; SIKKA, *supra* note 17, at 2–3, 7–9.
100. BOYER & KAMPOURIS, *supra* note 30, at 22.

> They are asked questions such as this routinely: "How much have you had to drink?," "What drugs have you done?," and "You are a prostitute are you not?" . . . . [I]f an Aboriginal woman who has been trafficked or is in the sex trade has been raped, often they will get a cold response at the hospital and leave after many, many hours of waiting . . . .[101]

Similarly, the social service and frontline support organizations interviewed by Boyer and Kampouris pointed to this same discrimination perpetrated by Canadian police.[102] Citing one of their participants, they stated "[t]here is no trust. [The police] either rape you or arrest you. The cause is racism and discrimination."[103] Finally, in a 2014 study of human trafficking conducted by the Native Women's Association of Canada (NWAC), frontline social service providers reported the shortage of support for indigenous women and girls as a major obstacle for indigenous women and girls wanting to leave prostitution.[104] "Not only is there a lack of supports," the political organization contends, "there is also the morale impact from the women seeing their prioritization by society through this shortage."[105]

2. The Residential School System

Not only is the residential school system identified by indigenous women as contributing significantly to many of the aforementioned factors producing a high vulnerability to being trafficked,[106] but some also identify it as a form of human trafficking.[107] The high rates of interpersonal violence in indigenous communities, they argue, are the product of generations of indigenous children being educated in violent residential schools and subjected to physical, sexual, emotional, and spiritual abuse and gross neglect.[108] As Boyer and Kampouris note, "the residential school legacy has contributed to intergenerational physical and sexual abuse; family members who were abused in that regime have a higher chance of abusing their own children, than family members who did not attend

101. *Id.*
102. *See id.* at 17.
103. *Id.*
104. *See* NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 46.
105. *Id.*
106. *See* BOYER & KAMPOURIS, *supra* note 30, at 34; KINGSLEY & MARK, *supra* note 69, at 11, 13, 59; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 11; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 6–7.
107. *See* Deer, *supra* note 35, at 665–69; Hunt, *supra* note 36, 27–28.
108. *See* BOYER & KAMPOURIS, *supra* note 30, at 34; KINGSLEY & MARK, *supra* note 69, at 13, 59; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 11.

or otherwise face abuse in their own lives."[109] According to Kingsley and Mark, residential schools have contributed to the fragmentation of indigenous cultures, as well as indigenous families and communities, eroding support networks, and removing positive indigenous role models that might protect indigenous women and girls from trafficking.[110] Some, however, take a stronger stand arguing, as Sarah Hunt does, that "[f]orced migration, confinement in residential schools and facilitated sexual abuse has the characteristics of what we now call human trafficking, although it is not recognized as such."[111]

From the perspective of indigenous women, then, colonialism is a fundamental factor influencing indigenous female vulnerability to human trafficking—and naming this factor, as this discussion makes clear, necessarily involves critically acknowledging and interrogating the Canadian state's complicity in the trafficking of indigenous women and girls. While indigenous women have pointed to the residential school system and the absence of criminal justice system responses as indicative of this complicity, the next section of this Article focuses on expanding our understanding of Canada's historical and ongoing involvement in the trafficking of indigenous females.

II. THE CANADIAN STATE AND THE TRAFFICKING OF INDIGENOUS WOMEN AND GIRLS

A. Interrogating the Canadian State: Colonial Exploitation and the Trafficking of Indigenous Women and Girls in Canada

Acknowledging the fundamental role of colonialism and thus Canada's complicity in the trafficking of indigenous women and girls requires an understanding of Canada as a settler colonial nation. The Canadian nation state, alongside other major nations including the United States and Australia, are white settler colonial nations established through the domination and exploitation of indigenous peoples and their lands. As critical antiracist feminist scholar Sherene Razack explains:

109. BOYER & KAMPOURIS, *supra* note 30, at 34.

110. *See* KINGSLEY & MARK, *supra* note 69, at 13, 17–18; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 7.

111. *See* Hunt, *supra* note 36, at 27–28. Additionally, indigenous legal scholar Sarah Deer has carefully articulated this position in relation to the Indian residential school system in the United States and, given the similarities in the system, her analysis can be extended to the Canadian context. *See* Deer, *supra* note 35, at 665–69.

> A white settler society is one established by Europeans on non-European soil. Its origins lie in the dispossession and near extermination of Indigenous populations by the conquering Europeans. As it evolves, a white settler society continues to be structured by a racial hierarchy. In the national mythologies of such societies, it is believed that white people came first and that it is they who principally developed the land; Aboriginal peoples are presumed to be mostly dead or assimilated. European settlers thus *become* the original inhabitants and the group most entitled to the fruits of citizenship.[112]

As Razack points out, racial hierarchy underpins settler colonialism, both ideologically and practically, with white settler supremacy established and confirmed through the portrayal of indigenous peoples as subhuman: inferior, backwards, uncivilized, deviant, dirty, and inherently worthless to dominant society.[113] This racist ideology works in interlocking and mutually supportive synchronicity with sexist ideology to produce the dominant image of the inherently sexually available, and therefore sexually violable, indigenous female, previously identified by indigenous women in their critical responses to the trafficking of indigenous women and girls in Canada.[114] This denigration of indigeneity by dominant society is required to not only justify and excuse violence against indigenous peoples, but also to justify and excuse the theft of the indigenous lands and resources required for establishing and securing a white nation state.[115] As Razack notes, however, "[a] quintessential feature of white settler mythologies is . . . the disavowal of conquest, genocide, slavery, and the exploitation of the labour of peoples of colour," and "[i]n North America, it is still the case that European conquest and colonization are often denied, largely through the fantasy that North America was peacefully settled and not colonized."[116]

In the United States, indigenous legal scholar Sarah Deer has meticulously detailed how the colonization of the Americas has required the ongoing trafficking of indigenous women and children to secure colonial domination over indigenous peoples and territories.[117] "These tactics of traffickers," she argues, "are

112. Sherene H. Razack, *Introduction: When Place Becomes Race*, RACE, SPACE, AND THE LAW: UNMAPPING A WHITE SETTLER SOCIETY 1, 1–2 (Sherene H. Razack ed., 2002).

113. *Id.* at 3. *See also* Sherene H. Razack, *Gendered Racialized Violence and Spatialized Justice: The Murder of Pamela George*, *in* RACE, SPACE, AND THE LAW: UNMAPPING A WHITE SETTLER SOCIETY, at 126–128, Smith, *supra note 96,* at 9–10, 12, 22–23.

114. *See* BOYER & KAMPOURIS, *supra* note 30, at 7; Hunt, *supra* note 36, at 27–28. *See also* Razack, *supra* note 114, at 121, 126 (Sherene H. Razack ed., 2002); SMITH, *supra* note 96, at 7–33; SIKKA, *supra* note 17, at 1.

115. *See* Razack, *supra* note 114, at 129–31.

116. Razack, *supra* note 112, at 2.

117. *See* Deer, *supra* note 35.

consistent with many of the tactics used by colonial and American governments to subjugate Native women and girls" and this "behavior is so deeply ingrained in American history that it is often rendered invisible and thus becomes normalized."[118] According to Deer:

> The disproportionate amount of sexual violence perpetrated against Native women can be linked to exploitation and displacement, both of which are conditions of human trafficking in contemporary law. The commoditization and exploitation of the bodies of Native women and girls, although theoretically criminalized through contemporary prostitution laws, has not been the subject of rigorous investigation and prosecution. In fact, this ubiquitous form of predation was not only legal throughout most of history, but encouraged by the dominant (white) culture.[119]

Moreover, "the dispossession and relocation of indigenous peoples on this continent both necessitated and precipitated a highly gendered and sexualized dynamic in which Native women's bodies became commodities—bought and sold for the purposes of sexual gratification (or profit)."[120] Further, "[t]oday, the eroticized image of Indian women is so commonplace in our society that it is unremarkable—the image of the hypersexual Indian woman continues to be used to market any number of products and ideas."[121] Significantly, Deer contends that "[c]olonial legal systems historically protected (and rewarded) the exploiters of Native women and girls and therefore encouraged the institutionalization of sexual subjugation of Native women and girls."[122]

While there has been some indictment of the Canadian state's complicity in the trafficking of indigenous women and girls in Canada (as noted in the discussion of residential schools), there has yet to be a focused critical interrogation of this complicity.[123] This Subpart documents how the colonial Canadian state has, whether historically or contemporarily, engaged in or enabled the trafficking of indigenous women and girls in Canada. While this is in no way intended as a comprehensive list of these instances, this discussion will highlight key examples of Canadian state complicity with the violence of human trafficking.

I want to address from the outset the unique and unprecedented Canadian requirement that trafficking victims prove they feared for their safety if they did

118. *Id.* at 626.
119. *Id.*
120. *Id.* at 628.
121. *Id.* at 626.
122. *Id.* at 628–29.
123. *See supra* note 111 and accompanying text.

not comply with the demands of their traffickers. As critics like Benjamin Perrin have pointed out, there are many reasons that trafficking victims may not have feared for their safety: For example, many trafficking situations are framed as interpersonal familial or romantic relationships and not explicitly as exploitation or violence.[124] Furthermore, traffickers often rely on psychological and emotional coercion instead of physical violence to secure the compliance of trafficking victims.[125]

But even if fear for safety is not an unfair standard by which to measure whether trafficking has occurred, indigenous women and girls have lived and continue to live in a state of constant fear for their safety in the Canadian nation state. As scholars have noted, violence, fear, and terror are integral components of settler colonial societies, helping to establish and secure the ideological and material hierarchies of colonial domination.[126] "Whatever conclusions we draw about how [colonial] hegemony was so speedily effected," contends anthropologist Michael Taussig, "we would be unwise to overlook the role of terror."[127] Indeed, it has been well-documented that violence against indigenous women and girls has long been integral to the domination of indigenous peoples and territories by white settler nation states like the United States and Canada.[128] "[I]n order to colonize a people whose society was not hierarchical," Cherokee scholar Andrea Smith contends, "colonizers must first naturalize hierarchy through instituting patriarchy." "Patriarchal gender violence is the process by which colonizers inscribe hierarchy and domination on the bodies of the colonized."[129] As such, "[t]he project of colonial sexual violence establishes the ideology that Native bodies are inherently violable—and by extension, that Native lands are also inherently violable."[130] This ideology, Smith notes, hinges on dominant colonial beliefs in the inherent sexual deviance of indigenous peoples, and "[b]ecause Indian bodies are 'dirty,' they are considered sexually violable and 'rapable,' and the rape of bodies that are considered inherently impure or dirty simply

124. *See* PERRIN, supra note 18, at 61–62.
125. *See* BOYER & KAMPOURIS, *supra* note 30, at 3, 61; PERRIN, *supra* note 19, at 8–9.
126. *See, e.g.*, MICHAEL TAUSSIG, SHAMINISM, COLONIALISM, AND THE WILD MAN: A STUDY IN TERROR AND HEALING 5 (1987); Patrick Wolfe, *Settler Colonialism and Elimination of the Native*, 8 J. GENOCIDE RES. 387–88 (2006).
127. TAUSSIG, *supra* note 126, at 5.
128. *See generally* LESLEY ERICKSON, WESTWARD BOUND: SEX, VIOLENCE, THE LAW, AND THE MAKING OF A SETTLER SOCIETY, (2011); SMITH, *supra* note 96; Emma D. LaRocque, *Violence in Aboriginal Communities*, *in* VIOLENCE AGAINST WOMEN: NEW CANADIAN PERSPECTIVES 147, 147–62 (Katherine M.J. McKenna & June Larkin eds., 2002); Razack, *supra* note 114, at 122–56.
129. SMITH, *supra* note 96, at 23.
130. *Id.* at 12.

does not count."[131] This ideology not only helps to impose patriarchal and settler colonial order onto indigenous nations, but it also exonerates perpetrators (whether white settler or not) by erasing their violence. Furthermore, this violence, Smith suggests, is productive of the multiple social identities that underpin the colonial order of things—it establishes the dominance of white men (as mythic frontier heroes) over inferior others, including dirty and lascivious indigenous females; savage and lascivious indigenous males; and respectable but vulnerable white settler women requiring protection.[132] In other words, this violence is integral to securing the hierarchies of race and gender that structure white settler societies.

Given this fundamental requirement for violence against indigenous women and girls in Canada in establishing settler colonial domination, colonial governments, including the current Canadian government, have engaged in and enabled this violence. This includes problematic governmental legislation such as the Indian Act, which has unfairly targeted only indigenous women (and their children) for exclusion from legal status (covered in greater detail later in this Article). Significantly, sex-based discrimination under the Indian Act has been linked to indigenous female poverty and vulnerability to violence. The Government of Canada also authorized and ran the Indian residential school system (which operated predominantly from the 1830s to 1996) where a large majority of indigenous children were subjected to extreme physical, emotional, and sexual abuse at the hands of various predators (also discussed in greater detail below). The Canadian criminal justice system has been condemned for overcriminalizing indigenous women and girls while failing to protect them from violence.[133] It has also been indicted for failing to pursue perpetrators of violence against indigenous women and girls and extending tremendous leniency to those who are caught.[134] Such inaction clearly communicates to indigenous women and girls the low value of their lives within the Canadian nation state.

This devaluation of the lives of indigenous women and girls has been reaffirmed in recent years by the unwillingness of current Canadian Prime Minister Stephen Harper to officially investigate, through governmental inquiry, the disappearances and deaths of thousands of indigenous women and girls from across

131. *Id.* at 10.
132. *See* SMITH, *supra* note 96, at 21–22.
133. *See* AMNESTY INT'L, *supra* note 5, at 17–19.
134. *See generally* 1 ABORIGINAL JUSTICE IMPLEMENTATION COMM'N, *Chapter 13: Aboriginal Women*, *in* THE JUSTICE SYSTEM AND ABORIGINAL PEOPLE (1991); Nicholas Bonokoski, *Colonial Constructs and Legally Sanctioned Sexually Violent Consequences in R V Edmondson*, RECONSTRUCTION: STUDIES IN CONTEMPORARY CULTURE 7 (2007); Razack, *supra* note 114, at 126–27.

Canada since the 1980s. Despite confirmation by the Canadian national police force of the high number of missing and murdered indigenous women and girls,[135] and despite the growing political demand for an official governmental inquiry into this phenomenon, Prime Minister Harper continues to claim that this issue is not high on his political radar.[136]

Indigenous women and girls in Canada, as such, have long lived with the knowledge that their lives are frequently devalued within the Canadian nation state, that very little would be done to protect them from violence, and, in fact, that the state itself enables this violence. Settler colonial domination requires violence against indigenous women and girls, and thus it is normalized and justified in white settler societies like Canada. And where violence against indigenous women and girls is the norm, indigenous women and girls (and their families and communities) live in a constant state of fear. There is therefore no need to explicitly prove fear in each of the cases of Canadian state human trafficking of indigenous women and girls (and their communities) because this entire social and political relationship is built around colonial domination and persistent fear.

B. Land Theft, Relocation, and Containment

As a white settler colonial nation state, Canada's demand for indigenous lands and resources has long required the trafficking of indigenous women and girls (and indeed, all indigenous peoples). The contemporary Canadian nation state, as is well documented, was founded principally on the British legal principle of *terra nullius*—literally "empty land."[137] As anthropologist Dara Culhane notes, a 1722 memorandum of the Privy Council of Great Britain set out two legal options for establishing British sovereignty on new territories.[138] The first, the "doctrine of discovery" (or, as Culhane refers to it, the doctrine of occupation or settlement) "was to be applied in circumstances where the land discovered was *terra nullius*—uninhabited by human beings."[139] "In the case of *terra nullius*," she contends, "Britain simply proclaimed sovereignty by virtue of discovery and

135. *See supra* notes 6–11 and accompanying text.

136. *See* Tanya Kappo, *Stephen Harper's Comments on Missing, Murdered Aboriginal Women Show 'Lack of Respect'*, CBC NEWS, (Dec. 19, 2014, 1:13 PM), http://www.cbc.ca/news/aboriginal/stephen-harper-s-comments-on-missing-murdered-aboriginal-women-show-lack-of-respect-1.2879154.

137. *See, e.g.*, NICHOLAS BLOMELY, UNSETTLING THE CITY: URBAN LAND AND THE POLITICS OF PROPERTY 114–18 (Routledge, 2004); DARA CULHANE, THE PLEASURE OF THE CROWN 47-53 (1998); COLE HARRIS, MAKING NATIVE SPACE: COLONIALISM, RESISTANCE, AND RESERVES IN BRITISH COLUMBIA, at xxi (2002); Razack, *supra* note 112, at 3, 12.

138. *See* CULHANE, *supra* note 137, at 47.

139. *Id.*

British law became, automatically, the law of the land."[140] The second option was referred to as the "doctrine of conquest," and it dealt with situations in which an indigenous population was encountered. This law, Culhane explains, established that "[w]here Indigenous populations were found inhabiting the desired land, the law required that British sovereignty had to first be won by military conquest, or achieved through the negotiation of treaties, before colonial law could be superimposed."[141] She contends, however:

> Of course, Britain never had colonized and never would colonize an uninhabited land. Therefore, the doctrine of discovery/occupation/settlement based in the notion of *terra nullius* was never concretely applied "on the ground." Rather, already inhabited nations were simply legally *deemed to be uninhabited* if the people were not Christian, not agricultural, not commercial, not "sufficiently evolved" or simply in the way.[142]

As this description makes clear, colonial doctrines of indigenous inferiority were used to justify land theft by the British, with the effect, according to Culhane, of not only denying indigenous peoples' prior occupation of these lands, but also their status as human beings—both of which continue to plague indigenous nations to this day.[143] Thus, "when Aboriginal people say today that they have had to go to court to prove they exist," she writes, "they are speaking not just poetically, but also *literally*."[144]

While this manipulation of colonial law helped justify the theft of indigenous lands, the actual bodies of indigenous peoples continued to occupy this legally "empty land." As a result, British and Canadian colonial governments engaged in further manipulation and coercion to displace indigenous populations from their traditional territories and confine them to "prisons of grass"[145] (reserves) in order the secure wealth and personal gain for colonial powers and individual white settlers. In some cases, colonial governments signed treaties with indigenous nations that not only secured white settler control over resource-rich lands in Canada, but also frequently confined indigenous nations to particular tracts or plots of land known as Indian reserves or reservations.[146] These legal treaties were often established through unfair practices (including, for example, negotiations

140. *Id.*
141. *Id.* at 47–48.
142. *Id.* at 48.
143. *See id.*
144. *Id.*
145. *See* HOWARD ADAMS, PRISON OF GRASS: CANADA FROM A NATIVE POINT OF VIEW (1989) (explaining that the "prisons of grass" concept draws attention to how reserves confined previously independent and mobile indigenous nations to land-based prisons created by the Canadian state).
146. *See* Harris, *supra* note 129, xxi, 291.

and agreements conducted in English or French without interpretation for indigenous parties and misrepresentation of a treaty's contents) and outright deception (for example, colonial signatories increasing their land holdings after the signing of the treaty, as in the case of the Toronto Purchase) for the profit and personal gain of colonial governments and their white settlers.[147] In other cases, colonial governments simply created Indian reservations and forced indigenous communities to comply with relocations and spatial confinement.[148] Too often, these reserves were created and assigned with little regard for an indigenous nation's traditional land use patterns, and were composed of the least arable and most resource-poor lands.[149] In addition to land, these forced relocations and confinements of indigenous peoples to reservations provided other personal gains for colonial governments in the quest of colonial domination. For example, disrupting traditional economies and patterns of subsistence not only helped secure indigenous participation in the colonial capitalist economy,[150] but also increased indigenous economic dependence on the colonial governments.[151] In other words, this colonial land theft, forced relocation, and confinement of indigenous peoples to reservations constituted human trafficking because it not only enabled the exploitation of indigenous lands and resources for the personal gain of colonial governments and white settlers by removing indigenous peoples, but also secured indigenous labour to be exploited within the colonial capitalist economy (again, to the personal gain of the colonial government and white settlers who controlled this economy). The expense of this gain, however, has been paid by indigenous peoples, whose historical and contemporary realities of abject poverty and welfare dependence have been linked to this colonial theft of indigenous land and resources and the relocation and confinement to reserves.[152] In turn, poverty is currently an indication of vulnerability to being targeted for human trafficking, making the Canadian state, once again, complicit with the domestic trafficking of indigenous women and girls.

147. *See, e.g.*, HARRIS, *supra* note 137, at xv–xxiv; Bonita Lawrence, *Rewriting Histories of the Land: Colonization and Indigenous Resistance in Eastern Canada*, *in* RACE, SPACE, AND THE LAW 23, 40–41 (Sherene. H. Razack, ed., 2002); MISSISSAUGAS OF THE NEW CREDIT FIRST NATION, TORONTO PURCHASE SPECIFIC CLAIM: ARRIVING AT AN AGREEMENT, 5–11 (2001); ROYAL COMM'N ON ABORIGINAL PEOPLES, LOOKING FORWARD, LOOKING BACK, 145–64 (1996).

148. *See* HARRIS, *supra* note 137, at xviii, 271.

149. *Id.* at 274–80.

150. *See* ADAMS, *supra* note 145, at 13–14.

151. *See* HUGH SHEWELL, 'ENOUGH TO KEEP THEM ALIVE': INDIAN WELFARE IN CANADA, 1873–1965 at 5 (2004).

152. *See* HARRIS, *supra* note 137, at 275, 284–85; ROYAL COMMISSION ON ABORIGINAL PEOPLES, *supra* note 147, at 130–85, 395–522.

While some might imagine that forced relocations of indigenous communities like this are safely contained to Canada's long-ago past, they have, in fact, been part of the recent past and continue to occur to this day. In the 1950s, the federal government forcibly relocated Inuit families (twenty-one families in total) from the rural northern communities of Inukjuak and Pond Inlet to the larger High Arctic communities of Grise Fiord and Resolute Bay.[153] As the Government of Canada itself notes:

> The relocatees suffered significant hardship as a result of the relocations. Having been moved from an area of lush tundra to an Arctic desert, the families had to adapt to the constant darkness of the winter months and a terrain and climate that were much more severe than they were accustomed to. The varieties and quantity of wildlife were more limited and temperatures were, on average, 20 degrees colder than in their home community. Due to poor planning and implementation of the move, the relocated families spent their first winter in the High Arctic in flimsy tents with inadequate food and supplies.[154]

Deceptively, "the Government had promised that the relocatees could return to Inukjuak if they were not happy with their new homes," but "this promise was not honoured until many years later."[155] Although the federal government issued a formal apology in 2010,[156] this incident has still never been acknowledged as an act of human trafficking.

Neither have the relocations of the Sayisi Dene of northern Manitoba in 1956, Inuit of Hebron, Labrador in 1959, Gwa'Sala and 'Nakwaxda'xw of British Columbia in 1964, nor the Mushuau Innu of Labrador in 1967—all of which, as the 1996 federal Royal Commission on Aboriginal Peoples (RCAP) found were "administrative relocations," "carried out to facilitate the operation of government or address the perceived needs of Aboriginal people."[157] As noted in the RCAP final report:

> Facilitating government operations was the rationale for many relocations in the era following the Second World War. Aboriginal people

153. *See* Gov't of Can., *Backgrounder-Apology for Inuit High Arctic Relocation*, ABORIGINAL AFF. & N. DEV. CANADA, http://web.archive.org/web/20150309025132/https://www.aadnc-aandc.gc.ca/eng/1100100015426/1100100015427 (last modified Sept. 15, 2010) (accessed by searching for specific URL in Internet Archive index).

154. *Id.*

155. *See id.*

156. *See* Gov't of Can., *Government of Canada Apologizes for Relocation of Inuit Families to the High Arctic*, ABORIGINAL AFF. & N. DEV. CANADA, http://web.archive.org/web/20150220192719/http://www.aadncaandc.gc.ca/eng/1100100015397/1100100015404 (last modified Sept. 15, 2010) (accessed by searching for specific URL in Internet Archive index).

157. *See* ROYAL COMM'N ON ABORIGINAL PEOPLES, *supra* note 147, at 397.

> were often moved to make it easier for government administrators to provide the growing number of services and programs becoming available through the burgeoning welfare state . . . . Addressing the perceived needs of Aboriginal peoples often involved moving them 'for their own good.' By removing people 'back to the land' from a more or less settled existence, administrators attempted to encourage them to resume or relearn what was considered the traditional way of life. This form of dispersal was also used when officials considered it necessary to alleviate perceived population pressures in a particular region. Dispersing populations were also an effective way to separate Aboriginal people from the corrupting influence of non-Aboriginal society.[158]

RCAP identified a second type of relocation: development relocations.[159] Development relocation, the final report explains, "is the consequence of national development policies whose stated purpose is primarily to 'benefit' the relocatees or get them out of the way of proposed industrial projects," including agricultural expansion and land reclamation, urban development, and hydroelectric projects.[160] Such relocations involved the Songhees in British Columbia in 1911, the Métis of Ste. Madeleine, Manitoba in 1935, the Cheslatta Carrier Nation in northwestern British Columbia in the 1950s, and the Chemawawin Cree of Manitoba also in the 1950s.[161] RCAP identified a number of significant consequences of these relocations, including "(1) severing Aboriginal people's relationship to the land and environment and weakening cultural bonds; (2) a loss of economic self-sufficiency, including in some cases increased dependence on government transfer payments; (3) a decline in standards of health; and (4) changes in social and political relations [including the destruction of community cohesion, a lack of community leadership, and family breakdown] in the relocated populations"[162]—all of which have been identified as contributing to the vulnerability of indigenous women and girls to human trafficking in contemporary Canadian society.

These relocations continue, only they are now more commonly referred to as "evacuations." For example, the Government of Canada has long operated (since 1892) and continues to operate an evacuation policy that removes pregnant indigenous women from reserves in rural and remote reserves in Canada and

158. *Id.* at 397–98.
159. *See id.* at 398–99.
160. *Id.* at 398.
161. *See id.* at 398–99.
162. *Id.* at 400. *See also id.* at 467–80.

forces them to give birth in urban centres.[163] While this "routine, long-standing, nation-wide practice is currently articulated as originating between the 1960s and 1980s,"[164] researchers Karen Lawford and Audrey Giles argue that this dating "ignores the evacuation policy's true beginnings"[165] in the late nineteenth century.[166] Though this practice is now billed as being an issue of safety, Lawford and Giles have uncovered its founding in goals of assimilation and "civilizing" indigenous nations by undermining indigenous healing practices and coercing indigenous communities into accepting the settler Canadian biomedical model.[167] "The federal government," they contend, "viewed birthing, whether at home or in the hospital, as an influential way to assimilate and civilize First Nations into the colonial world,"[168] and consequently manipulated federal health care policy and practice (including withholding medical services) in order to facilitate these forced movements of indigenous women and their unborn children from their communities (and their indigenous birthing practices) into the colonial medical system.[169] Moreover, such evacuations sever important familial and community supports and places indigenous women and girls alone in urban centers they may be entirely unfamiliar with[170]—both of which have been identified as contributing to the vulnerability of indigenous females to being trafficked.[171] Therefore, maternal evacuations not only constitute a direct form of human trafficking on the part of the Canadian state, but also powerfully contribute to the vulnerability of indigenous females to being targeted for further human trafficking.

As these examples make clear, the settler colonial demand for indigenous lands in Canada has long required, and indeed continues to require, the trafficking of indigenous women and girls (and indeed all indigenous peoples), with forced movements of indigenous bodies necessary to secure colonial gains (land, domination, and control). While this section introduced the complicity of Canadian law in facilitating this practice, the next section focuses on the predominant Canadian legislation governing indigenous peoples in Canada: the Indian Act.

163. Karen Lawford & Audrey Giles, *Marginalization and Coercion: Canada's Evacuation Policy for Pregnant First Nations Women Who Live on Reserves in Rural and Remote Regions*, 10 PIMATISIWIN: J. ABORIGINAL & INDIGENOUS CMTY. HEALTH 327–28, 331–32 (2012).
164. *Id.* at 327.
165. *Id.* at 328.
166. *Id.* at 331.
167. *Id.* at 328, 332–34.
168. *Id.* at 332.
169. *See id.* at 331–34.
170. *See id.* at 335.
171. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2, 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 28.

1. Legislated Trafficking—the Indian Act

The colonial trafficking of indigenous people in Canada has been greatly facilitated through the Government of Canada's Indian Act. In place continuously since 1876, the Indian Act legislates most aspects of life in Canada for indigenous peoples, including identity.[172] It defines in law precisely who counts as "Indian" (according to the government) and therefore who the Canadian state is accountable to in terms of treaty and status obligations, including financial commitments, health care, and education (to name just a few).[173] "Control of Native people in Canada," indigenous scholar Bonita Lawrence contends, "has . . . been maintained largely through the creation of an extremely repressive body of colonial law known as the Indian Act, upheld always by the threat of direct military violence."[174] As she explains,

> Through this legislation, the only level of Indigenous governance recognized by Canada has been the elected government imposed at the local reserve or band level. Initially implemented on populations in eastern Canada demoralized by disease and alcoholism after two centuries of fur trade and Christianization, these "governments" were forced on the western nations after the selective use of policies of deliberate starvation, premised on the destruction of the buffalo, had forced them to enter into treaties and settle on reserves. Definitions of Indianness almost from the start controlled who was recognized as an Indian band, who could get any land under the treaties, and who could live on this land. Side by side with this policy of carefully controlled segregation was another one, that of carefully controlled assimilation, which was the primary means by which Canada sought to destroy its pacified Indian populations.[175]

Legal control of indigenous identity, as such, was critical to securing the settler colonial Canadian state's domination of indigenous peoples, but perhaps more importantly, indigenous territories. For as Lawrence writes, "the only way in which Indigenous peoples can be permanently severed from their land base is when they no longer exist as peoples."[176]

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172. *See, e.g.*, BONITA LAWRENCE, "REAL" INDIANS AND OTHERS: MIXED-BLOOD URBAN NATIVE PEOPLES AND INDIGENOUS NATIONHOOD 25–44 (2004); ROYAL COMM'N ON ABORIGINAL PEOPLES, *supra* note 147, at 259–81.
173. *See* LAWRENCE, *supra* note 172, at 31; Royal Comm'n on Aboriginal Peoples, *supra* note 137, at Chapter 9, Section 9.
174. *Id.* at 30.
175. *Id.* at 30–31.
176. *Id.* at 38.

Consequently, the Indian Act implements many of its own exclusions from the official category of "Indian." For example, it has not included either Inuit or Métis peoples (although this recently changed for Métis, as discussed momentarily).[177] Over the years, the Act also excluded from status any Indian who earned a university degree; became a doctor, lawyer, or clergyman; served in the military; or, as Lawrence notes, "[left] their reserves for long periods of time to maintain employment."[178] Since its inception, the Indian Act has also made explicitly sexist exclusions. Between 1876 and 1986, section 12(1)(b) ejected Indian women and their children from status for marrying a non-status Indian male.[179] Yet in the case of Indian men who did the same, not only did they retain their status, but their status was also extended to their non-Indian wives and children.[180] Furthermore, if an Indian woman married an Indian man from another community, she ceased to be a member of her home community band and was transferred to her husband's band, and her status made conditional on her husband's.[181] There was also the so-called "double mother" clause wherein an Indian child would be excluded from status at age eighteen if both their mother and grandmother acquired status through marriage, regardless of the Indian lineage of their fathers.[182] An amendment in 1951 excluded from status those Indian women whose husbands died or abandoned them, as well as excluding their children.[183] And while Bill-C31, hard fought for by indigenous women and their organizations and enacted in 1985, amended the Indian Act to remove these provisions and reinstate women, it also introduced two classes of Indians.[184] Whereas the first class can pass their Indian status to their children, the second class cannot pass their status to their children unless the other parent has status under the Act.[185]

These exclusions have not only had devastating consequences for indigenous women and their communities, but also qualify as trafficking of indigenous peoples by the Canadian state. According to Lawrence, "[t]he ongoing regula-

177. *See id.* at 25–26; Gov't of Can., *Frequently Asked Questions*, ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT CANADA, http://www.aadnc-aandc.gc.ca/eng/1100100013800/1100100013801 (last modified Sept. 15, 2010).

178. *See* LAWRENCE, *supra* note 172, at 31.

179. *Id.* at 50–69.

180. *Id.* at 51–52

181. *See Bill C-31*, THE UNIVERSITY OF BRITISH COLUMBIA – INDIGENOUS FOUNDATIONS, http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-indian-act/bill-c-31.html (last visited Apr. 14, 2015).

182. *Id.*

183. *See id.*

184. *See* Martin J. Cannon, *Revisiting Histories of Legal Assimilation, Racialized Injustice, and the Future of Indian Status in Canada*, *in* RACISM, COLONIALISM, AND INDIGENEITY IN CANADA 89, 89–90 (Martin J. Cannon & Lina Sunseri eds., 2011).

185. *See id.*

tion of Indigenous peoples' identities . . . is part of the way in which Canada and the United States continue to actively maintain physical control of the land base they claim, a claim which is still contested by the rightful owners of the land."[186] About the specifically sexist exclusions, Lawrence contends:

> [I]t is important to note that this "bleeding off" of Native women and their children from their communities was in place for 116 years, from 1869 until 1985. The phenomenal cultural implication hidden in this legislation is the *sheer numbers of Native people lost to their communities.* Some sources have estimated that by far the majority of the twenty-five thousand Indians who lost status and were externalized from their communities . . . did so because of ongoing gender discrimination in the *Indian Act. But it is not simply a matter of twenty-five thousand individuals.* If one takes into account the fact that for every individual who lost status and had to leave her community, all of her descendants . . . also lost status and for the most part were *permanently alienated* from Native culture, the numbers of individuals who ultimately were removed from Indian status and lost to their nations may, at the most conservative estimates, number between one and two million.[187]

In other words, the Canadian state used exclusions enshrined in Canadian law to effectively traffic untold millions of indigenous women and children (and grandchildren, and so on) out of indigenous nations to be subsumed within the colonial Canadian nation state. The benefits secured for the state were multiple, including reducing government expenditures on treaty and Indian Act obligations,[188] providing a massive influx of exploitable labour for the capitalist economy,[189] removing these bodies from indigenous lands to ensure access for the rapid influx of white settlers,[190] and suppressing indigenous resistance.[191] The specific targeting of indigenous women struck a serious blow to the ability of indigenous nations to regenerate themselves. Moreover, the weapon of forced enfranchisement (loss of Indian status),

> provided formidable opportunities for Indian agents to control resistance in Native communities, by pushing for the enfranchisement (and therefore the removal from their communities) of anybody empowered by education or a secure income. War veterans were also enfranchised, thereby removing many of the men who had experi-

186. LAWRENCE, *supra* note 172, at 38.
187. *Id.* at 55–56 (emphasis added).
188. *Id.* at 52–54.
189. *Id.* at 27–28.
190 *Id.* at 17.
191 *Id.* at 17, 36.

> enced relative social equality overseas, as well as men who were accustomed to fighting, from reserve communities.[192]

In this way, the Indian Act and enfranchisement enabled Canadian state trafficking of indigenous peoples through coercion and force in order to remove invaluable indigenous resources to indigenous nations and force their complicity with the goals of the colonial Canadian state.

These state-initiated exclusions have enabled, and continue to enable, the trafficking of indigenous women and girls in other ways. As Lawrence argues, "[t]he financial losses experienced by Native women due to loss of status have been considerable,"[193] including the reduction and elimination of treaty monies and

> the lack of access to postsecondary-education funding, free day-care provisions in some communities, funding for school supplies and special schooling programs, housing policies that enabled on-reserve Indians to buy houses with assistance from the Central Mortgage and Housing Corporation and Indian Affairs, loans and grants from the Indian Economic Development Fund, health benefits, exemption from taxation and from provincial sales tax, hunting, fishing, animal grazing and trapping rights, cash distribution from the sale of band assets, and the ability to be employed in the United States without a visa . . . .[194]

Moreover, "Indian women were generally denied access to personal property willed to them [and] evicted from their homes, often with small children and no money . . . ."[195] These exclusions propelled generations of indigenous women and their children toward economic marginalization and poverty,[196] both identified as contemporary risk factors for being targeted for human trafficking.[197] These exclusions also facilitated the destruction of familial and social support networks,[198] all the while facilitating the trafficking of these women and children into settler colonial Canadian society where the hypersexualization of indigeneity[199] and high rates

192. *Id.* at 32.
193. *Id.* at 54.
194. *Id.* 54–55.
195. *Id.* at 55.
196. *See* CANADIAN PANEL ON VIOLENCE AGAINST WOMEN, CHANGING THE LANDSCAPE: ENDING VIOLENCE ~ ACHIEVING EQUALITY: FINAL REPORT OF THE CANADIAN PANEL ON VIOLENCE AGAINST WOMEN 145 (Penny Williams et al., 1993).
197. *See, e.g.*, BOYER & KAMPOURIS, *supra* note 30, at 2, 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 15–18, 22; Hunt, *supra* note 36, at 28.
198. *See* CANADIAN PANEL ON VIOLENCE AGAINST WOMEN, *supra* note 196, at 145.
199. *See* LaRocque, *supra* note 128, at 148–49.

of all forms of violence are the norm.[200] Again, all of these have been identified as factors contributing to the extreme vulnerability of indigenous women and girls to being targeted for human trafficking.[201]

In addition to those surrounding identity, the Indian Act has other provisions that involve and enable the trafficking of indigenous peoples. For example, in 1884, the Act was amended to outlaw potlatches and other important ceremonies, which were fundamental to the redistribution of wealth that sustained precolonial indigenous societies.[202] This amendment disrupted internal indigenous economies and self-sustenance to secure not only indigenous economic dependence on the Canadian state, and therefore increased settler state control over indigenous peoples and territories, but also turned indigenous bodies into an exploitable labour force within the settler state's capitalist economy. And although this provision was repealed in 1951, the economic marginalization and poverty that this created continues to plague indigenous communities to this day—again, poverty being one of the prime risk factors for being targeted for human trafficking in contemporary Canadian society. In an explicit example of trafficking, a 1905 amendment to the Indian Act allowed the federal government to remove Indian people from reserves near towns with more than 8000 residents,[203] while a 1911 amendment allowed for the movement of an entire reserve away from a Canadian municipality without the consent of the indigenous communities.[204] Between 1876 and 1951, indigenous women were prohibited from being involved in band governance, with the result that the interests of indigenous women were often ignored by Indian band leadership and the Canadian

200. *Id.* at 147.

201. On the breakdown of familial and other supports as contributing factors to the vulnerability of indigenous females to human trafficking, see, for example, BOYER & KAMPOURIS, *supra* note 30, at 19; KINGSLEY & MARK, *supra* note 69, 19–20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; Hunt, *supra* note 36, at 29. For hypersexualization as a contributing factor, see Hunt, *supra* note 36, at 28. Finally, for previous experiences of violence as contributing to the vulnerability of indigenous females to human trafficking, see, for example, BOYER & KAMPOURIS, *supra* note 30, at 2, 18–20; KINGSLEY & MARK, *supra* note 69, at 14–16; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 8, 10–12; Hunt, *supra* note 36, at 28.

202. *See, e.g.*, ARTHUR J. RAY, I HAVE LIVED HERE SINCE THE WORLD BEGAN: AN ILLUSTRATED HISTORY OF CANADA'S NATIVE PEOPLE 222–27 (2010); Erin Hanson, *The Indian Act*, THE UNIVERSITY OF BRITISH COLUMBIA – INDIGENOUS FOUNDATIONS, http://indigenousfoundations.arts.ubc.ca/home/government-policy/the-indian-act.html#potlatch (last visited Apr. 14, 2015).

203. *See The Indian Act, 1876: Information Taken From the Government of Saskatchewan First Nations and Métis Relations Website*, DEPARTMENT OF INDIAN AFFAIRS – CANADA, http://www.tidridge.com/uploads/3/8/4/1/3841927/the_indian_act.pdf (last visited Apr. 14, 2015).

204. *See* ROYAL COMM'N ON ABORIGINAL PEOPLES, *supra* note 147, at 261.

state.[205] This disempowerment of indigenous women's historical primary roles in indigenous leadership has been linked to the economic marginalization of indigenous women and girls,[206] the absences of social supports appropriately and adequately addressing the needs of indigenous women and their children,[207] and the high rates of violence against indigenous women and girls in Canada[208]—all of which, once again, have been identified as contributing to indigenous women's high vulnerability to being trafficked in contemporary Canadian society.

As this discussion makes clear, the Indian Act was an important legal tool enabling the direct trafficking of indigenous peoples by the Canadian state. By legislating the exclusion of generations of indigenous people from their communities through identity provisions that unfairly targeted indigenous females and many indigenous groups (including Inuit and Métis), the Indian Act not only facilitated the removal of these indigenous bodies from indigenous territories but also eliminated any future claim to indigenous lands in Canada. In other words, this legislation arranged for the trafficking of indigenous bodies for the direct social, political, and economic gains of settler colonial Canadian society. Moreover, the Indian Act provisions in 1905 and 1911 codified the trafficking of indigenous peoples by the Canadian state and white settlers, enabling the movement of entire communities if deemed expedient by the state and, most importantly, did not require the prior consent of that community. In addition to direct trafficking, the consequences of colonialism inflicted through the Indian Act, including poverty, isolation from familial and community supports, and high rates of physical and sexual violence, have been indicated as contributing to the contemporary vulnerability of indigenous females to being targeted for human trafficking. The Indian Act also authorized another particularly heinous and flagrant example of the Canadian state's trafficking of indigenous children: residential schools. In the next Part, I examine the forced removal of generations of indigenous children through the residential school and contemporary child welfare systems in Canada and explain how these removals are complicit with human trafficking.

205. *See* Kim Anderson, *Leading by Action: Female Chiefs and the Political Landscape*, *in* RESTORING THE BALANCE: FIRST NATIONS WOMEN, COMMUNITY, AND CULTURE 99, 100 (Gail Guthrie Valaskakis et al. eds., 2009).

206. *See* KIM ANDERSON, A RECOGNITION OF BEING: RECONSTRUCTING NATIVE WOMANHOOD 65 (Beth McAuley ed., 2000).

207. *See* CANADIAN PANEL ON VIOLENCE AGAINST WOMEN, *supra* note 196, at 164.

208. *See* LaRocque, *supra* note 128, at 148–49.

2. The Trafficking of Indigenous Children

As outlined previously, indigenous women in Canada have identified the Indian residential school system as not only a contributing factor to the current vulnerabilities faced by indigenous women and girls to the violence of human trafficking, but also as, itself, a form of trafficking. Here I tease out this argument in more detail in the Canadian context. Residential schools operated in Canada from the 1830s until 1996, and estimates suggest that more than 150,000 indigenous (Indian, Inuit, and Métis) children attended these institutions operated cooperatively between the government of Canada and major Canadian Christian churches (predominantly Catholic and Protestant).[209] Children under the age of sixteen were removed (many times through force) from their families and communities and confined to residential schools for most, if not all, of a year with little to no contact.[210] Indeed, contact between children of the same family or community was often prohibited within the residential schools themselves.[211] Isolated and alone in a foreign and hostile institution, indigenous children were vulnerable to predation and targeted for sexual exploitation by residential school staff, clergy, and possibly pedophile rings.[212] Moreover, as the system progressed, emphasis on education was replaced by increasing the exploitation of indigenous children's labour to help finance the costs of operating the indigenous residential school system.[213] In this system, indigenous children had every reason to fear for their safety for failing to comply with their traffickers (state officials, staff, clergy) because, as is well documented, physical abuse and gross neglect were rampant in residential schools. In the words of the Truth and Reconciliation Commission, established by the Government of Canada in 2008 to investigate the experiences of indigenous children in the residential school system: "In some schools, a *culture of abuse permeated the entire institution.*"[214] The system clearly displayed the key components of Canada's contemporary understanding of the crime of human trafficking: forced relocation and forcible confinement of indigenous children who feared for their lives within this punitive and violent system, where both child sexual exploitation and the exploitation of child labour occurred. This was

209. THE TRUTH AND RECONCILIATION COMM'N OF CAN., CANADA, ABORIGINAL PEOPLES, AND RESIDENTIAL SCHOOLS: THEY CAME FOR THE CHILDREN 5–6, 113 (2012).
210. *See* JOHN S. MILLOY, A NATIONAL CRIME: THE CANADIAN GOVERNMENT AND THE RESIDENTIAL SCHOOL SYSTEM – 1879 TO 1986 at 24–26 (1999).
211. *See* THE TRUTH AND RECONCILIATION COMM'N OF CAN., *supra* note 209, at 23.
212. *See* SMITH, *supra* note 96, at 40; THE TRUTH AND RECONCILIATION COMM'N OF CAN., *supra* note 209, at 41–44.
213. *See* THE TRUTH AND RECONCILIATION COMM'N OF CAN., *supra* note 209, at 35–37.
214. *Id.* at 44 (emphasis added).

an aggravated charge of human trafficking, of course, given the heinous physical violence (up to and including murder)[215] perpetrated against indigenous children.

Significantly, while the Indian residential school system is now part of the chronological past, its effects continue to reverberate in the present and into the foreseeable future. As indigenous women have made clear, residential schools introduced and inculcated generations of indigenous children in shame, predation, and violence, with the effect that these patterns have been passed down to the children and grandchildren (and so on) of residential school survivors. Both the trauma of residential school attendance and the intergenerational trauma passed on to the ancestors of these survivors are linked to poor physical health, mental health and addiction issues, and low self-esteem,[216] all of which are identified as contemporary risk factors of human trafficking. As such, the Canadian state and its residential school system continue to contribute to the trafficking of indigenous women and children.

The trafficking and exploitation of indigenous children by the Canadian state also, however, continue unabated through the child welfare system. With the decline of the Indian residential school system in the 1950s, the Canadian state increasingly relied on its child welfare agencies to apprehend indigenous children, remove them from their families and communities, and confine them in state care. While an intensification of such apprehensions occurred in the 1960s, commonly referred to as the "Sixties Scoop," there are currently more indigenous children in the custody of the Canadian state than there ever were at the height of the Indian residential school system.[217] As Suzanne Fournier and Ernie Crey note, "culturally inappropriate judgments" underpin the removal of indigenous children cared for by parents or grandparents.[218] In many instances, children were frequently targeted for removal for living in the impoverished conditions endemic on reserves and thus, as Fournier and Crey claim, "often the only difference between the parents whose children were stolen away and those who took in foster children for a little extra cash was the colour of their skin."[219] In addition to providing income for nonindigenous foster parents, the state facilitated the adoptions of untold thousands of indigenous children to nonindigenous families

215. *See* Canada Criminal Code, R.S.C. 1985, c. C-46, s. 279.01(1)(a).
216. *See* LAWRENCE, *supra* note 172, at 105–11; THE TRUTH AND RECONCILIATION COMM'N OF CAN., *supra* note 209, at 77–83.
217. *See* Nico Trocmé et al., *Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System*, SOC. SERV. REV. 577, 579 (2004). This source uses "out-of-home care" to refer to children who have been removed from their homes by the Canadian state and placed into the protective custody of the state.
218. *See* SUZANNE FOURNIER & ERNIE CREY, STOLEN FROM OUR EMBRACE 85 (1997).
219. *Id.*

around the world—many of whom have never been returned to their nations.[220] Recent studies suggest that indigenous children in state care experience tremendously high rates of physical violence, sexual exploitation, mental health and addiction issues, and poverty—again, all factors recognized as contributing to the increased risk of indigenous women and children to being trafficked. Indeed, involvement with Canadian state child welfare agencies has been indicated as a risk for trafficking.[221]

CONCLUSION

While it is admirable that Canada has stepped up to address human trafficking, ending the trafficking of indigenous women and girls will require the Canadian state to take a hard look at itself and examine its complicity in this violence. As a settler colonial nation, Canada has been built on and sustained through the trafficking of indigenous peoples, including children. In turn, the acts of trafficking by the Canadian state have carried consequences for generations of indigenous peoples that correlate with contemporary predictors of vulnerability for being targeted for human trafficking. And while there is nothing in contemporary Canadian legislation for pursuing charges of human trafficking against the Canadian state, there is the possibility of holding Canada accountable through its international treaty obligations to end human trafficking. Ending the trafficking of indigenous women and girls, however, will not only require addressing how the Canadian state is complicit in this violence, but will also require dismantling the colonial domination which makes all of it possible. The process of decolonization will not only require a drastic revisioning of the current Canadian state and the destruction of dominant systems of oppression, but also the regeneration of indigenous sovereignty and self-determination—with careful attention, of course, to not replicating dominant systems of oppression within the regeneration.

220. *See* LAWRENCE, *supra* note 178, at 113.

221. *See* BOYER & KAMPOURIS, *supra* note 30, at 19; KINGSLEY & MARK, *supra* note 69, at 20; NATIVE WOMEN'S ASS'N OF CAN., *supra* note 17, at 13; PAUKTUUTIT INUIT WOMEN OF CAN., *supra* note 17, at 25–26.