



## Gendered Racial Violence and Spatialized Justice : The Murder of Pamela George

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*To unmap literally is to denaturalise  
geography, hence to undermine  
world views that rest upon it.*

Richard Phillips<sup>1</sup>

### Introduction

On Easter weekend, April 17, 1995, Pamela George, a woman of the Saulteaux (Ojibway) nation and a mother of two young children, was brutally murdered in Regina, a small Canadian prairie city. Beyond the fact that Pamela George came from the Sakimay reserve on the outskirts of the city, and that she occasionally worked as a prostitute, something she was doing that Easter weekend, court records of the trial of the two white men accused of her murder and media coverage of the event reveal few details of her life or the life of her community. More is known about her two murderers, young white, middle-class men. Easter marked the first weekend since the end of their university exams. There was a week or so of freedom before summer jobs began. Nineteen-year-old university athletes Steven Kummerfield and Alex Ternowetsky set out to celebrate the end of term. They went out drinking in isolated areas under bridges and behind hockey arenas, and then cruised 'the Stroll,' the city's streets of prostitution. Eventually, after failing to persuade one Aboriginal woman working as a prostitute to join them in the car, one man hid in the trunk. Approaching her twice and being refused twice, they finally succeeded in persuading another Aboriginal woman, Pamela

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<sup>1</sup> R. Phillips, *Mapping Men and Empire: A Geography of Adventure* (New York: Routledge, 1997) at 147 [hereinafter *Phillips*].

George, who was working as a prostitute that night, to enter the car. The two men drove George to an isolated area outside the city, a place littered with bullet casings and condoms. Following oral sex, they took turns brutally beating her and left her lying with her face in the mud. They then drove to a fast food restaurant and later to a cabin on Saskatchewan Beach which belonged to one of their grandfathers. The next morning, upon returning to town, they heard a radio report describing a body found outside the city. After both first confided their involvement in the murder to a number of friends and to one of their parents, one man left town to take up his summer job planting trees in the Northern forests of British Columbia. The other man flew to the mountain resort of Banff, Alberta, where he joined other white male university athletes celebrating the end of term. In early May, nearly one month after the murder, after following a tip and having exhausted the list of suspects who were mostly Aboriginal and/or of the "streets" of the Stroll, the Royal Canadian Mounted Police (RCMP) arrested both men for the murder of Pamela George. The arrest of two young, white, middle-class men for the murder of an Aboriginal woman working as a prostitute sent shock waves through the white population of this small prairie city.

At the trial two years later, the Defense at first tried to argue that Pamela George managed to walk away from the isolated field and was killed by someone else, an Aboriginal man. They also argued that since both men were highly intoxicated, they bore diminished responsibility for the beating. The boys did "pretty darn stupid things,"<sup>2</sup> but they did not commit murder. Both the Crown and the Defense maintained that the fact that Pamela George was a prostitute was something to be considered in the case.<sup>3</sup> The judge sparked a public furor when he instructed the jury to bear this in mind in their deliberations. The men were convicted of manslaughter and sentenced to six and a half years in prison, having already spent twenty months in prison. The objections of the Native community and some members of the white community stemmed from their belief that the crime was at the very least one of second degree murder and that the judge acted improperly in directing the jury to a finding of manslaughter.<sup>4</sup>

Why write about this trial as spatialized justice and this murder as gendered racial or colonial violence? Some readers of early versions of this article have commented that the prison sentences for manslaughter

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<sup>2</sup> *R. v. Kummerfield & Ternowetsky*, "Transcript of 12-15, 18-22, 25-28 November, and 2-5, 9-12, and 17-20 December 1996" [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]) at 3469 [hereinafter "Transcript"].

<sup>3</sup> *Ibid.* at 4755.

<sup>4</sup> B. Pacholik, "Relief, and Anger. Aboriginal Spokesman Demands Appeal" *Regina Leader Post* (21 December 1996) A1.

meted out to the two accused were not highly unusual and therefore not indicative of the court's leniency. Others noted that a finding of murder would have required more evidence than was available. In agreement with this latter view, in 1998, the Saskatchewan Court of Appeal rejected an appeal by the Crown that the trial judge had failed to fairly present the Crown's position that the two men had murdered Pamela George. The Appeal Court concluded that Mr. Justice Malone had made it clear to the jury that a finding of murder, whether first or second degree, would require evidence that the accused intended to commit murder or knew that their actions would result in Pamela George's death. There is some indication, according to the Appeal Court, that the jury did indeed carefully consider whether there was enough evidence to convict on a charge of murder rather than manslaughter. Further, the Appeal Court continued, the trial judge's direction to the jury to consider that Pamela George was working as a prostitute the night of the murder did not denigrate her in any way and thus cannot be considered to have led the jury to its conclusion that the men committed manslaughter and not murder.<sup>5</sup>

I propose to show that a number of factors contributed to masking the violence of the two accused and thus diminishing their culpability and legal responsibility for the death of Pamela George. Primarily, I claim that because Pamela George was considered to belong to a space in which violence routinely occurs, and to have a body that is routinely violated, while her killers were presumed to be far removed from this zone, the enormity of what was done to her remained largely unacknowledged. My argument is in the first instance an argument about race, space, and the law. I deliberately write against those who would agree that this case is about an injustice but who would de-race the violence and the law's response to it and label it more generically as patriarchal violence against women, violence that the law routinely minimizes. While it is certainly patriarchy that produces men whose sense of identity is achieved through the brutalizing of a woman, the men's and the court's capacity to dehumanize Pamela George derived from their understanding of her as the (gendered) racial Other whose degradation confirmed their own identities as white – that is, as men entitled to the land and the full benefits of citizenship. In the same vein, I race the argument made by some feminist scholars that women working as prostitutes are considered in law to have consented to whatever violence is visited upon them.<sup>6</sup> While I wholeheartedly agree, I underline

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<sup>5</sup> *R. v. Kummerfield*, [1998] 9 W.W.R. 619; *R. v. Kummerfield (S.T.) & Ternowetsky (A.D.)*, [1998] 163 Sask. R. 257.

<sup>6</sup> See e.g. B. Balos & M.L. Fellows, "A Matter of Prostitution: Becoming Respectable" (1999) 74 N.Y.U.L.Rev. 1220. "The unstated assumption is that if a woman enjoyed

how prostitution itself (through enabling men to mark the boundary between themselves and degenerate<sup>7</sup> others), and the law's treatment of it as a contract, sustain a colonial social order. Finally, I reject the view that the spatialized justice I describe, the values that deem certain bodies and subjects in specific spaces as undeserving of full personhood, has more to do with class than it does with race. In this view, it is her poverty and her location in the inner city that most influenced how Pamela George was treated in life and in law.<sup>8</sup> A white woman in a similar circumstance and place would be treated the same way, or perhaps only slightly better. Again, while I would not disagree (indeed I would argue that a white woman working as a prostitute on the Stroll would be racialized), I emphasize here that race over-determined in bringing Pamela George *and her murderers* to this brutal encounter, and bringing the court to the position where the men's culpability for their actions was diminished.

To bring the racial or colonial aspects of this encounter more prominently in view, I trace two inextricably linked collective histories: the histories of the murderers, two middle-class white men, and those of Pamela George, a Saulteaux woman. Significantly, history is precisely what was absent in the trial. Pamela George stood abstracted from history and remained for the Court only an Aboriginal woman working as a prostitute in a rough part of town. The two men, Alex Ternowetsky and Steven Kummerfield, also remained abstracted out of their histories. They were simply university athletes out on a spree one Easter weekend. As abstractions, neither side could be seen in the colonial project in which each was embedded. The history of dispossession, and its accompanying violence, that brought both Pamela George and her murderers to the Stroll; white people's historic participation in and benefit from that dispossession and violence; and the law's complicity in

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a benefit, she 'assumed the risk' and therefore bears responsibility for the violence, leaving the alleged perpetrator less accountable for his behavior." *Ibid.* at 1231.

<sup>7</sup> I use the term 'degeneracy' in this article to denote those groups whom Foucault describes as the "internal enemies" of the bourgeois male – women, racial others, the working class, people with disabilities, in short all those who would weaken the vigorous bourgeois body and state. For a discussion of the concepts of respectability and degeneracy, see S. Razack, "Race, Space and Prostitution: The Making of the Bourgeois Subject" (1998) 10 C.J.W.L. 338.

<sup>8</sup> For a general argument of this kind, made with respect to Aboriginal people in the inner city, see C. La Prairie, *Seen But Not Heard: Native People in the Inner City* (Ottawa: Minister of Justice and Attorney General of Canada, 1994). La Prairie writes: "Overall, the research suggests that social stratification and the experience people have in their families dictate the role they play in cities. It is the ill-equipped who are mostly seen on the streets of the inner city." *Ibid.* at 19. Similar to the deficit model in educational theory, this view places the problems Aboriginal peoples have in cities squarely on their own shoulders, leaving little room for the ongoing effects of colonial practices emphasized in this article.

settler violence, particularly through an insistence on racelessness and on contract, all remained invisible. At the end of the day, the record showed only that two white “boys” lost control and an Aboriginal woman got a little more than she bargained for.

The collective histories I trace are also geographies. In examining the transcripts of the case, one can hardly miss the spatiality of the violence and its relationship to identity as well as to justice. The men leave the university and their families’ and girlfriends’ middle-class homes in the suburbs to spend time with each other, in places that are ‘outside’ civilized society. From drinking under bridges, beside airports, and behind hockey arenas, they proceed to the Stroll, the streets of prostitution occupied by racial Others, and ultimately to the murder scene. In the elite spaces of middle-class life (the university, suburban homes, chalets and cottages), they learn who they are, and, more importantly, who they are not. Moving from respectable space to degenerate space and back again is an adventure that serves to confirm that they are indeed white men in control who can survive a dangerous encounter with the racial Other and who have an unquestioned right to go anywhere and do anything. These journeys of transgression are deeply historical ones. White settlers displaced Pamela George’s ancestors, confining her Saulteaux nation and others to reserves. Pamela George’s own geographies begin here. Colonization has continued apace. Forced to migrate to the cities in search of work and housing, urban Aboriginal peoples in cities like Regina quickly find themselves limited to places like the Stroll. Over-policed and incarcerated at one of the highest rates in the world, their encounters with white settlers have principally remained encounters in prostitution, policing and the criminal justice system. Given the intensity of this ongoing colonization, white men such as Kummerfield and Ternowetsky had only a very small chance of seeing Pamela George as a human being. When the Court itself undertook the same journey from respectable to degenerate space during the trial, as it reviewed the events surrounding the murder, her personhood again remained invisible. White complicity in producing the harsh realities of her life never surfaced and the men’s own activities were subjected to very little critical scrutiny. At the end of the day, the “naturalness” of white innocence and of Aboriginal degeneracy remained firmly in place as the conceptual framework through which this incident of gendered racial violence could be understood.

I propose to unmap these journeys. That is to say, I want to denaturalize the spaces and bodies described in the trial in an effort to uncover the hierarchies that are protected and the violence that is hidden when we believe such spatial relations and subjects to be naturally occurring. To unmap one must historicize, a process that begins by

asking about the relationship between identity and space.<sup>9</sup> What is being imagined or projected on to specific spaces, and I would add, bodies? Further, what is being *enacted* in those spaces and on those bodies? In the first part, *Space and the Making of White Settler Societies*, I discuss the factors that brought Pamela George to the Stroll and those that brought two white men to it. I suggest that the encounter between the white men and Pamela George was fully colonial – a making of the white, masculine self as dominant through practices of violence directed at a colonized woman. In the second part, *Unmapping Law*, I explore how various legal and social constructs naturalized these spatial relations of domination, highlighting in the process white respectability and entitlement and Aboriginal criminality. In the conclusion, I explore how we might contest these practices of domination through a resurrection of historical memory of colonization and its continuing effects. In essence, I suggest that we insist that in law, as in life, we inhabit histories of domination and subordination for which we are accountable.

**Space, Gendered Racial Violence,  
and the Making of White Settler Societies**

*Why was she prostituting herself  
when the Queen promised her a  
prosperous life on the reserve? ...  
Why would she prostitute herself if  
the treaties had been fulfilled? ...  
Many times I wonder at nights  
whether she screamed "Canada,  
Canada" like that Somalia kid that  
was killed by the Airborne  
Regiment.*

Morning Child commenting on the  
death of his daughter  
Calinda Waterhen<sup>10</sup>

Two white men who buy the services of an Aboriginal woman in prostitution, and who then beat her to death, are enacting a quite specific violence perpetrated on Aboriginal bodies throughout Canada's history, a colonial violence that has not only enabled white settlers to secure the

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<sup>9</sup> Phillips, *supra* note 1 at 338.

<sup>10</sup> Quoted in "The Victims: Life and Death on the Edge of Nowhere" [*Saskatoon*] *Star Phoenix* (8 June 1996) C3. Denise McConney cites this article and I am grateful to her for bringing it to my attention. D. McConney, "Differences For Our Daughters: Racialized Sexism in Art, Mass Media, and the Law" (1999) 19:1&2 *Can. Women's Stud.* 209 at 213 [hereinafter McConney].

land but *to come to know themselves as entitled to it*. In the men's encounter with Pamela George, these material (theft of the land) and symbolic (who is entitled to it) processes shaped both what brought Pamela George to the Stroll and what white men from middle-class homes thought they were doing in a downtown area of prostitution on the night of the murder. And, as I contend in part two, these processes also shaped what sense the Court made of their activities.

### *Dispossession, Spatial Containment and Sexual Violence*

In *Racist Culture*, David Goldberg writes about the spatial configurations of colonial societies arguing persuasively that racial categories have been spatialized. Colonizers at first claim the land of the colonized as their own through a process of violent eviction, justified by notions that the land was empty or populated by peoples who had to be saved and civilized. In the colonial era such overt racist ideologies and their accompanying spatial practices (confinement to reserves, for example) facilitate the nearly absolute geographical separation of the colonizer and the colonized. At the end of the colonial era, and particularly with urbanization in the 1950's and 1960's, the segregation of urban space replaces these earlier spatial practices: slum administration replaces colonial administration. The city belongs to the settlers and the sullyng of civilized society through the presence of the racial Other in white space gives rise to a careful management of boundaries within urban space. Planning authorities require larger plots in the suburbs, thereby ensuring that larger homes and wealthier families live there. Projects and Chinatowns are created, cordoning off the racial poor. Such spatial practices, often achieved through law (nuisance laws, zoning laws, and so on), mark off the spaces of the settler and the native both conceptually and materially. The inner city is racialized space, the zone in which all that is not respectable is contained.<sup>11</sup> Canada's colonial geographies exhibit this same pattern of violent expulsions and the spatial containment of Aboriginal peoples to marginalized areas of the city, processes consolidated over three hundred years of colonization. Here, however, both colonial and slum administration persist. Reserves remain lands administered by the *Indian Act*, while city slums are regulated through a variety of municipal laws.

Regina, the prairie city in which the murder occurred, is a city of almost 200,000 people in which Aboriginal peoples make up

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<sup>11</sup> D. Goldberg, *Racist Culture, Philosophy and the Politics of Meaning* (Cambridge, Mass: Blackwell Publishers, 1993) at 185-205.

approximately eight percent of the population.<sup>12</sup> Regina is estimated to have a higher urban Aboriginal population per capita than all other major Canadian cities. The city's Aboriginal population is also the youngest one in Canada with forty three percent of it 15 years old or younger.<sup>13</sup> However, the presence of a significant Aboriginal population in an urban centre is a relatively recent historical development. Canada's colonizing endeavours confined the majority of Aboriginal peoples to reserves by the second half of the 19<sup>th</sup> century, establishing in the process the geographical configuration of Regina today as a primarily white city in the midst of the reserves of the Qu'appelle Valley. This 19<sup>th</sup> century spatial containment of a subject population was never secure and often required brutal policing and settler violence. Fearful of Native rebellions, for example, in 1885 white settlers of Regina organized a home guard and pressed vigorously for the North West Mounted Police (NWMP) to police Natives and to hang Native leaders arrested after the Riel rebellion.<sup>14</sup>

Sexual violence towards Aboriginal women was an integral part of 19<sup>th</sup> century settler technologies of domination. In her research on the appearance during this time of captivity narratives (stories about the abduction of white women and children by Aboriginal peoples), Sarah Carter documents the important role that stereotypical representations of Aboriginal women played in maintaining the spatial and symbolic boundaries between settlers and natives. While prior to 1885 there had been relative co-existence between fur traders and Aboriginal peoples, the rebellion of the Metis and general Aboriginal resistance to their

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<sup>12</sup> Canada, *Profile of Census Tracts in Regina and Saskatoon* (Ottawa: Statistics Canada, 1999). Regina's total population for 1996 was 193,652. Of that total 14,565 persons identified as Aboriginal. *Ibid.* at 4-6. On the problems associated with Aboriginal census data, see J. Saku, "Aboriginal Census Data in Canada: A Research Note" (1999) 19:2 *Can. J. Nat. Stud.* 365. In coming years Saskatchewan is expected to have a greater proportion of population with Aboriginal identity: 13 percent by 2016. Statistic Canada and Population Projections Section, Demography Division, *Projections of the Population with Aboriginal Identity, Canada, 1991-2016* by M.J. Norris, D. Kerr & F. Nault (Ottawa: Statistics Canada, 1996).

<sup>13</sup> D. Anaquod & V. Khaladkar, "Case Study: The First Nations Economy in the City of Regina", CD-ROM: *For Seven Generations: An Information Legacy of The Royal Commission on Aboriginal Peoples* (Ottawa: Libraxus, 1997) at 6 [hereinafter *For Seven Generations*].

<sup>14</sup> J.W. Brennan, *Regina, An Illustrated History* (Toronto: Lorimer & Canadian Museum of Civilization with the Secretary of State, 1989) at 37; S. Carter, *Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West* (Montreal & Kingston: McGill-Queens' Press, 1997) at 20-21. The brutality of the NWMP and the RCMP towards Aboriginal peoples, and their sexual brutality towards Aboriginal women is described in L. Brown & C. Brown, *An Unauthorized History of the RCMP* (Toronto: James Lewis & Samuel, 1973) at 143-81.



spatial confinement, as well as the increasing presence of white women on the prairies, led to powerful negative images of Aboriginal women. The negative images of these women, portrayed as licentious and bloodthirsty, helped to justify the increasing legal regulation of Aboriginal women's movement and their confinement to reserves. As Carter demonstrates, "the squalid and immoral 'squaw'" helped to deflect criticism away from the brutal behaviour of government officials and the NWMP, and it enabled government officials to claim that the dissolute character of Aboriginal women and the laziness of the men explained why reserve land was not used to capacity and were pockets of poverty. Indeed, when the pass system was introduced after 1885, requiring Aboriginal peoples to obtain a pass from a government employee before leaving the reserve, one rationale was that the system would limit the numbers of Aboriginal women "of abandoned character" entering the towns.<sup>15</sup> Relying on dairies of policemen, newspapers, and court records, Carter discusses a variety of oppressive practices towards Aboriginal women. For example, government agents sometimes withheld rations to reserve communities unless Aboriginal women were made available to them.<sup>16</sup> The NWMP often turned a blind eye to such practices, engaging in their own coercive relations with Aboriginal women. White men in positions of authority often beat Aboriginal women, sometimes fatally.<sup>17</sup> Oral narratives of Lakota women living at the end of the 19<sup>th</sup> century suggest that the NWMP had easy sexual access to Aboriginal women whose families were starving.<sup>18</sup>

Newspaper records of the 19<sup>th</sup> century indicate that there was a near universal conflation of Aboriginal woman and prostitute and an accompanying belief that when they encountered violence, Aboriginal women simply got what they deserved. Police seldom intervened even when the victim's cries could be clearly heard.<sup>19</sup> In one case explored by Sarah Carter that bears an uncanny parallel to the trial of Ternowetsky and Kummerfield for the murder of Pamela George, a Cree woman, referred to in the newspapers as a squaw named Rosalie who was

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<sup>15</sup> Carter, *ibid.* at 187. In 1894 amendments to the *Indian Act* racially encoded the suspect morality of the Aboriginal woman, as well as the suspect obedience – to spatial confinement – of the Aboriginal man. That year Indian agents regained their criminal law authority over certain sexual offences committed by Aboriginal persons (first articulated in 1890), and two additional offences became law: Indian prostitution and Indian vagrancy. Canada, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Supply and Services Canada, 1996) (Co-Chairs: R. Dussault & G. Erasmus) at 289.

<sup>16</sup> Carter, *ibid.* at 182.

<sup>17</sup> *Ibid.* at 179.

<sup>18</sup> *Ibid.* at 180.

<sup>19</sup> *Ibid.* at 181.

working as a prostitute, was murdered by William Fisk, a white man of a well-established family. Even when Fisk confessed to the murder, the Crown expressed his sympathy for Fisk as a man whose activities in capturing rebellious Natives clearly marked him as a patriot and upstanding citizen. When a jury declared Fisk innocent, a judge ordered a re-trial and, unusual for the period, urged the new jurors to forget the victim's race and consider the evidence at hand. Ultimately convicted of manslaughter, Fisk was initially given a life sentence, which was reduced to fourteen years of hard labour when testimonials of support for him poured in. Rosalie, as one newspaper boasted, had a "respectable burial" even though she was not white, an honour swiftly diluted when the church refused her burial in the mission's graveyard because she had died in 'sin' while engaging in prostitution. The lesson of the case, one Calgary newspaper opined, was that it was important to "keep the Indians out of town."<sup>20</sup>

The 19<sup>th</sup> century spatial containment of Aboriginal peoples to reserves largely remained in place until the 1950's. As professor Jim Harding of the University of Regina noted in his presentation to the Royal Commission on Aboriginal peoples (RCAP), a white boy growing up in Regina in the 1950's would know Regina as almost exclusively white and as bordered by the reserves of the Qu'Appelle Valley: "two different worlds."<sup>21</sup> By the 1960's, however, a steady stream of Aboriginal peoples flowed from the reserves to the city. With a high birth rate, Aboriginal peoples left reserves in increasing numbers, impoverished among other things, by a series of federal government cutbacks for housing. In 1971, the census indicated only 2,860 Aboriginal peoples in Regina but unofficial estimates placed the number closer to 30,000 by mid decade.<sup>22</sup> This pattern of migration from reserves to cities is well documented for other Canadian cities. For example, Barsh studied the high rates of relocation from reserves to Lethbridge, Alberta – a city that is also bordered by reserves – in the 1990's, and concluded that migration was primarily linked to housing shortages on reserves rather than to the lure of economic activities in the city.<sup>23</sup> Barsh suggests that reserve housing shortages were created by cutbacks in federal grants to reserves during the 1980's.<sup>24</sup> For the

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<sup>20</sup> *Ibid.* at 189-90.

<sup>21</sup> J. Harding, "Presentation to the Royal Commission on Aboriginal Peoples" (Regina, Sask. 11 May 1993) CD-ROM: *For Seven Generations*, *supra* note 13 at 321[hereinafter Harding].

<sup>22</sup> Brennan, *supra* note 14 at 165.

<sup>23</sup> R.L. Barsh, "Aboriginal People in an Urban Housing Market: Lethbridge, Alberta" (1997) 17:2 *Can. J. Nat. Stud.* 203.

<sup>24</sup> *Ibid.* at 212.

Ontario context, these patterns are confirmed by Williams who reviews a number of Canadian studies of migration of Aboriginal peoples to cities.<sup>25</sup> Between 1986 and 1991, the urban Aboriginal population grew by 55 percent in contrast to the non-Aboriginal urban population increase of 11 percent.<sup>26</sup>

Pamela George's homeland, the Sakimay reserve, is typical of the spatial configurations that emerged in Canadian colonialism and produced the migration from reserves to the city. The link between the material privilege of white settlers in the cities and Aboriginal marginalization is a direct one, as the Indian Claims Commission (an independent body set up by the federal government to aid in the settlement of land claims) established with respect to the Sakimay reserve and others in the area. The Commission found that in the 1940's the federal government had failed to consult the six First Nations involved before passing *The Prairie Farm Rehabilitation Act*,<sup>27</sup> authorizing the construction of dams and the flooding of reserve lands along the Qu'Appelle River. The government also failed to expropriate or obtain surrenders of affected reserve lands. These practices left the Sakimay reserve among others tremendously impoverished, while white farmers profited from the enhanced irrigation.<sup>28</sup>

Winnipeg, Regina and Saskatoon, three prairie cities, have a higher in-migration from reserves than other Canadian cities.<sup>29</sup> Women form the majority of these migrants (58 percent), relocating to the city for a variety of reasons including a loss of tribal status, violence, lack of housing and employment. Once in the city, however, the majority of urban Aboriginal peoples are left in a "jurisdictional limbo" between the city and the reserve.<sup>30</sup> As the authors of a case study of the First Nations economy in the city of Regina conclude, the urban Aboriginal population remains more marginal than their reserve counterparts, without access to

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<sup>25</sup> A.M. Williams, "Canadian Urban Aboriginals: A Focus on Aboriginal Women in Toronto" (1997) 17:1 Can. J. Nat. Stud. 75.

<sup>26</sup> *Canada, Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, vol. 4 (Ottawa: Supply and Services Canada, 1996) at 603 [hereinafter *Perspectives*].

<sup>27</sup> R.S., c. P-17.

<sup>28</sup> "Qu'Appelle Valley Indian Development Authority Inquiry Report on: Flooding Claim Cowessess First Nation, Muscowpetung First Nation, Ochapowace First Nation, Pasqua First Nation, Sakimay First Nation, Standing Buffalo First Nation" online: Indian Claims Commission Homepage (Claimsmap) [http://www.indianclaims.ca/english/claimsmap/prov\\_sask.htm](http://www.indianclaims.ca/english/claimsmap/prov_sask.htm) (last modified: May 2000).

<sup>29</sup> *Perspectives*, *supra* note 26 at 602.

<sup>30</sup> *Ibid.* at 543.

social services and networks.<sup>31</sup> Aboriginal people also remain outside the city's economy in Regina. Only 2.8 percent of the workforce is native, while Aboriginal people constitute eight percent or more of the population.<sup>32</sup> Sixty percent of urban Aboriginal households live below the poverty line and, for single parent households headed by women, the figure is 80-90 percent.<sup>33</sup> In Regina, this picture is even worse: 81 percent of the city's Native households live in poverty<sup>34</sup> and the high-school drop-out rate for Aboriginal children in Regina is 90 percent, higher than in any other city.<sup>35</sup>

Despite three decades of significant urbanization, the spatial configuration of the 19<sup>th</sup> century and the social hierarchies it both engenders and sustains, remain firmly embedded in the white Canadian psyche and in social and economic institutions. As the Native Council of Canada put it directly to the Royal Commission on Aboriginal Peoples, "there is a strong, sometimes racist perception that being Aboriginal and being urban are mutually exclusive."<sup>36</sup> In their own testimonies to the Royal Commission and other bodies, Aboriginal peoples report on the considerable racism in their lives in the cities. Robin Bellamy, a front-line worker in inner city Saskatoon, told commissioners of the fear Aboriginal people had described to him in entering white areas of the city.<sup>37</sup> Bellamy also described in considerable detail the almost complete exclusion of Aboriginal people from the institutions of the city, for example in banking where Aboriginal people regularly encounter difficulties cashing cheques.<sup>38</sup>

There are perhaps no better indicators of continuing colonization and its accompanying spatial strategies of containment than the policing and incarceration of urban Aboriginal peoples, a direct continuation of the policing relationship of the 19<sup>th</sup> century. As Harding reports, between

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<sup>31</sup> *For Seven Generations*, *supra* note 13 at 1-2.

<sup>32</sup> Canada, *Royal Commission on Aboriginal Peoples, Aboriginal Peoples in Urban Centres: Report of the National Round Table on Aboriginal Urban Issues* (Ottawa: Supply and Services Canada, 1993) at 91 [hereinafter *National Round Table*].

<sup>33</sup> *Perspectives*, *supra* note 26 at 520.

<sup>34</sup> *National Round Table*, *supra* note 32.

<sup>35</sup> *Ibid.* at 77.

<sup>36</sup> *Perspectives*, *supra* note 26 at 518. The authors of *Report of the Royal Commission on Aboriginal Peoples* are quoting the Native Council of Canada, *Decision 1992: Background and Discussion Points for the First Peoples Forum* (Ottawa: Native Council of Canada 1992) at 10.

<sup>37</sup> R. Bellamy, Saskatoon Friendship Inn, "Discussion Paper C" (Saskatoon, Saskatchewan, 13 May 1993) CD-ROM: *For Seven Generations*, *supra* note 13 at 366. For more general Aboriginal commentary on the pervasive quality of racism in urban life, see also *Perspectives*, *supra* note 26 at 426-28.

<sup>38</sup> Bellamy, *ibid.* at 367.

the late 1960's and the early 1970's the number of Aboriginal peoples in Regina's jails increased by 10 percent.<sup>39</sup> In 1971 the city stepped up downtown patrols, and in 1975 created a special task force for the purpose of policing Aboriginal peoples.<sup>40</sup> By 1994, the province of Saskatchewan (of which Regina is the capital) had the highest level of incarceration of Aboriginal peoples in Canada: 72 percent of the population in the province's jails were Aboriginal.<sup>41</sup> According to a "One-Day Snapshot" survey taken in October of 1996, 76 percent of Saskatchewan's inmates on register in adult correctional facilities were Aboriginal.<sup>42</sup> In 1999, Patricia Monture-Angus tells us that Aboriginal men made up approximately 80 percent of the population at Saskatchewan Penitentiary.<sup>43</sup> The rates of incarceration are even more dramatic for Aboriginal women. Ten years ago it was estimated that in Saskatchewan a treaty Indian woman was 131 times more likely to be incarcerated than a non-Aboriginal woman, while Metis women were 28 times more likely to be incarcerated.<sup>44</sup> According to Jim Harding's 1993 testimony to the Royal Commission, Aboriginal women then made up 80-90 percent of the prison population at Pinegrove, a correctional facility in Regina.<sup>45</sup> Thus while the number of admissions to correctional centres increased in Saskatchewan, by 46 percent between 1976 and 1992, the rate of increase for Aboriginal women was 111 percent for the same period.<sup>46</sup> Looking to a national scale, and to more recent statistics, First Nations women (registered or "Status" Indians) made up only 1-2 percent of the Canadian population in 1997, but represented 19 percent

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<sup>39</sup> Harding, *supra* note 21.

<sup>40</sup> Brennan, *supra* note 14 at 165.

<sup>41</sup> J. Hylton cited in Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Supply and Services Canada, 1996) at 31 n. 41 [hereinafter *Bridging*].

<sup>42</sup> A. Finn *et al.*, "Female Inmates, Aboriginal Inmates, and Inmates Serving Life Sentences: A One Day Snapshot" *Juristat* 19:5 (Ottawa: Canadian Centre for Justice Statistics /Statistics Canada, 1999) at 9. In addition, "at the provincial/territorial level, a larger proportion of Aboriginal than non-Aboriginal inmates were segregated from the rest of the inmate population (11 percent versus 4 percent)." *Ibid.*

<sup>43</sup> P. Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism, and Correctional Practice" (1999) 19:1&2 *Can. W. Stud.* 24 at 28, n. 3.

<sup>44</sup> Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People*, vol. 1 (Winnipeg: Queen's Printer, 1991) (Commissioners: A. C. Hamilton & C.M. Sinclair) at 498 [*Aboriginal Justice Inquiry*] In describing the Saskatchewan situation, Manitoba's commissioners were highlighting the fact that the disproportionate rate of Aboriginal women represented in Manitoba's Portage Correctional Institution (at that time 70 percent) was by no means unique, particularly when considered within the prairie regional context.

<sup>45</sup> Harding, *supra* note 21 at 323.

<sup>46</sup> *Bridging*, *supra* note 41 at 31-32 [notes omitted].

of federally sentenced women.<sup>47</sup> Harding connected Saskatchewan's provincial carceral scene, in particular, to the history of colonization, reminding RCAP commissioners that it was in Saskatchewan that Louis Riel was hanged and eight Indian leaders were executed in 1885. Perhaps, he speculated, the lessons of 1885 remain "deeper in our psyche [and] in our social structure than we would like to realise."<sup>48</sup>

Not surprisingly, the encounter in policing between white people and Aboriginal people maintain all of the characteristics of the 19<sup>th</sup> century colonial encounter. Commenting on the use of police dogs to terrorize Native youth, professor Harding recalled witnessing the police unleashing a dog in the house of a Native woman engaging in prostitution.<sup>49</sup> Describing to the commissioners the scene of terror that ensued, Harding underlined the fact that the typical offender is also the typical victim: a young Native woman.<sup>50</sup> Indeed, Native women can seldom count on the police when assaulted.<sup>51</sup> Harding estimated that in the decade preceding the RCAP hearings, at least ten Aboriginal prostitutes had been murdered in Regina.<sup>52</sup> René Dussault, co-chair of the Royal Commission, aptly concluded that Harding's presentation described "the dark side of the city," a zone where Aboriginal women are particularly at risk.<sup>53</sup>

The evidence that Aboriginal peoples live in a state of colonization as direct and coercive as prevailed two centuries ago is nowhere better demonstrated than in the high rate of suicide among Aboriginal peoples in Canada. As a government report concludes, the suicide rate, one of the highest in the world and four times higher than that of the non-Aboriginal population, is an expression of the "collective anguish" of

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47 "Fact Sheets: Alternatives to Incarceration" online: Elizabeth Fry Society Homepage [http://www.elizabethfry.ca/facts1\\_e.htm](http://www.elizabethfry.ca/facts1_e.htm) (date accessed: 21 July 2000). According to the Society, in 1998 "41 percent of federally sentenced women who are classified as maximum security women are Aboriginal, whereas Aboriginal women represent only 18.7 percent of the total population of federally sentenced women, and less than 2 percent of the population of Canada." "Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners" online: Elizabeth Fry Society Homepage <<http://www.elizabethfry.ca/maxe.htm>> (date accessed 21 July 2000).

48 Harding, *supra* note 21 at 324-26.

49 *Ibid.* at 327-28.

50 *Ibid.* at 333.

51 *Perspectives*, *supra* note 26 at 577.

52 Harding, *supra* note 21 at 334.

53 *Ibid.* at 335.

300 years of colonial history.<sup>54</sup> Illustrating the sources of this anguish and the depth of despair, one young Aboriginal woman told the report's authors of her own former life on the street, a past which included prostitution. Exemplifying what the report calls "a mixture of sexual and racial exploitation," "Missy" described how men from high class communities go downtown to look for Native kids to rape and assault, knowing that the Native kids who survived would not talk. She commented on how she was generally perceived by such men: "One thing that really used to bother me was that men looked at me differently [from the other girls]. I always felt really dirty all the time. Men used to look at me and undress me with their eyes just anywhere, or try and pick me up thinking I was just easy. That used to really bother me." As Missy concluded: "So I felt really dirty being an Indian."<sup>55</sup>

Although there is no systematic study of the sexual violence Aboriginal women endure today on the streets at the hands of white men,<sup>56</sup> the cases that do surface suggest that the 19<sup>th</sup> century perception of the Aboriginal woman as licentious and dehumanized squaw (a perception described by Missy near the end of the 20th century) continues to prevail. The Aboriginal Justice Inquiry's discussion of the 1971 murder of Helen Betty Osborne in The Pas, Manitoba, elaborates on its prevalence. Brutally murdered by two white men, Osborne, an Aboriginal student who was walking down a downtown street, was picked up in town and driven to a more secluded spot where she was assaulted and killed. As the Commissioners of the Aboriginal Justice Inquiry concluded, Osborne's attackers "seemed to be operating on the assumption that Aboriginal women were promiscuous and open to enticement through alcohol or violence. It is evident that the men who abducted Osborne believed that young Aboriginal women were objects

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<sup>54</sup> Canada, *Royal Commission on Aboriginal Peoples, Choosing Life: Special Report on Suicide Among Aboriginal People* (Ottawa: Supply and Services Canada, 1995).

<sup>55</sup> *Ibid.* at 33-34.

<sup>56</sup> Of course Aboriginal women also endure considerable violence from the men of their own communities. I would argue that such violence is of a different order than the violence discussed here although the obvious link is that both emerge out of conditions of colonization. As Emma Larocque so insightfully commented in her testimony to the Aboriginal Justice Inquiry of Manitoba, the squaw stereotype regulates relations between Aboriginal men and women as it does between Aboriginal women and white society. E. Larocque, "Written Presentation to Aboriginal Justice Inquiry Hearings, 5 February 1990" cited in *Aboriginal Justice Inquiry*, *supra* note 44 at 479. See S. Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 69.

with no human value beyond [their own] sexual gratification..."<sup>57</sup> Such assumptions often appear to be operating when the police fail to respond to the disappearance of Aboriginal women, citing their involvement in prostitution and their practices of moving from place to place. In the early 1990's, John Crawford, a white man, was convicted of murdering three Aboriginal women, Calinda Waterhen, Shelley Napope, and Eva Taysup. In each case, Crawford and another white friend began by drinking and having sex with the woman in question who was possibly working as a prostitute. The women's disappearance attracted little attention. When their families reported them missing, police appeared to assume that such women were simply transients on the move. As police sergeant Dave Kovach told a reporter, the police don't look for transient adults because such individuals often go missing and often don't want to be found.<sup>58</sup> Crawford's victims were indeed, as Denise McConney has written, "caught up in the ongoing displacement, relocation, and search for a safe place that is a consistent theme in the lives of most native women."<sup>59</sup> Ironically, it is their very dispossession that is held against them when Aboriginal women encounter violence on the streets.

*The Making of White Men : The Two Accused*

*European empires and European masculinities were imagined in geographies of adventure.*

Richard Phillips<sup>60</sup>

Alex Ternowetsky and Steven Kummerfield's histories begin in the colonial practices described above. In their everyday life, they would have had almost no chance of encountering an Aboriginal person. Absent from the university, the ordered suburbs of their families, the chalets and cottages, spaces that come into existence through the violent dispossession of Aboriginal peoples, Aboriginal bodies must be sought out in those marginal spaces of the city. Why would white men seek out these bodies? Why would they leave their own spaces of privilege? How do young white men such as Alex Ternowetsky and Steven Kummerfield come to know themselves as beings for whom the definition of a good

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<sup>57</sup> Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol. 2 (Winnipeg: Queen's Printer, 1991) at 52.

<sup>58</sup> J.L. Sheane, "Life and Death on the Edge of Nowhere" [*Saskatoon*] *Star Phoenix* (8 June 1996) C3.

<sup>59</sup> McConney, *supra* note 10 at 212.

<sup>60</sup> Phillips, *supra* note 1 at 3.



time is to travel to the parts of the city inhabited by poor and mostly Aboriginal peoples and there to purchase sexual services from an Aboriginal woman? In this section, I offer the argument that the subject who must cross the line between respectability and degeneracy and, significantly, return unscathed, is first and foremost a colonial subject seeking to establish that he is indeed in control and lives in a world where a solid line marks the boundary between himself and racial/gendered others. For this subject, violence establishes the boundary between who he is and who he is not. It is the surest indicator that he is a subject in control.

I have argued elsewhere<sup>61</sup> that the spatial boundaries and transgressions that enable the white, middle-class male to gain mastery and self-possession, are generally evident in a man's use of a woman in prostitution. When they purchase the right of access to the body of a prostitute, men, whether white and middle-class or not, have an opportunity to assert mastery and control, achieving in the process a subjectivity that is intrinsically colonial as well as patriarchal. Naturalized as necessary for men with excess sexual energy, prostitution is seldom considered to be a practice of domination that enables men to experience themselves as colonisers and patriarchs, that is, as men with the unquestioned right to go anywhere and to do anything to the bodies of women and subject populations they have conquered (or purchased). Instead, the liberal idea that we are autonomous individuals who contract with each other is used to annul the idea that prostitution is non-reciprocal sex and thus a violation of the personhood of the prostitute. The contract cancels the violence, although we readily recognize the violence of other financial transactions (such as Third World youth who sell their corneas to First World buyers). The space of prostitution, which Malek Alloula describes as "*the very space of orgy: the one that the soldier and the coloniser obsessively dream of establishing on the territory of the colony,*"<sup>62</sup> is the space of license to do as one pleases, regardless of its impact on the personhood of others.

How did the two men enact their colonial histories? Race is not at first glance as evident as gender although neither exists independently. The men's behaviour bears some resemblance to the young hockey athletes researched by Laura Robinson in her book *Crossing the Line: Violence and Sexual Assault in Canada's National Sport*.<sup>63</sup> Robinson

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<sup>61</sup> Razack, *supra* note 7.

<sup>62</sup> M. Alloula, *The Colonial Harem*, (Minneapolis: University of Minnesota Press, 1986) cited in R. Bishop and L. S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* (New York & London: Routledge, 1998) at 151.

<sup>63</sup> L. Robinson, *Crossing the Line: Violence and Sexual Assault in Canada's National Sport* (Toronto: McClelland & Stewart, 1998) [hereinafter *Crossing the Line*].

describes the masculinity that is actively fostered in the world of young athletes as one where violence and sexual aggression, and a hatred of the softness that is female, are positive signs of masculinity.<sup>64</sup> The normalizing of abusive relationships and male bonding rituals designed to foster team relationships help to produce men for whom relationships with other men become the primary source of intimacy.<sup>65</sup> Drawing on the work of scholars researching sports and masculinity, notably Peggy Reeves Sanday, Robinson suggests that sexual violence collectively enacted enables the men to get as close to each other as they can without endangering their sense of themselves as heterosexuals. To debase and degrade a woman in the presence of other men secures the masculinity that must be aggressive and that must disavow sexual feelings for other men.<sup>66</sup> Scholars pursuing these themes in the context of university-educated men on sports teams share Robinson's emphasis on the relational features of this masculinity. Schacht, for instance, concludes of male rugby players that a kind of "order-by-violence" often prevails in which the definition of a real man is someone who sexually harms women.<sup>67</sup> The players resorted to a variety of violent practices to "distance themselves from the feminine," continually reminding one another what masculinity is.<sup>68</sup> Donnelly and Young also note "the fragility of reputations" in sports sub-cultures, that is, the need to make and remake masculine identity and the constitutive role that violence plays in this cycle.<sup>69</sup> Wenner describes the male adolescent for whom excessive public drinking (as well as buying the services of a prostitute) is a rite of passage into manhood, an exposure of oneself to a dangerous situation from which one emerges triumphant. Sport, Wenner suggests, works in a similar way, enabling men to establish their reputations with other men and to mark off the distinction between themselves and women.<sup>70</sup> As I show below, such practices also enable men to mark themselves as different from and superior to racial Others.

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<sup>64</sup> *Ibid.* at 39.

<sup>65</sup> *Ibid.* at 120.

<sup>66</sup> *Ibid.* at 151-52.

<sup>67</sup> S.P. Schacht, "Misogyny On and Off the 'Pitch': The Gendered World of Male Rugby Players" (1996) 10:5 *Gender & Soc.* 550 at 555. See also A.A. Boswell & J.Z. Spade, "Fraternities and Collegiate Rape Culture: Why Are Some Fraternities More Dangerous Places for Women?" (1996) 10:2 *Gender & Soc.* 133.

<sup>68</sup> Schacht, *ibid.* at 557-58.

<sup>69</sup> P. Donnelly & K. Young, "The Construction and Confirmation of Identity in Sport Subcultures" (1988) 5 *Soc. Sport J.* 223 at 235.

<sup>70</sup> L.A. Wenner, "In Search of the Sports Bar: Masculinity, Alcohol, Sports, and the Mediation of Public Space" in G. Rail, ed., *Sport and Postmodern Times* (Albany : Suny Press, 1998) 301.

Kummerfield and Ternowetsky inhabited a world in which the homo-social bonding, drinking, and aggression described by scholars of sports masculinities were important features. Their counsel presented a unified picture of boys who started drinking at fourteen and who steadily progressed into a regular pattern of weekend and summer drinking. Both of the accused noted that as the youngest members of their university sports teams, they were initiated into more serious drinking by older teammates. Described as an “up and coming basketball star” of the University of Regina, Steven Kummerfield was cautioned about his excessive drinking by his basketball coach and saw an addictions counselor while in his first year of university.<sup>71</sup> Kummerfield’s drinking led on one occasion to his becoming a young offender, when in 1994 he damaged some unoccupied farm buildings.<sup>72</sup> For his part, Alex Ternowetsky described socializing and drinking with his hockey teammates at the University of Northern British Columbia. Returning to Regina for a visit a few months after beginning his first year, Ternowetsky drank to excess with his friends (Tyler Stuart and Ryan Leier) and ended up at a convenience store in the early morning. While there, he tried to hug a girl emerging from a nearby vehicle and when confronted by her boyfriend proceeded to smash the latter’s car with a golf club handed to him by his friends. He received a conditional discharge and his father paid the damages of \$3,000. The assault charge was dropped. Shortly after, he sought some addictions counseling although it is not clear if this was as a consequence of the court case.<sup>73</sup>

On the weekend of the murder, both men indulged in extensive drinking with their friends. Ternowetsky’s account of his activities over the Easter weekend prior to the murder provides some idea of his social world. Arriving via Edmonton, he contacted a friend, Rod MacLeod, with whom he went drinking at one of their old haunts behind the Balfour hockey arena.<sup>74</sup> Later, at a bar, his friend Eric Woolrich got into a fight with a man he assumed was harassing Ternowetsky. Eric broke his leg during the fight.<sup>75</sup> The following day, Ternowetsky continued drinking with MacLeod on the roof of the Optimist’s arena.<sup>76</sup> Nostalgically sharing a bottle of rye in memory of a good time the summer before, the two also went drinking behind Massey Pool. Finally,

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<sup>71</sup> “Transcript”, *supra* note 2 at 3515.

<sup>72</sup> *R. v. Kummerfield & Ternowetsky*, “Transcript of Sentencing 30 January 1997” [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]) at 49 [hereinafter “Transcript of Sentencing”].

<sup>73</sup> “Transcript”, *supra* note 2 at 3811.

<sup>74</sup> *Ibid.* at 3818.

<sup>75</sup> *Ibid.* at 3821.

<sup>76</sup> *Ibid.* at 3824.

when neither Woolrich nor MacLeod was available to continuing partying, Ternowetsky arranged to meet Kummerfield at Rainbow Bridge and took a cab there, stopping at a bank machine en route to withdraw money for the night's activities.

Of the dozen or so male friends of the accused who testified, all were white male athletes attending university. In this remarkably homogeneous shared world of young, white, athletic, middle-class men (some of whom even had the same first Christian names), drinking and socializing occurred in isolated spaces mainly outside of their respectable homes. Parental surveillance and the financial costs of drinking in a bar were undoubtedly factors contributing to this pattern; during the Easter weekend, Ternowetsky was not allowed into the home of a friend and Kummerfield's parents refused to lend him the car to go out drinking. The men relied on their allowances to obtain drinking money. Their places of drinking and socializing were invested with special meaning, a testimony to the importance of their friendships. The accused testified that the places were secluded and a tradition,<sup>77</sup> a place where they shared good times.<sup>78</sup> A strip of gravel beside the airport runways was Alex Ternowetsky's favourite place and his friends named it the "Alport" in his honour.<sup>79</sup> Steven Kummerfield's favourite place to drink was underneath Rainbow Bridge, a cement bridge over the Waskana Creek,<sup>80</sup> which he described to a correctional officer as "a special place" for himself and Alex.<sup>81</sup> It was in this spot that "Allie" and "Stevie," as the accused called each other, began drinking on the night of the murder.

The sense of identity which both accused gained from their activities with other men was premised on a shared whiteness. Their sports activities cement white settler identity in ways I do not explore here,<sup>82</sup> but evidence of their shared whiteness is most apparent in their

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<sup>77</sup> *Ibid.* at 315-24.

<sup>78</sup> *Ibid.* at 3829.

<sup>79</sup> *Ibid.* at 1009.

<sup>80</sup> *Ibid.* at 852.

<sup>81</sup> *Ibid.* at 1394.

<sup>82</sup> Although few scholars of sports masculinity discuss the role that race plays in the making of the white male athlete in the contemporary context, several scholars have noted the connections between sport masculinities and empire. See e.g. R. Morrell, "Forging a Ruling Race: Rugby and Masculinity in Colonial Natal, c.1870-1910" in J. Navright & T.J.L. Chandler, eds., *Making Men: Rugby and Masculine Identity* (London: Frank Cass, 1996) 91; J. Rutherford, *Forever England: Reflections on Masculinity and Empire* (London: Lawrence & Wishart, 1997). Related Canadian work on sport and national identity has not been explicitly about race and the forging of identities in a white settler society. See e.g. K.B. Wamsley, "The Public Importance of Men and the Importance of Public Men" in P. White & K. Young, eds., *Sport and Gender in Canada* (Don Mills, ON: Oxford University Press, 1999) 24 at 34; A. Bélanger, "The Last Game? Hockey and the Experience of Masculinity

own and their friends' and families' responses to Pamela George and to the Stroll. The men told several of their friends about the events the night of the murder and received considerable support and advice. Alex Ternowetsky told at least four of his friends. One of these, Rodney McLeod with whom he had been drinking at Massey Pool and, whose fleece jacket he was wearing the night of the murder reassured him that no one would find out.<sup>83</sup> To another, Tyler Harlton, he confided that he had killed "an Indian hooker".<sup>84</sup> Ryan Leier, with whom Ternowetsky had been in trouble before and to whom he confided the full details of the night while both were in a hot tub at a chalet in Banff, reassured his friend with the advice "you shouldn't assume you killed her."<sup>85</sup> Finally, Ternowetsky told his friend Eric Willrich, whose jeans he was wearing the night of the murder and at whose house he is alleged to have washed the blood stains off. Steven Kummerfield confided to his best friend Tyler Stuart, with whom he had once gone to the area of prostitution, that "we beat the shit out of "an Indian hooker."<sup>86</sup> In Tyler Stuart's account, Kummerfield also elaborated that he said to Pamela George "If you don't give us head, we're going to kill you."<sup>87</sup> Stuart, apparently mostly concerned about the transmission of disease to Kummerfield's white girlfriend, advised his friend to break up with her if he hadn't worn a condom the night of the murder.<sup>88</sup> In none of these conversations was there any indication that the men acknowledged that a woman has been brutally murdered; her death seemed almost incidental and simply inconvenient. The men seemed to possess a collective understanding of Pamela George as a thing, an objectification that their exclusively white worlds would have given them little opportunity to disrupt.

In contrast to these spaces of intense white, male bonding, the men's relationships with white women and parents appeared to be less intense although no less supportive of their practices of white masculinity. Kummerfield had dinner with his girlfriend Shannon Johnstone before the murder and then went out drinking with Ternowetsky. Although each said they were in love, he never told her about the murder. Suspecting that he had been with another woman, she apparently interpreted his withdrawn manner in the days following the murder as irritation at her

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in Quebec" in P. White & K. Young, eds., *Sport and Gender in Canada* (Don Mills, ON: Oxford University Press, 1999) 293-309.

<sup>83</sup> "Transcript", *supra* note 2 at 315-24.

<sup>84</sup> *Ibid.* at 457.

<sup>85</sup> *Ibid.* at 595-615.

<sup>86</sup> *Ibid.* at 858.

<sup>87</sup> *Ibid.* at 846-910.

<sup>88</sup> *Ibid.* at 871.

questioning about where he had slept on the night of the murder.<sup>89</sup> Kummerfield did confide in his mother about his involvement in the murder, the morning after. Far from counseling her son to go to the police, she suggested that she could call Crimestoppers and provide the police with a false tip.<sup>90</sup> His mother also washed his jeans and cleaned his shoes after the murder while his father went with him to have the car vacuumed more thoroughly.<sup>91</sup> Other parents were equally protective of their sons once they became aware of the gravity of the charges. For example, Tyler Harlton's father mailed newspaper clippings of the trial to his son but took care to return unopened a letter from Alex Ternowetsky.<sup>92</sup> Here too, there appeared to be little anguish over the fate of Pamela George.

In addition to their own isolated spaces, the men also inhabited those of middle-class respectability. They inhabited the spaces of the university, which Carol Schick demonstrates to be so clearly white space on the Canadian prairies,<sup>93</sup> and sports arenas, again white space as Laura Robinson demonstrates with respect to hockey.<sup>94</sup> The suburban households out of which they came enabled them to wear expensive clothing including the labels of Club Monaco, Nike and Timberland,<sup>95</sup> and for Kummerfield to use his father's credit cards to withdraw money for prostitutes, and Ternowetsky to use his own account to buy a plane ticket to the resort mountain town of Banff.<sup>96</sup> In this world of race and class privilege, there were cabins and chalets, the former owned by a grandfather who was formerly a member of the provincial legislature, the latter rented by hockey-playing friends. These spaces of material privilege provided the men with another male space for drinking. Alex Ternowetsky, who flew to Banff the day after the murder, was able to book himself into a hotel room in the resort town and to continue partying, activities that required cabs and money for the room, food, and alcohol.

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<sup>89</sup> *Ibid.* at 574-88.

<sup>90</sup> *Ibid.* at 869.

<sup>91</sup> *Ibid.* at 3588.

<sup>92</sup> *Ibid.* at 463-64.

<sup>93</sup> Schick describes how white teacher-training candidates whom she interviewed about their responses to a mandatory course on Aboriginal issues, experienced the university as elite space, into which Aboriginal bodies entered as interlopers, contaminating the space by representing everything that was not rational. C. Schick, "Keeping the Ivory Tower White: Discourses of Racial Domination." See this issue.

<sup>94</sup> *Crossing the Line*, *supra* note 63 at 226.

<sup>95</sup> "Transcript", *supra* note 2 at 3843.

<sup>96</sup> *Ibid.* at 3757.

Although we have few details from the trial about the subjects who inhabit these elite white spaces, the testimonies of the men staying at the chalet in Banff suggest that, at least in the all-male spaces, sexual aggression was normalised. Ternowetsky's drunken talk at the chalet (saying eight times in a half hour period that "I want to go find a hooker and beat and rape her", and replying to a question about whether he had ever done this with "Yeah ... it was fun and it was a rush")<sup>97</sup> did not strike his listeners as unusual. They objected to his loudness but, as Curtis Doell testified, nothing struck him as unusual.<sup>98</sup> The normal pattern was to ski and follow this up by eight hours or more of drinking. It was also typical to bring white women picked up in bars to the chalet.<sup>99</sup> Presumably, this talk about women and "Indians" was entirely normal.

In this all-white masculine world of privilege, the Stroll, the area of prostitution described in the trial as encompassing St. John and Ottawa streets and involving a specific set of streets and hotels in between,<sup>100</sup> represented the dangerous world of racial Others, a frontier on the edge of civilization. Police described the Stroll as a world of drugs and prostitution, and most of all, as a space of Aboriginality. Steven Kummerfield and his friends visited the Stroll "out of curiosity."<sup>101</sup> Alex Ternowetsky and his friends took their girlfriends on an adventure to the Stroll, "sort of seeing who was there," as his lawyer put it.<sup>102</sup> The young women hid under blankets while the young men negotiated for the services of an Aboriginal prostitute: a thrilling excursion to the slums that would have helped these young white people to know their own place in the world.

On the night of the murder, after leaving Rainbow Bridge, Kummerfield and Ternowetsky drove to a place where they could buy liquor and then headed to the streets of the Stroll. They encountered Charlene Rosebluff, an Aboriginal woman working as a prostitute. In her account, they offered her \$60, which neither of them had. Rosebluff refused to get in the car because there were two men and both were drunk. When she refused, the two men yelled at her using a string of racial slurs. At the trial, they acknowledged that this was possible and that they were likely to have used racial epithets.<sup>103</sup> One man then got into the trunk of the car while the other drove around and tried to

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<sup>97</sup> *Ibid.* at 486-87.

<sup>98</sup> *Ibid.* at 3494.

<sup>99</sup> *Ibid.* at 470-95.

<sup>100</sup> *Ibid.* at 2921.

<sup>101</sup> *Ibid.* at 3760.

<sup>102</sup> *Ibid.* at 892.

<sup>103</sup> *Ibid.* at 3933.

persuade Rosebluff twice again. (At the trial, it is unclear whether they recognize her to be the same woman.). She again refused. The men switched positions and tried one more time. This time, when Pamela George agreed to get into the car, they drove her to a country field two miles outside the city.

When young white men enter racialized urban spaces their skin-privilege clearly marks them as out of place. They are immediately read as johns, and as rich white men who have come 'slumming.' In this respect, they experience an unfamiliar racial marking. This visibility no doubt contributes to white (particularly more affluent) city-dwellers' tendency to perceive themselves as likely targets of robbery or violence in racialized urban space.<sup>104</sup> Steven Kummerfield once paid for the services of a prostitute and alleged that she disappeared with the money without providing her service.<sup>105</sup> Such perceptions of white vulnerability frequently exist in a manner disproportionate to actual documented incidence of crimes, violent crimes in particular.<sup>106</sup> It is perhaps the men's perception that they were marked and at risk on the Stroll that prompted them to drive Pamela George outside of the city to a borderland between the country and the city, a no-man's-land that offers greater anonymity.<sup>107</sup> In this no-man's-land, violent acts can be committed without meaningful consequence. Although the accused both maintained that they did not know the area, the RCMP and the neighbouring farmers testified that it was isolated and that it was routine for prostitution to occur there.<sup>108</sup> What normally happened in this space was mostly undisputed during the trial. The Crown referred to activities in the space as "romantic" activities,<sup>109</sup> while a farmer stated that couples and prostitutes often used the area and that there was "necking or petting in vehicles."<sup>110</sup> The defense lawyer Kovach asked an RCMP officer (who testified that he often stopped vehicles in this area) if "we're talking males, females, homosexuals, whatever, we don't know the kind

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<sup>104</sup> At Public Hearings in Saskatoon for RCAP, Robin Bellamy contrasted this fear typical of (white) suburbanites ("people say that they are concerned about coming down there on a Saturday night at midnight") with Aboriginal citizens' fear of entering the "better areas of Saskatoon." Bellamy, *supra* note 37.

<sup>105</sup> "Transcript", *supra* note 2 at 3933.

<sup>106</sup> Recall Harding's assertion that the typical victim of violent crime in racialized urban space is young, female and Aboriginal, *not* white and male. *Supra* note 21 at 333. In 1990-91, Aboriginal persons comprised 31 percent of the victims of reported crime in Regina, while they represented approximately 5 percent of the population. *Ibid.* at 331.

<sup>107</sup> This interpretation was suggested to me by Carol Schick.

<sup>108</sup> "Transcript", *supra* note 2 at 262, 304.

<sup>109</sup> *Ibid.* at 280.

<sup>110</sup> *Ibid.* at 282.



of people – or you don't know the kind of people that frequent that road.”<sup>111</sup> The accused had no response when they were asked by the Crown why they would drive George to this area if all they wanted to do was have sex with her, a question the judge later directed the jury to ignore.<sup>112</sup> Presumably, since Pamela George and the men were engaged in a contract of prostitution, something that occurred routinely in this space, the jury was directed to draw no special conclusion from their having taken George there.

It is difficult to avoid both the historical and contemporary racial and spatial parallels between the murders of Helen Betty Osborne and Pamela George. Equally, newspaper reports in 1999 calling attention to cases of Aboriginal men found frozen to death after Saskatoon police apparently dropped them outside the city limits in the dead of winter, outline the tremendous violence of the eviction of Aboriginal peoples from urban space.<sup>113</sup> In each instance, white men forcibly and fatally removed Aboriginal bodies from the city space, a literal cleansing of the white zone. The violence is itself cleansing, enabling white men to triumph over their own internal fears that they may not be men in control. The evictions are to areas where white men are able to evade responsibility for their violent acts, areas where there are few witnesses and where, significantly, the norms of civility are suspended and violence by contract is known to occur.

Although there are several instances which neither of the accused can recall, they generally agreed that once at the country field, Pamela George was frightened and tried to defend herself. They talked to her and gave her false names. She ultimately agreed to perform oral sex and all three remained in the front seat of the car while this was in progress. While George was performing oral sex on Ternowetsky (having finished with Kummerfield), Kummerfield announced that they should leave. Ternowetsky asked that George be allowed to finish but a short time later, Kummerfield dragged her from the car and hit her. Ternowetsky, at first surprised, joined in. Neither recalled the extent of the violence but each remembered her face in the mud and the fact that she tried to defend herself. They later claimed that when they drove off (after having bent the license plate to conceal the numbers), Pamela George was still standing.<sup>114</sup>

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<sup>111</sup> *Ibid.* at 1729-30.

<sup>112</sup> *Ibid.* at 4710.

<sup>113</sup> Following press coverage of this incident, the Assembly of First Nations for the prairie region received nearly 600 calls from Aboriginal men and women describing similar acts of violence towards them. M. O'Hanlon, "RCMP Investigate Deaths of Saskatoon Aboriginals" [*Toronto*] *Star* (17 February 2000) A3.

<sup>114</sup> "Transcript", *supra* note 2 at 3574, 3888.

During the trial, the murder scene and the Stroll were described as spaces somehow innately given to illicit and sexual activity. The bodies of Charlene Rosebluff, Pamela George and a number of Aboriginal men were represented variously as bodies that naturally belonged to these spaces of prostitution, crime, sex and violence. This degenerate space, into which Kummerfield and Ternowetsky ventured temporarily, was juxtaposed to the spaces of respectability. Each space required a different legal response. In racialized space, I argue below, violence may occur with impunity. Bodies from respectable spaces may also violate with impunity, particularly if the violence takes place in the spaces of prostitution, racial spaces.

### Unmapping Law: Gendered Racial Violence in Anomalous Zones

*I appropriate these tragedies to argue that blackness has been produced to signify a region of the modern space that lies beyond the domain of "Universal Justice." I believe that to address the problem of race justice we need strategies which recognize how blackness indicates a particular kind of subaltern subject and how the white body has been produced to signify the shrinking smaller territory of universal equality and freedom informing our conceptions of the just.*

Denise Ferreira da Silva<sup>115</sup>

When I identify Ternowetsky and Kummerfield's transgression into racial space as an identity-making process (the men entered the zone, came into close contact with its degenerate occupants, and survived to tell the tale), it is worth reiterating the important connection between prostitution, race, space and justice. Prostitution emerged in its modern form as distinct and confined to sharply demarcated areas of the city at the historical moment when liberal nation-states emerged. Bourgeois subjects, the new citizens of the nation-state, knew themselves as respectable and civilized largely through a spatial separation from those deemed to be degenerate and uncivilized. Degenerate spaces (slums, colonies) and the bodies of prostitutes were known as zones of disorder, filth and immorality. The inhabitants of such zones were invariably

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<sup>115</sup> D. Ferreira da Silva, "Interrogating the Socio-Logos of Justice: Considerations of Race Beyond the Logic of Exclusion" Law and Society Association Summer Institute, University of Buffalo, SUNY (8 July 2000) at 2 [unpublished].

racialized,<sup>116</sup> evacuated from the category human, and denied the equality so fundamental to liberal states.

Seeking to understand the police shooting of her young cousin in one of Rio's '*favelas*' or poor districts, Denise Ferreira da Silva demonstrates how it comes to be that violence inflicted on residents of the *favelas* was considered to be naturally occurring violence, an inevitable feature of places inhabited by Black people. The *favelas* and the Black bodies who live there symbolise a domain of illegality that gives meaning to the respectable neighbourhoods of Brazil where law and order prevails. In the same way, during the trial, Pamela George came to be seen as a rightful target of the gendered violence inflicted by Kummerfield and Ternowetsky. Put another way, her murder was characterized as a natural by-product of the space and thus of the social context in which it occurred, an event that is routine when the bodies in question are Aboriginal. This naturalizing of violence is sustained by the legal idea of contract, an agreement between consenting and autonomous individuals. Because she consented to provide sexual services, the violence became more permissible. The moment of violence is contained within the moment of the contract and there can be no history or context, for example the constraints on her choice and the historical conditions under which the bargain was made. Trapped in the moment in time of the contract, during the trial, Pamela George remained simply "the prostitute" or the "Indian." In the absence of details about George's life and critical scrutiny of the details of the lives of the accused, a number of subject positions remained uninterrogated. Thus, not only did George remain the 'hooker' but Ternowetsky and Kummerfield remained boys who "did pretty darn stupid things"; their respective spaces, the places of white respectability and the Stroll simply stood in opposition to each other, dehistoricized and decontextualized. If Pamela George was a victim of violence, it was simply because she was of the Stroll/reserve, Aboriginal, and engaging in prostitution. No one could then be really held accountable for her death, at least not to the extent that there would have been accountability had she been of spaces within the domain of justice.

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<sup>116</sup> For example, Sander Gilman shows how prostitutes in 19<sup>th</sup> century Europe were depicted with African features even though they were nearly all white. S. Gilman, "Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth-Century Art, Medicine and Literature" in J. Donald & A. Rattansi, eds., "*Race*" *Culture and Difference* (London: The Open University, 1992) 171. Similarly, McClintock discusses the racialization of the Irish poor, routinely depicted with Black skin in 19th Century England. A. McClintock, *Imperial Leather* (New York: Routledge, 1995) at 52-53.

*The Stroll and the Street*

The perception that the Stroll and Aboriginal bodies are spaces of violence, while the university and white suburbs are spaces of civility, is first demonstrated by the candid responses of the police when questioned as to who they initially pursued and why. The boundary between the streets and the university and suburbs was so firmly entrenched in the minds of the police that they spent the first three weeks after the murder “rounding up the usual suspects.” The testimony of Corporal Torgunrud in reply to the Crown’s attorney’s question as to who is a murder suspect is revealing in this respect:

Q Who do you usually suspect when you get a murder?

A Well – ...

Q Let me give you a better example. If it’s a woman who’s killed and there is [sic] boyfriends, husbands, are those people often the suspects?

A Yes.

Q And that’s simply because of the reality of life because oftentimes there is violence in relationships?

A That’s right.

Q And do you often suspect associates?

A Yes.

Q And if a person happens to live a life on the street, involved in that type of world, you might suspect other associates in that area?

A That’s right.

Q Did you suspect anybody who was attending of Regina when you first got the case?

A No.

Q And why not?

A Nobody had ever come forward or there was never anything to point to anybody there.

Q And why would you suspect somebody *far removed from Pamela George’s life*, I take it?

A Right.

Q And did you get much, make much headway in this case pursuing the leads where the suspects were street people, people involved in sort of a lifestyle different, maybe, than most of us have?<sup>117</sup>

It is, of course, only possible to consider the world of the university as entirely apart from the world of the streets if one discounts that there are two parties in prostitution: the prostitute *and* the client. Pursuing suspects on the street, the RCMP interviewed a number of Aboriginal men, and the white man described as George’s common-law husband. The

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<sup>117</sup>“Transcript”, *supra* note 2 at 3281-82 [emphasis added].

suspects all speculated that George was murdered by a “bad Trick,”<sup>118</sup> but this made little impression on the police and they continued looking for Aboriginal men or men from the ‘streets.’ The police had to overcome a number of obstacles in order to keep their focus on suspects from the streets, obstacles that ultimately defeated them. For one thing, the shoe marks at the murder scene indicated that the murderer likely wore Caldera Nike hiking boots, expensive shoes that no suspect from the streets possessed. It was only when they followed up on Charlene Rosebluff’s tip that the police considered the men who were most likely to possess such shoes: white middle-class athletes.

The first suspect the police pursued, George’s common-law husband, Lenny Hall, was a white man who was consistently described by the defense as “an elusive character” whose “whereabouts are pretty scarce,”<sup>119</sup> a man with greasy long hair all the way to his mid-back.<sup>120</sup> The police described Hall as extremely distraught when they told him of Pamela George’s death. He later took a polygraph test and was cleared.<sup>121</sup> In spite of being white, Hall was so thoroughly racially marked and identified as ‘of the street’ that when the Defense hired a private investigator to find him (on the strength that he was still a suspect), she looked in the downtown hotels, the salvation Army Hostel, the Souls Harbour Mission, the food bank and correctional centres. She asked “certain street people ... that generally sort of keep tabs on each other” but did not think to ask George’s family if they knew where Hall was.<sup>122</sup> At the trial, both she and the police concluded that Hall was unlocatable, a conclusion the Crown attorney quickly attempted to qualify with his own spatial assessment:

... you can appreciate to some extent who we’re dealing with here, this is someone who, from his background, has moved around a fair bit, he is an Ontario native to begin with ... native to Ontario to begin with, Saskatchewan isn’t home, he’s not born and raised here ... for example. Charlene Rosebluff’s evidence, why people don’t want to get involved in this, especially street people...the last thing Mr. Hall quite frankly, wants to be doing is getting involved in this thing.<sup>123</sup>

In his awkward naming of Hall as an ‘Ontario native to begin with,’ the Crown attorney very nearly made an explicit and subtextual conflation of

<sup>118</sup> *Ibid.* at 2922.

<sup>119</sup> *Ibid.* at 444.

<sup>120</sup> *Ibid.* at 3345.

<sup>121</sup> *Ibid.* at 2928.

<sup>122</sup> *Ibid.* at 2844-49.

<sup>123</sup> *Ibid.* at 2883.

Hall and 'Natives,' a predictable slip given the extent to which Hall was invested with racial characteristics and regarded as degenerate and therefore not white enough.<sup>124</sup> One should not read anything sinister, the Crown attorney suggested, in Hall being difficult for the police and the private investigator to find: such people are hard to find and are reluctant to become involved with the police. Again, Hall's elusiveness was naturalized as an innate feature of someone of this background, almost a cultural characteristic (or an acquired racial one), and not in any way an effect of ongoing police violence towards individuals racialized and policed in urban Aboriginal spaces.

In contrast to Hall, the Aboriginal suspect, Lloyd Issac, was easy to find since in the weeks following the murder he was arrested and jailed for robbery. As with other Aboriginal suspects, Issac had no Caldera boots and his own running shoes were free of mud and blood. Nonetheless, the Defense maintained throughout the trial that he was possibly the killer. With a history of encounters with the police, Issac was reported to be very agitated when asked if he would take a polygraph test. (He was earlier falsely accused on the basis of one). Issac had several theories about the murder and had heard from other Aboriginal men in prison, including George's cousin, about some of the details of the investigation. In the re-telling of the police's interview with Issac, the Court heard details of how prisons, conflated with Aboriginal spaces, operate. They learned of prison networks of information, for example.<sup>125</sup> The street thus remained, in the space of the courtroom, an aggregate of individuals who form a mass and who function according to their own rules. From this perspective, criminality sticks to the Aboriginal bodies, entrenching a view that such bodies can be associated with little else. In the court transcripts, we do not learn, as newspaper reports revealed, that Issac had been struggling to overcome a drug habit, that he had been subjected to several beatings by police, and had feared being framed for the murder of Pamela George. He had been interrogated by the police four times in relation to the case and was unable to find legal assistance, circumstances that possibly contributed to the taking of his own life in March 1996.<sup>126</sup> Since the over-policing, incarceration and high suicide rates of Aboriginal peoples were not brought to bear on the details, the stain that is Aboriginality could not be seen as socially constructed.

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<sup>124</sup> Hall is in this instance being read as his 19<sup>th</sup> century counterpart would have been, that is, as a "squaw man." Carter notes that white lower-class men labeled in this way were often blamed by the police for crimes such as liquor offences. *Supra* note 14 at 184.

<sup>125</sup> "Transcript", *supra* note 2 at 3008.

<sup>126</sup> K. O'Connor, "Issac Felt Police Would Frame Him" [*Regina*] *Leader Post* (23 December 1996) A1.

Aboriginal women did not fare any better than the men in failing to materialize as subjects during the trial. They too remained ‘of the streets’ and therefore of the violence. Charlene Rosebluff, who was originally of the Sakimay reserve, as was Pamela George, and who the men first approached on the night of the murder, remained in the judge’s mind as “the prostitute.”<sup>127</sup> When she was late for her second court appearance, the Crown attorney explained that she was upset by the way in which “her world” was being described. The judge instructed the jury to read nothing sinister into her failure to show.<sup>128</sup> Kummerfield described her to his friend Tyler Stuart as a hooker and not very good-looking. As an expert on substance abuse revealingly suggested to the Court, it was likely that the men were unable to positively identify Rosebluff as the person they approached three times, not because of their state of inebriation, but because they couldn’t tell one Indian from another and viewed all Indians as being the same.<sup>129</sup> Later pressed by the Defense to explain once again what the men’s failure to recognise Charlene Rosebluff might mean, the expert witness, Dr. Aubrey Levin, again suggested that while such behaviour might be explained by memory loss due the effects of alcohol, the use of insulting language towards Rosebluff would more strongly suggest that the men were unable to recognise her because of “a certain attitude towards that kind of person,” a person who is a prostitute.<sup>130</sup> His expertise, and thus his opinion of the source of the men’s confusion, was later discredited by the judge in his address to the jury.

Apart from a few moments, such as when Charlene Rosebluff remembered her as a nice person and a mother with two children,<sup>131</sup> and when her mother and sister recalled that she liked doing crafts, could cook anything and was a good mother to her ten and five-year-old, Pamela George never left the racially bounded space of prostitution and degeneracy during the trial, a space that marked her as a body to be violated. We never learn of the Sakimay reserve and the extensive familial networks of her life there, nor do we learn anything about why she resorted to prostitution a few times a month, and why she left the reserve in the first place. It is only in newspaper articles that we learn that she helped her father through his crisis with alcohol abuse, supporting him in his journey to become an addictions counselor.<sup>132</sup>

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<sup>127</sup> “Transcript” *supra* note 2 at 444.

<sup>128</sup> *Ibid.* at 846.

<sup>129</sup> *Ibid.* at 2114.

<sup>130</sup> *Ibid.* at 2116.

<sup>131</sup> *Ibid.* at 811.

<sup>132</sup> T. Sutter, “‘She Was My Baby’” [*Regina*] *Leader Post* (13 May 1995, Saturday Magazine) at 1.

When details of her life emerged, such as the fact that Pamela George had a cousin in prison, and her father had himself been falsely accused of a crime,<sup>133</sup> they only confirmed the equation of Aboriginality with violence, a state of affairs that remained unconnected to the violence of the colonisers. In place of details that might have given her personhood, there were a myriad of other details that instead reassured the Court of her belonging to spaces of violence. The needle marks on her arm,<sup>134</sup> the tattoos on her body with the words “Ed” and “I love mom,”<sup>135</sup> the stories of her ripping off clients (stories the police report they heard from Lenny Hall),<sup>136</sup> the mention of her sister who was also a prostitute,<sup>137</sup> and the detailed descriptions of how prostitutes conducted their business (but not how clients participate) leave a powerful image of degeneracy. This degeneracy was clearly racial. She was described as a member of the Mongoloid or Mongolian race<sup>138</sup> when a strand of her hair was classified in evidence. Stephen Kummerfield described her as “shuffling” away from him in fear when she saw Alex Ternowetsky jump out of the trunk.<sup>139</sup> Perhaps most telling of all were the accused’s sense of the crime they committed. Ternowetsky told his friend Tyler Harlton that they picked up an Indian hooker, got kind of mad at her, started to hit her and did it too much and so probably killed her. Tyler was asked on the witness stand how Ternowetsky regarded the murder, to which he replied: “he kind of glanced over it, looked at it sexually.” When asked to clarify, he explained that his friend did not describe the sexual act but instead made a noise like grunting.<sup>140</sup> Ternowetsky did not apologize to the George family until relatively late in the trial. Questioned by the Crown attorney as to why he felt he had to leave town quickly if all he thought he had done was hit someone a few times, Stephen Kummerfield replied:

I was basically disgusted with what took place that evening, and I really didn’t want to be arrested or anything like that just because there are so many opportunities I had, you know, to be successful and stuff and, you know, I just felt so ashamed and things like that.<sup>141</sup>

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<sup>133</sup> *Ibid.*

<sup>134</sup> “Transcript”, *supra* note 2 at 1113.

<sup>135</sup> *Ibid.* at 33, 132.

<sup>136</sup> *Ibid.* at 4248.

<sup>137</sup> *Ibid.* at 2993.

<sup>138</sup> *Ibid.* at 2619.

<sup>139</sup> *Ibid.* at 3562.

<sup>140</sup> *Ibid.* at 457.

<sup>141</sup> *Ibid.* at 3763.



Lost opportunities weighed more heavily on Kummerfield's mind than the thought that he might have severely injured if not killed a woman. Kummerfield's response to the violence parallels those of hockey players like Jarret Reid, who described in *his* statements to the Court the tragedy of the loss of his hard-won hockey career, and his reputation as an adored and respected athlete.<sup>142</sup>

Ultimately, it was Pamela George's status as a prostitute, hence not as a human being, and her belonging to spaces beyond universal justice, that limited the extent to which the violence done to her body could be recognized and the accused made accountable for it. Although it was central to the Defense to spatialize accountability in this way, neither the Crown attorney nor the judge contested these relations between space and justice. The Defense naturalised the violence by framing it as merely something that happens in prostitution and in those spaces. Describing the murder scene as a "quiet" rather than isolated location in which to have sex,<sup>143</sup> Defense attorney Kovach suggested at sentencing: "They were out in the country doing what happens apparently on that road on a regular basis ... This is a fairly common area for that type of activity to be taking place ... She wasn't stabbed forty times. There wasn't a hammer used."<sup>144</sup> In perhaps the most convoluted but revealing of arguments that prostitution lies beyond the space of universal justice, the Defense lawyer for Alex Ternowetsky suggested that if the Court was going to ignore that Pamela George was working as a prostitute (and thus consider the beating and murder as one would any other), then the same consideration must be extended to his client:

But I think the same consideration has to apply when you look at the evidence as it applies to Alex Ternowetsky. Alex admits that he drank excessively, that he picked up a prostitute, that he hit her and he left her out in the country to walk back to the city on her own, and no one can blame you if you look at that and say that's disgusting behaviour. But the issue that you have to consider is whether or not he's guilty of murder....<sup>145</sup>

Although it is difficult to follow his logic, Defense lawyer Aaron Fox appeared here to be suggesting that if the court ignored that the violence occurred within the context of prostitution (and is thus a lesser violence), then it must also ignore that his client drove George to a place of prostitution and inflicted the violence that caused her death. The social

<sup>142</sup> *Crossing the Line*, *supra* note 63 at 44.

<sup>143</sup> "Transcript", *supra* note 2 at 2139.

<sup>144</sup> "Transcript of Sentencing", *supra* note 72 at 37.

<sup>145</sup> "Transcript", *supra* note 2 at 3480.

meaning of places and bodies must all be studiously ignored even as the law depends on these meanings to evaluate the violence. Presumably, his client would then be guilty of disgusting behaviour but not of murder. A parallel was being made between George's engaging in prostitution and his client's drinking, both being examples of risky and ill-advised behaviour. Prostitution in particular "may not be pleasant but that's the reality."<sup>146</sup> Further, Pamela's alleged drug addiction can be equated to their client's drunkenness.<sup>147</sup> It was indeed central to the Defense's arguments that the accused were simply young men who went out drinking. As Fox sums up,

You come to realize how easy it is for two otherwise rather average young boys with a booze problem to find themselves in a whole pile of extremely serious criminal difficulty, difficulty that could indeed effectively wreck their lives for years to come.<sup>148</sup>

For the Defense, if there was a problem to be named in this trial, it is "substance abuse,"<sup>149</sup> and not racial or sexual violence that ended in murder.

The Defense had to go to considerable lengths to make the argument that their clients were drunk and incapable of formulating an intent to injure or kill. The accused performed a number of deliberate actions (hiding in the trunk, hiding the license plate, having oral sex, and so on). While one expert witness saw such actions as indicating consciousness of what they were doing, the Defense's own expert on substance abuse declared the men "alcohol tolerant" to the point that they could perform intricate tasks while very drunk.<sup>150</sup> Drunkenness as a defense for what was being viewed as a temporary loss of control on the part of the men may have made sense to the Court not only because of the men's firm belonging to their own social space but also because of the victim's position outside of it. In other words, given her status in the trial as an Aboriginal woman prostitute and thus of the space of violence, was Pamela George seen as having simply gotten what she deserved?<sup>151</sup>

In his summation, after noting that Pamela George worked as a prostitute, the Crown attorney reminded the court that everyone was

<sup>146</sup> *Ibid.* at 4632.

<sup>147</sup> *Ibid.* at 4633.

<sup>148</sup> *Ibid.* at 4527-25.

<sup>149</sup> *Ibid.* at 4633.

<sup>150</sup> *Ibid.* at 4449.

<sup>151</sup> Cynthia Lee speculates that this may be the case in cases where provocation is the defense used by men who kill unfaithful wives. C. Lee, "She Made me Do It! Killings in Response to Infidelity" (May 1999) [unpublished, in author's possession].

entitled to the protection of the law.<sup>152</sup> He nevertheless concluded in his summary remarks, after sympathizing with the families of the accused, that “Pamela George obviously lived a lifestyle far removed, probably from yours and mine ... The fact that she was a prostitute obviously is a fact, and you have to consider that as part of the case.”<sup>153</sup> In his address to the jury, the judge directed the jury as follows:

Now, if you should find that Pamela George consented to the sexual activity of the two accused, notwithstanding Kummerfield’s remark about killing her if she did not give them head, or if you should have a reasonable doubt as to whether the accised [sic] consented or not, bearing in mind that the evidence indicates that she indeed was a prostitute, then the Crown has not made out its case with respect to first-degree murder occurring during a sexual assault, and you must find the accused not guilty of first-degree murder but guilty of second-degree murder.<sup>154</sup>

He then clarified that forcible confinement was a separate and distinct issue from confinement for sexual assault. For there to be forcible confinement, Pamela George would have to be shown to have been dragged to the car and held against her wishes; she cannot simply have been forced to have sex.<sup>155</sup> He directed the jury to remember that George consented to perform sexual acts and that the accused were within their rights to hire her. Even Kummerfield’s remark that he would kill her if she did not perform the sexual acts had to be considered in light of the fact that he had in fact hired her to perform these acts.<sup>156</sup> While George was to be judged for engaging in prostitution, the men were not to be judged for having purchased her services. Put more plainly, her activity was a crime which carried the risks of violence, while theirs was a contract. Taking her out to the country should then have no bearing on how the intentions of the accused were understood.<sup>157</sup> Presumably, this was all within the purview of the contract Pamela George made to sell her sexual service and within the limits of her lifestyle.

I suggest that it was difficult for the Crown to disturb the argument of drunkenness and disorderly conduct (as opposed to murder), primarily because of an implicit spatial underpinning which was never challenged and was indeed shared by the Crown. While Pamela George remained

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<sup>152</sup> “Transcript of Sentencing”, *supra* note 72 at 69.

<sup>153</sup> “Transcript”, *supra* note 2 at 4755.

<sup>154</sup> *Ibid.* at 4825.

<sup>155</sup> *Ibid.* at 4344.

<sup>156</sup> *Ibid.* at 4809, 4824.

<sup>157</sup> *Ibid.* at 4795.

stuck in the racial space of prostitution where violence is innate, the men were considered to be far removed from the spaces of violence. She was of the space where murders happen; they were not. They received support from several white people and were praised for their accomplishments. The RCMP reported that they got along well with the accused<sup>158</sup> and a correctional officer conveyed that he related to Alex Ternowetsky like a father.<sup>159</sup> Counsel received an anonymous note claiming that a juror flirted with the boys.<sup>160</sup> Steven Kummerfield's lawyer reminded the court at sentencing that Kummerfield had often been the most valuable player of the week and that his sports record "is some indication of who he is and more important who he is now and hopefully who he'll be able to become after he pays his debt."<sup>161</sup> At the trial's end, the judge defended his remarks to the jury by noting that the media did not report evidence that was favourable to the accused.<sup>162</sup> As Robinson shows in her review of cases involving hockey players accused of sexual assault, such evidence need hardly be mentioned since white male judges and lawyers alike often share the view that the loss of the young men's hockey career is a greater tragedy than the young women's loss of her life.<sup>163</sup>

Race rarely surfaced explicitly in the trial but when it did, it was quickly disconnected from whiteness. For example, during a discussion of hair found in the car of the accused, the Defense (using a 19<sup>th</sup> century language of race) discussed negroid, caucasian and mongolian hair. The Defense lawyer Kovach asked the expert witness on hair whether Kovach, as a Hungarian, would be caucasian or mongolian.<sup>164</sup> In this discussion, the word 'white' was never mentioned. It was as though white people did not exist, only caucasians and Hungarians do, labels that have less association with racism than the term 'white' does. When race threatened to disturb the raceless equivalences that were maintained (George's prostitution and the white men's drunkenness, her addiction and theirs), the attorneys drew attention to their own ethnicity in a bid to represent everyone as equally raced. Following a long exchange in which the expert witness Dr. Aubrey Levin maintained that the language used by the men (language that includes racist slurs but is seldom named as

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<sup>158</sup> *Ibid.* at 406.

<sup>159</sup> *Ibid.* at 1409.

<sup>160</sup> *Ibid.* at 3205.

<sup>161</sup> "Transcript of Sentencing", *supra* note 72 at 47.

<sup>162</sup> Justice Malone, "Response to the Honourable Chief Justice Allan McEachern to Complaints by Ms. Sharon Ferguson-Hood and Ms. Ailsa Watkinson and Others, February 6, 1997" [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]).

<sup>163</sup> *Crossing the Line*, *supra* note 63 at 44.

<sup>164</sup> "Transcript" *supra* note 2 at 2550.

such) indicated their social attitudes rather than their state of inebriation, the Defense then asked him whether one's true personality emerged when one was drunk. When Dr. Levin replied that what emerged when drunk was a facet of a person's personality, Kovach once again introduced his own ethnicity and asked:

So that if one, inappropriately perhaps – and let me use the – we – the word Hungarian, because I am Hungarian and proud of it, but if one sees six drunk Hungarians, including myself, on the street corner and we're being rude to you and drunk to you and aggressive towards you, which we might not otherwise be, and if you walked by and described us as being six or seven rude, vulgar, drunken whatever, Hungarians in this case, you are saying that that is a true description of them, as opposed to how they might otherwise be; is that correct doctor?<sup>165</sup>

Hungarians once again replaced white in this exchange where the Defense argued that it was unreasonable to consider "rude" conduct while drunk as having anything to do with underlying social attitudes. If the accused uttered racial slurs to Charlene Rosebluff, this could not then be taken as evidence of their racism since racial slurs uttered under the influence of alcohol were not evidence of racism. Instead, as Kummerfield's lawyer Kovach maintained, they were remarks made "out of character."<sup>166</sup> Interestingly, while it was argued that being drunk is out of character for white men, being drunk is more often than not seen as in character for Aboriginal peoples.<sup>167</sup> Alcohol abuse and its accompanying racial and sexual violence were described as temporary aberrant behaviour while Pamela George's "lifestyle" remained a permanent personal characteristic.

It is no small irony that racism, so rarely named during the trial, only emerged explicitly during sentencing. The Defense reported that Alex Ternowetsky had taken a course on native literature while in prison and had written a paper on Aboriginal/White relations that proved that he has "no clear motive of hatred towards someone of a particular racial origin."<sup>168</sup> Racelessness was pursued to the bitter end, however. When there were complaints made against him after the trial, Mr. Justice Malone confirmed (in a letter to Chief Justice Allan McEachern) that race overdetermined the trial, but noted that only a strategy of racelessness (ignoring everyone's race) countered it:

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<sup>165</sup> *Ibid.* at 2173.

<sup>166</sup> "Transcript of Sentencing", *supra* note 72 at 50.

<sup>167</sup> That Aboriginal people are stereotyped as drunk and criminal is acknowledged by the Court in *R. v. Williams*, [1998] 1 S.C.R. 1158 at para. 58.

<sup>168</sup> "Transcript of Sentencing", *supra* note 72 at 40.

I suspect the real basis for most of the complaints, including the two that I have dealt with, is the underlying feeling that because the two accused were white and the victim was a First Nations person they received special treatment and the jury's verdict [of manslaughter and not murder] was based on racism. This was certainly the reaction of several First Nations spokesmen and extensive media coverage was given in their remarks in this regard. Furthermore, both accused came from financially secure homes and enjoyed the material benefits associated therewith. Their position in life was in striking contrast to the position of the victim. Every effort was made during the trial by counsel and myself to deal with the case strictly on the basis of relevant evidence and not on the financial and social positions of the accused and their victim or their race.<sup>169</sup>

Here, colour-blindness as a legal approach, the belief that justice can only be achieved by treating all individuals as though they were the same, held full sway.

Race, social position, and, I would add, gender, were indeed made to disappear during the trial and in sentencing. The social meaning of spaces and bodies was deliberately excluded as evidence that would contaminate the otherwise pure processes of law, evidence that was not relevant. It was not then possible to interrogate what white men thought they were doing in journeying to the Stroll to buy the services of an Aboriginal prostitute. It was also not possible to interrogate the meaning of consent and violence in the space of prostitution and between white and Aboriginal bodies. Since bodies had no race, class, or gender, the constructs that ruled the day, heavily inflected with these social relations, coded rather than revealed them explicitly. Thus, "prostitute," and people of "the street" came to signify the racial Other and the spaces of violence. In contrast, the university, the chalet, the cottage, the suburban home, the isolated spaces in which the men socialized, were unmarked. When Pamela George's mother Ina and her sister Denise respectively commented in their victim impact statements, "so what if she was a prostitute" and "it felt she was on trial because she was a prostitute,"<sup>170</sup> they were identifying the central way in which Da Silva's two domains of law, the domain of justice and the domain beyond it, were established. This spatial configuration was explicitly geographical and quite deliberately mapped. It was also explicitly raced, classed, and gendered. Bodies that engage in prostitution and the spaces of prostitution are

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<sup>169</sup> Justice Malone, *supra* note 162 [emphasis added].

<sup>170</sup> "Transcript", *supra* note 2 at 5023.

racialized, as I have argued elsewhere, regardless of the actual race of the prostitute. In this sense, it is possible, as Ternowetsky's lawyer suggested at sentencing, that Pamela George's race made no difference,<sup>171</sup> but only in the sense that any woman engaging in prostitution loses her status as white. What a spatial analysis reveals is that bodies in degenerate spaces lose their entitlement to personhood through a complex process in which the violence that is enacted is naturalized. Even when the trial judge at sentencing acknowledged that Pamela George was the victim of mindless violence and that her murderers "cast her aside as if she were something less than human," these observations did not alter his ultimate position that the accused deserved a punishment of six and a half years, given the time of twenty months already served.<sup>172</sup>

## Conclusion

Uncovering this spatialized view of justice helps us to see how race shapes the law by informing notions of what is just and who is entitled to justice. It enables us to see how whiteness is protected and reproduced through such ideas as contract between autonomous individuals standing outside of history. What would it mean to deliberately introduce history and social context into this trial? In the first instance, we would have to ask questions about the activities of the accused. How did they routinely conduct themselves? What is the role of violence against women in their activities? Who were the women who were seen as targets of the violence? These questions would have to be raised within the historical and social context of Aboriginal/white relations in Regina. Secondly, to appreciate that a person has been brutally murdered, details about Pamela George's life, once again historically contextualized, would have to be on the record to counter the historically produced response to her as a woman whose life was worth very little. Efforts to introduce these two lines of evidence would be thwarted by the notion that prostitution is a contract, and not violence, and the notion that individuals must be judged as though they were not embedded in historical and contemporary relations of domination. These approaches would also be resisted by the deeply entrenched notion that colonization simply happened a long time ago, if at all, and that it has ended, without colonizers enacting it and benefiting from it and, most of all, without their continuing to do so. If this exploration of Pamela George's murder trial does anything at all, my hope is that it raises consciousness about how little she mattered to her

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<sup>171</sup> "Transcript of Sentencing", *supra* note 72 at 39.

<sup>172</sup> *Ibid.* at 60. While I do not take a position on the value of long prison terms, I note here that they have been traditionally understood by society as an indicator of the severity of the crime.

murderers, their friends and families, and how small a chance she had of entering the Court's and Canadian society's consciousness as a person.

### **Résumé**

En 1995, Pamela George a été brutalement assassinée par deux jeunes athlètes universitaires de dix-huit ans. Les deux hommes condamnés pour meurtre se virent infliger des peines légères pour leur crime. Dans cet article, j'examine le meurtre de Pamela George comme un acte de violence raciale sexuée faisant partie de la poursuite de la colonisation des Autochtones. Je suggère qu'en tant que femme autochtone travaillant dans un espace de prostitution, Pamela George représentait un corps qui pouvait être violé impunément. Les hommes blancs respectables qui s'aventurent temporairement dans une zone de dégénérescence pour s'engager dans une rencontre avec une prostituée ne sont pas tenus responsables de la violence qui se produit régulièrement dans les espaces et sur le corps de l'Autre. La relation entre les corps, l'espace et la justice, où les zones habitées par l'Autre racialisé ainsi que celles de prostitution (souvent l'une étant l'autre) sont considérées comme des espaces où la justice universelle n'opère pas, suggère que cette violence reste invisible devant la loi. Ses caractéristiques, son rôle dans la constitution de l'homme blanc et des sociétés de colonisateurs blancs, indiquent pourquoi la violence persiste et pourquoi elle est niée par le droit de façon constante. Les processus de création d'identité décrits sont essentiels à la colonisation et, dans ce cas, à celle des Autochtones du Canada.

### **Abstract**

In 1995, Pamela George was brutally murdered by two young university athletes. The men were convicted of manslaughter and given light sentences. In this article, I examine the murder of Pamela George as gendered racial violence and continuing colonization of Aboriginal peoples. I suggest that as an Aboriginal woman working in the space of prostitution, Pamela George represented a body that could be violated with impunity. Respectable white men who journey temporarily into the zone of degeneracy to engage in an encounter in prostitution are not held accountable for violence that occurs so routinely in the spaces and on the bodies of the Other. Further, this relationship between bodies, space, and justice, in which zones inhabited by racial Others as well as zones of prostitution (often one and the same) are considered to be spaces in which universal justice does not operate, suggests how the violence remains invisible in the law. The constitutive features of this violence, its role in making white men and white settler societies, suggest why it keeps on happening and is so consistently denied in law. The identity making processes I describe are vital to colonization and, in this case, specifically to the colonization of Aboriginal peoples in Canada.

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