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## The Bunk House Rules: Housing Migrant Labour in Ontario

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## **The Bunk House Rules: Housing Migrant Labour in Ontario**

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Adrian Smith

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The paper tackles the recent controversy surrounding an application to convert an abandoned school into housing for migrant agricultural workers in Ontario, Canada. It examines how the written reactions of community residents to a proposed municipal zoning by-law amendment convey and invoke understandings of the legal regulation of temporary labour migration. When viewed through a legal consciousness analytic lens, reconstituted to attend to the material practices and context underpinning residents' discursive and ideological responses, what I term a 'materialist legal consciousness studies', it is evident that the residents' submissions intervene in the organization and regulation of agricultural production. While framed in opposition to the proposed amendment and the rules on siting bunk houses, residents' responses -- which rehearse well-worn, racist colonial tropes -- (re)produce material outcomes affecting the working and social lives of migrant agricultural workers in southwestern Ontario. I argue that residents' overwhelming opposition to the bunk house proposal re-inscribes and even extends the unfree labour relations and conditions in which these workers toil and dwell. In so doing, residents perpetuate growers' control not merely of labour power but in fact over racialized labouring bodies, deepening the regulatory immobilization and hyper-exploitation of migrant workers.

### **Keywords:**

Unfree migrant labour, legal consciousness, racialization, migrant housing, municipal planning law

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### Abstract

The paper tackles the recent controversy surrounding an application to convert an abandoned school into housing for migrant agricultural workers in Ontario, Canada. It examines how the written reactions of community residents to a proposed municipal zoning by-law amendment convey and invoke understandings of the legal regulation of temporary labour migration. When viewed through a legal consciousness analytic lens, reconstituted to attend to the material practices and context underpinning residents' discursive and ideological responses, what I term a 'materialist legal consciousness studies', it is evident that the residents' submissions intervene in the organization and regulation of agricultural production. While framed in opposition to the proposed amendment and the rules on siting bunk houses, residents' responses -- which rehearse well-worn, racist colonial tropes -- (re)produce material outcomes affecting the working and social lives of migrant agricultural workers in southwestern Ontario. I argue that residents' overwhelming opposition to the bunk house proposal re-inscribes and even extends the unfree labour relations and conditions in which these workers toil and dwell. In so doing, residents perpetuate growers' control not merely of labour power but in fact *over* racialized labouring bodies, deepening the regulatory immobilization and hyper-exploitation of migrant workers.

*Every colonized people ... finds itself face to face with the language of the civilizing nation*<sup>1</sup>

## **Introduction**

Recent controversy over a proposal to convert a former elementary school into housing for Caribbean migrant agricultural workers highlights commonplace understandings of the legal regulation of temporary labour migration. In late 2011, Norfolk Select Potato Company [“Norfolk Potato”] made its offer for purchase of the abandoned school conditional on a Norfolk County zoning by-law amendment.<sup>2</sup> Local residents in the hamlet of Windham Centre, the rural southwestern Ontario residential community in which the school facility is situated, organized a letter writing campaign and a petition with ninety-three signatures opposing the bunkhouse. Faced with this overwhelming community response, Norfolk Potato ultimately withdrew its application. The residents’ letters claimed the proposed by-law amendment would circumvent migrant worker supervision and monitoring by employers and threaten the safety and well-being of local residents and the community at-large. Windham Centre residents feared that a decision to approve the application would unleash “armies of offshore labour” in their otherwise tranquil community.<sup>3</sup> In one resident’s words:

There is no way for the farmers who have made this application to monitor and supervise the amount of men proposed to be housed on this site if they are not THERE! It has absolutely nothing to do with the race of these men, they could be white, or green with purple spots. That many men, housed in that manner, away from their families, is asking for trouble. Trouble which our little hamlet should not be responsible for as it wasn’t US who asked for them to be housed there.<sup>4</sup>

Of the written submissions, only one expressed unqualified support for the bunk house proposal. In calling for “cooler, saner and logical heads” to “prevail”, the lone supporter characterized the considerable volume of objections as “sort of sickening”. As the supporter pleaded to municipal officials: “Please, do not react to what is nothing less than [*sic*] blatant, albeit sometimes coded, racis[t] remarks and fears”.<sup>5</sup>

The letters invite deeper reflection on the processes and practices through which contemporary racism works. In taking a closer look at the written submissions, I examine the discursive

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<sup>1</sup> Frantz Fanon, *Black Skin, White Masks* (New York: Grove, 1967) at 18. I am grateful for the thoughtful feedback of the anonymous reviewers and editor Stefan Wood, as well as for the erudite support of Dayna Scott through the multiple iterations of this article.

<sup>2</sup> Michelle Ruby, “Migrant bunkhouse plan for Windham Centre meets with resistance” *Simcoe Reformer* (18 November 2011), online: <<http://www.simcoereformer.ca/ArticleDisplay.aspx?e=3375128>>; Monte Sonnenberg, “Potato company defends bunkhouse plan for former school” *Simcoe Reformer* (22 November 2011), online: <<http://www.simcoereformer.ca/2011/11/22/potato-company-defends-bunkhouse-plan-for-former-school>>; Sonnenberg, “Bunkhouse response called ‘xenophobic’” *Simcoe Reformer* (11 December 2011), online: <<http://www.simcoereformer.ca/ArticleDisplay.aspx?e=3399494>>; Sonnenberg, “Company puts kibosh on bunkhouse proposal” *Simcoe Reformer* (15 December 2011), online: <<http://www.simcoereformer.ca/2011/12/15/company-puts-kibosh-on-bunkhouse-proposal>>.

<sup>3</sup> H.G. (30 November 2011). I have adopted the convention of using the initials of community residents for identification purposes in footnotes, balancing the need for proper attribution and partial anonymity. I also have sought to provide modest grammatical alterations to facilitate readability of written submissions.

<sup>4</sup> P.M. (4 December 2011)(Emphasis in the original).

<sup>5</sup> R.K. (23 November 2011).

framing of local opposition. However, the aim is not to fetishize language. Nor is it to trivialize specific strands of oppositional discourse. Instead, I undertake an examination of the opposition to deepen understanding of the ways in which the legal consciousness of local residents intervene in the material relations and conditions of temporary labour migration to Canada. Encoded within residents' legal consciousness are conceptions not merely of the legal rights and entitlements of migrant agricultural workers but more profoundly of the configuration of Canada's agrarian labour regime. The political and legal mechanisms of control imposed on the deployment of migrant labour power are also extended over the bodies of the workers themselves. In this way, it is the specific framings of residents' opposition within the material context of the proposed amendment, the rules for siting bunk houses, and wider relations that prove deeply contentious. Functioning to legitimate and enforce highly unequal relations, residents' responses intervene to intensify migrant labour unfreedom.

The analysis develops in four sections. The first section commences with an overview of the ways agricultural production is structured through the use of "unfree migrant labour" in the Seasonal Agricultural Worker Program ("SAWP"), Canada's longstanding temporary labour migration scheme serving horticultural production. The second section articulates a framework of analysis based on a reconstituted approach to the study of legal consciousness. Framed around anti-racist Marxist theoretical insights, I articulate an analytical framework that takes seriously discourse, ideology and, most crucially, material practices and context. A materialist approach to legal consciousness serves to deepen appreciation of the relations and practices which underpin, and the contexts which surround, cognitive understandings and translate into action. Third, applying a materialist legal consciousness lens, I organize residents' written responses into two primary categories: (1) migrant worker supervision and monitoring, and (2) personal safety, sexual harassment, physical violence and other illicit activities. Grounded in colonial tropes, residents' invocations and representations of law re-inscribe and even extend migrant labour unfreedom. This has real implications for the politico-legal regulation of migrant labour, in terms of the exaction of labour power and especially the perpetuation of growers' control. In the final section, I attend to these effects.<sup>6</sup>

## **I. Urban Planning and the Regulation of Migrant Labour**

In 2011, when Norfolk Potato submitted an application to convert a shuttered school building into housing for migrant workers, the company made its offer conditional on an amendment to the local zoning by-law.<sup>7</sup> The by-law amendment was required because the lands in question were zoned primarily as "rural industrial", under which only specifically listed uses are permitted.<sup>8</sup> "Bunk houses" are listed, and thus would constitute a permitted use, but only on the

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<sup>6</sup> To be clear, the analytical task of this article is not to validate the specific migrant housing proposal -- nor to defend the specific rules for siting a bunk house. Indeed, I largely remain silent on the relative merits of the proposal.

<sup>7</sup> A zoning by-law sets out a detailed set of rules about how lands may be used, and where buildings may be located within a municipality. It is intended to implement a policy direction set out in the municipality's Official Plan. An application for an amendment to the Zoning by-law triggers a public consultation process under the *Planning Act*. R.S.O. 1990, CHAPTER P.13 [*Planning Act*]. Available at: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p13\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p13_e.htm)>.

<sup>8</sup> Norfolk County Comprehensive Zoning By-Law No. 1-Z-2011, at s.7.5. Available at: <<http://www.norfolkcounty.ca/download/government/community-planning/zoning-bylaws/Norfolk%20County%20Zoning%20By-law%20Mar%202017.11%20-%201st%20Draft.pdf>>.

condition that “occupants are employed predominantly by the farm operation where the bunk house is located”.<sup>9</sup> Similarly, the definition of “bunk house” in the Zoning by-law for Norfolk County states that:

“**BUNK HOUSE**” shall mean a *building* or part of a *building* used for the temporary accommodation of seasonal *farm* workers provided such accommodation does not serve as the principal place of residence of an occupant and the bunkhouse is located on the *farm* on which the seasonal workers are employed. A *mobile home* or *recreational vehicle* may be used for the purposes of a *bunk house*.<sup>10</sup>

In Norfolk Potato’s proposal, the workers would be housed away from the farm operation.<sup>11</sup> According to the provisions of Ontario’s *Planning Act*, the decision to amend a zoning by-law can only be taken by the municipal council after a duly-executed public consultation process, including a notice period, an opportunity to provide comments and a public meeting on the application.<sup>12</sup> Once notified, local residents undertook a letter writing campaign to the municipality which included the submission of a ninety-three-signature petition.<sup>13</sup> Of the seventeen letters submitted, only one person wrote in support of the proposal. Virtually all other respondents expressed unequivocal opposition to the application.<sup>14</sup> In the face of this concerted opposition, Norfolk Potato withdrew its application.

The relationship between the legal rules on siting bunk houses and the written submissions of residents calls out for deeper exploration in the context of the legal regulation of migrant labour in Canada. What should be made of the impact of the bunk house rules, including on migrant agrarian labour? And more to the point, does writing a submission opposing the migrant housing proposal constitute the act that requires evaluation and explanation? Or should the evaluative process be aimed at inaction, of Norfolk Potato and Canadian state officials, in the failed attempt to provide (adequate?) housing for migrant agricultural workers? In the first framing the inquiry is focused on the ideological representations of the respondents, on the inclusionary and/or exclusionary practices which those representations serve(d), or on both. In the second framing

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<sup>9</sup> *Ibid* at s.7.5(e).

<sup>10</sup> *Ibid* at s.2.3.

<sup>11</sup> The company was seeking a site-specific special provision permitting the housing of agricultural workers as an additional use in the Rural-Institutional Zone. For further details, see the full application materials: Norfolk County Planning and Economic Development Department, Application to Amend the Township of Delhi Zoning By-Law 1-DE-80 affecting the lands described as Lot 6, part lot 7, Lots 10-13, Part Lot 16, lock 3, Peographic Township of Wyndham, Norfolk County, to permit housing of agricultural workers, and to address inconsistencies in zone mapping, undated. Available at: <<https://norfolk.civicweb.net/FileStorage/005FC8DD8DA0490CA9067233F330BF5D-WorkspacePED%2011-173.pdf>>.

<sup>12</sup> *Planning Act*, ss.10-14.

<sup>13</sup> According to one submission, “A petition has circulated through the Hamlet of Windham Centre. In the designated Hamlet area there are 64 houses. We have received at least one signature from 53 households, 7 we could not make contact, and 3 houses are currently unoccupied. Only one person refused to sign, and they are an employee of one of the farmers who own Norfolk Select Potato Co. We have many more signatures from the immediate surrounding area” (K.G. & L.G. 5 December 2011).

<sup>14</sup> A.M. (5 December 2011).

the focus of inquiry would shift away from the respondents, perhaps altogether, and hone in on the role of the Canadian state and agri-capital.

I situate my line of inquiry within an analysis of the processes and practices through which racism works. Robert Miles and Malcolm Brown understand racism to have two dimensions. First, assuming initially at least an analytical -- as opposed to inductive -- understanding, racism constitutes an “ideological, representational phenomenon” in which groups or so-called ‘races’ of people are attributed with certain biological or somatic characteristics which are ascribed negative values or deemed to produce negative outcomes.<sup>15</sup> Second, as ideological content racism may produce the conditions that create unfreedom in the labour market.<sup>16</sup> These two logics of racism, although typically “complementary and inseparable”, must be demonstrated not assumed.<sup>17</sup> On this reading, writing a submission against a housing proposal designed to support a decidedly marginalized group does not in itself amount to racism in either sense, it is not necessarily even distasteful. In the same way, an expression of support for such a proposal can occur with the invocation of racist understandings or practices. Thus, evaluation of the content of those submissions must be undertaken to determine whether they adhere to racist representations or exclusions. Because racism takes on different meanings across space and time,<sup>18</sup> a contextualized analysis also is needed. Racism therefore is about both content and context.<sup>19</sup>

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<sup>15</sup> Robert Miles & Malcolm Brown, *Racism*, 2nd ed., (London; New York: Routledge, 2003) at 87, 103-104. As Miles and Brown stress, “there is no necessary logical correlation between cognition and action. The conceptual ability to make these distinctions serves the interests of analytical accuracy and of formulating potentially successful interventionist strategies intended to negate both racist ideologies and the disadvantage that accrues from exclusion” (*Ibid* at 103).

<sup>16</sup> As Miles and Brown put it, “its articulation as an ideology has legitimated the mode of production and racialized ... the labour market” (*Ibid* at 120).

<sup>17</sup> *Ibid* at 120. My understanding, while borrowing heavily from the approach articulated by Miles and Brown, differs in an important respect. Miles and Brown arrive at their understanding by drawing a sharp distinction between on one side “ideological content” and representation, which is derived cognitively, and on the other “function” understood as taking action to disadvantage and exclude -- or what they term “exclusionary practice” (*ibid* at 103). For them, the presumption of an innate link between racism as representation and practice undermines the concept’s explanatory potential for the linkage is not natural; it must be shown not presumed. Taking this as a point of departure, one explicitly framed by the desire to take seriously the call for “analytical accuracy” (*ibid*), Miles and Brown are right to stress that the linkage must be demonstrated and not merely taken as given. Notwithstanding this insistence, it is not necessary -- nor is it sustainable -- to draw so fine a distinction. As they rightly acknowledge, racism as ideology “often exists in a mutually reinforcing unity with exclusionary practice ...” (*ibid*). The task of determining whether linkage or unity exists is not an easy one. In-text, below, I discuss the complexity of the inclusion-exclusion distinction. The distinction between action and inaction is equally fraught. Certain nuances exist in distinguishing action from inaction especially as not doing something can itself be a political decision -- or the political act of not acting -- which upholds or reinforces the status quo. When status quo relations are characterized by such gross material inequalities as endemic to capitalism, the tyranny of inaction is indeed unconscionable. Context proves crucially important here and as such, despite Miles and Brown’s laudable intentions, inductive reasoning cannot be jettisoned altogether. As such, the approach adopted here may appear more consistent with Miles in his earlier work -- see Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London: Tavistock, 1987) -- but more properly follows the insights of Terry Eagleton and in a certain respect Slavoj Žižek.

<sup>18</sup> See Miles & Brown, *supra* note 15 at chapter 1.

<sup>19</sup> *Ibid* at 87. The wider claim in which the remaining analysis is wrapped is that capitalist relations generally and unfree relations of production specifically, are fraught with racialized and racist representations and contextual practices and relations. In point this out I attempt to gain analytical coherence by premising my argument on an analytical distinction between racist cognition and exclusionary practice and context, and then by accepting that on

A contextualized approach takes aim at the entire rich fabric of communal and social relations. Terry Eagleton, aligning with philosopher Slavoj Žižek, complicates the two-dimensional account of racism. Racist ideology, as Eagleton once put it, is “not just a matter of what I think about a situation; it is somehow inscribed in the situation itself. It is no good my reminding myself that I am opposed to racism as I sit down on a park bench marked ‘Whites Only’; by the action of sitting on it, I have supported and perpetuated racist ideology. The ideology, so to speak, is in the bench, not in my head”.<sup>20</sup> Racism materializes in social activity and thus we must remain attentive to social formations and material conditions within which ideas are promulgated. Further, in contextualizing the content of residents’ submissions there is a need to take account of historical contingency and specificity. The extent to which a given ideological representation takes on racist connotations is contingent on whether it works to extend, uphold, tinker with or breakdown status quo relations. The ideological representations of Windham Centre residents are inescapably inscribed within the socio-historical formation of the Canadian state and settler colonial project of nation building.<sup>21</sup> Situated within a general historical pattern of racist exclusion from the territory now known as Canada,<sup>22</sup> in specific ways the SAWP functions through a form of differential inclusion or incorporation.<sup>23</sup> How we situate our ‘selves’ in the evaluation is a crucial if unacknowledged point. Typically, the inclusion-exclusion

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balance these demonstrably develop together. In doing so, I am not rejecting universal claims of settler colonialism, but instead to put emphasis on context understood in specific historically materialist terms.

<sup>20</sup> Terry Eagleton, *Ideology* (London; New York: Verso, 1991) at 40. Žižek, *The Sublime Object of Ideology* (London, New York: Verso, 2008/1989) at 33 (“belief, far from being an ‘intimate’, purely mental state, is always *materialized* in our effective social activity”). For an application of ideology critique to law see Susan Marks, “Big Brother is Bleeping Us - With the Message that Ideology Doesn't Matter” (2001) 12:1 *European Journal of International Law* 109.

<sup>21</sup> See e.g. Abigail Bakan, “Reconsidering the Underground Railroad: Slavery and Racialization in the Making of the Canadian State” (2008) 4:1 *Socialist Studies* 3; Todd Gordon, “Towards An Anti-Racist Marxist State Theory: A Canadian Case Study” (2007) 37:1 *Capital & Class* 1; Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender* (Toronto: Canadian Scholars’ Press, 2000); Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2007); Nandita Sharma, *Home Economics: Nationalism and the Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto, 2006) [“Home”]. But even if the focus were set more narrowly, to capture the very specific or more immediate historical context in which the SAWP developed, the emergence of a liberal “open” points system of immigration and official multiculturalism, ignoring Canada’s white settler colonial formation, the program contains, as argued below, an intricate mix of exclusionary and inclusionary practices. Put differently, the challenge of contextualization remains one of setting the level of abstraction with the aim of not losing sight of the forest for the trees. The complexity of this is that inclusion and exclusion, even when viewed in the short run, are different sides of the same coin or “refer to different moments in a single act or process: to include is simultaneously to exclude, and vice versa” (Miles & Brown, *supra* note 15 at 103). But this understanding speaks to the inclusion of one group of people and the exclusion of another distinct group such as generally occurs through the existence of immigration law practices of national states. Temporary labour migration appears unique in that the same group of people, migrant workers, face, at different moments, inclusion and exclusion at the hands of the receiving state. Sending states play crucial roles in the organization of this inclusion-exclusion.

<sup>22</sup> For an account of the racialized and gendered exclusionary history of citizenship in Canada and generally see Donna Baines & Nandita Sharma, “Migrant Workers as Non-Citizens: The Case Against Citizenship as a Social Policy Concept” (2002) 69 *Studies in Political Economy* 75. Canada of course was — and *is* — forged through containment and dispossession of Indigenous populations and lands. For an account of this in relation to citizenship see Darlene Johnston, “First Nations and Canadian Citizenship” in William Kaplan, ed., *Belonging: The Meaning and Future of Canadian Citizenship* (Kingston: McGill-Queen’s University, 1994) 349.

<sup>23</sup> Sharma, *Home*, *supra* note 21; Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada since 1945* (London: Routledge, 2001) [“Racism”].



distinction is understood in terms of a self-defining process of Othering from the standpoint of the dominant self. It is on this basis that racism proves effective at “mak[ing] sense of the world and provid[ing] a strategy for political action” through its capacity to address and deflect “conditions, contradictions and problems” of capitalism.<sup>24</sup> And while racism often marks an attempt to address “the concrete problems” of a given social group, Fanon among other anti-racist thinkers invites us to take seriously the standpoint of the colonial, racialized Other.<sup>25</sup> In this the evaluative judgement of the *content* of residents’ written submissions against the bunk house proposal must take place within the *context* of the relations of capitalist agricultural production.

### ‘Unfree’-ing Migrant Farm Workers

Within capitalist societies, ordinary people are more or less compelled to seek paid work.<sup>26</sup> That compulsion, in theoretical terms, generally occurs through economic means. The vast majority of people must earn income to subsist so securing paid work becomes a necessity. This dull economic compulsion characterizes “free” wage labour. For certain workers, however, compulsion takes on an added dimension. In contrast to free labour, capitalist societies also contain “unfree labour” defined by the imposition of political and legal compulsion sometimes coupled with the use of direct physical force.<sup>27</sup> Where unfree labour exists, therefore, compulsion occurs through economic and politico-legal and/or physical means, capturing the use of a range of coercive practices.

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<sup>24</sup> Miles & Brown, *supra* note 15 at 107. Whereas Miles and Brown suggest that racism depends upon mistaken beliefs, Stuart Hall argues that it “...is not a set of mistaken perceptions...[It arises] because of the concrete problems of different classes and groups in the society. Racism represents the attempt ideologically to construct those conditions, contradictions and problems in such a way that they can be dealt with and deflected at the same moment”. Stuart Hall, “Racism and Reaction” in Commission for Racial Equality ed., *Five Views of Multi-Racial Britain* (London: Commission for Racial Equality, 1978) 23 at 35 cited in *ibid* at 106-107.

<sup>25</sup> Fanon, *The Wretched of the Earth* (New York: Grove, 1963). Following Miles and Brown, racialization “refers to a process of categorization, a representational process of defining the Other” or “a dialectical process of signification”. Miles & Brown, *supra* note 15 at 101. The concept characterizes attempts to “[a]scrib[e] real or imagined biological characteristics with meaning” typically in somatic terms (*Ibid*). Its dialectical nature derives from the counterposing of self and other: “to define the Other necessarily entails defining Self by the same criteria” (*Ibid*)

<sup>26</sup> The phrase “more or less” is a deliberate qualification. This is because, despite the pressures or compulsion faced by workers, capitalist production cannot meet the subsistence needs of all people within it. Yet the ever-expanding or globalizing logic resulting from the process of capital accumulation creates “countervailing tendencies”: “a tendency of capital to increase the labour population, as well as constantly to posit a part of it as surplus population” (Marx cited in Satzewich, *Racism, supra* note 23 at 5). The formation of this surplus population, or what Marx called a reserve army of labour, facilitates capital accumulation just as it undermines that same reserve army which, as Marx so rightly put it, “always stands with one foot in the swamp of pauperism” (*Ibid*). To the extent that migration provides an alternative, the modes through which migrant workers are incorporated into social relations of production in the receiving state becomes the focus of attention. See *ibid*; Satzewich, “Unfree Labour and Canadian Capitalism: The Incorporation of Polish War Veterans” (1989) 28 *Studies in Political Economy* 89 [“Unfree”]. See also H. Clare Pentland, *Labour and Capital in Canada, 1650-1860* (Toronto: James Lorimer, 1981).

<sup>27</sup> See e.g. Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London & New York: Tavistock, 1987) at 31. For a different definition see Tom Brass, *Towards A Comparative Political Economy of Unfree Labour: Case Studies and Debates* (London & Portland: Frank Cass, 1999); Tom Brass & Marcel van der Linden eds., *Free and Unfree Labour: The Debate Continues* (Bern: Peter Lang, 1997). On the application of unfree labour to migrant agricultural workers in Canada see Satzewich, *Racism, supra* note 23. See also Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal: McGill-Queen’s, 2002) [“Tortillas”].

Notwithstanding the apparent binary distinction between “free” and “unfree”, including the implicit treatment of these as opposites -- socio-legal historians and theorists have warned against such a simplistic understanding.<sup>28</sup> It is best, then, to see the free-unfree relationship as fitting along an intricate and nuanced continuum of coercion.<sup>29</sup> In this respect, for instance, we could locate as points along a continuum new world enslavement of primarily West African peoples as well as the indentured servitude of mostly Chinese and Indian labourers following the formal abolition of slavery in the British empire. Following this crucial insight, references to certain forms of temporary labour migration as enslavement or “slave-like”, or as a form of indentureship, are prescient,<sup>30</sup> so too are characterizations of free labour as, in Engels’ and later Marx’s words, wage slavery, although not as synonymous or indistinguishable but as kindred.<sup>31</sup>

Sociologist Vic Satzewich’s political economy of migration account addresses the incorporation of foreign labour into agricultural production relations in southwestern Ontario.<sup>32</sup> On numerous occasions during the twentieth century, the Canadian state sought to mobilize both internal<sup>33</sup> and external<sup>34</sup> labour reserves to undertake agricultural work. Free immigrant labour, unfree immigrant labour, free migrant labour and unfree migrant labour, formed the four available modes of incorporation of foreign-born labour in the post-War period.<sup>35</sup> Following many failed attempts, and under ongoing pressure from several sources since the late 1940s,<sup>36</sup> the Canadian state ultimately opted to formalize the mobilization of external labour reserves through the creation of the SAWP. In 1966, workers from Jamaica were incorporated as unfree migrant labour and in subsequent years and decades the SAWP expanded to include people from other

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<sup>28</sup> For the perspective from the view of social historians see Douglas Hay & Paul Craven, “Introduction” in Hay & Craven eds., *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004) 1-58. From the perspective of a socio-legal theorist see Alan Hunt, *Explorations in Law and Society: Towards A Constitutive Theory of Law* (New York; London: Routledge, 1993).

<sup>29</sup> See e.g. Hay & Craven, *ibid* at 27.

<sup>30</sup> This is a charge consistently leveled by workers and organizers alike, for instance by Justicia For Migrant Workers, and by researchers as well. See e.g. Min Sook Lee’s award-winning documentary *El Contrato* (National Film Board). See also Eugenie Depatie-Pelletier, “Under Legal Practices Similar to Slavery According to the UN Convention: Canada’s ‘Non White,’ ‘Temporary’ Foreign Workers in ‘Low’ Skilled Occupations” Paper presented at the 10th National Metropolis Conference, Halifax (3 April 2008).

<sup>31</sup> Friedrich Engels, *The Condition of the Working Class in England* (Oxford: B. Blackwell, 1958/1845).

<sup>32</sup> Satzewich, *Racism*, *supra* note 23.

<sup>33</sup> During World War II, the Canadian state sought to mobilize “unfree wage labour” including German prisoners of war, Japanese internees, conscientious objectors especially people of Doukhobor and Mennonite faith. Satzewich, *Racism*, *supra* note at 73-76. In addition to efforts to mobilize urban and rural unemployed workers in the two decades following the War, the state endeavoured to draw from such sources of labour as 10 to 16 year old children (with the assistance of the YWCA and YMCA), indigenous peoples, mental health patients, military personnel and high schoolers. *Ibid* at 69; 77-81.

<sup>34</sup> The use of “external” pools of labour included Polish war veterans and Displaced Persons (as unfree immigrant labour), Dutch farmers (as free immigrant labour), and western European university students, tobacco workers from the southern U.S. and Caribbean workers (as unfree migrant labour). See *ibid* at chapter 4. See also Satzewich, *Unfree*, *supra* note 26.

<sup>35</sup> See Satzewich, *Racism*, *supra* note 23 at chapter 4. Although Satzewich identifies these four forms, his analysis indicates that all but free migrant labour were deployed in the twentieth century Canadian context.

<sup>36</sup> *Ibid*. Political pressure derived from three sources: growers in Canada, Caribbean state officials and British officials on behalf of Caribbean states.

parts of the Caribbean and Mexico.<sup>37</sup> The differential incorporation of these workers, as Satzewich makes clear, has been structured through processes of racialization and racism.<sup>38</sup>

Under the SAWP, migrant workers are deployed in Canadian agricultural production for anywhere from several weeks to upwards of eight months in a year.<sup>39</sup> SAWP workers are tied exclusively to a specific agricultural employer within a defined geographic locale. Bound in this way, workers are not permitted to circulate freely in the labour market and must return home at the end of their work authorization or at any other moment determined by their employers. In other words, workers experience severely circumscribed labour market and geographic mobility within Canada. They are permitted to remain in the country only for the duration of their contract and, on the prerogative of growers, can be forced to leave sooner. During their authorized period of stay, migrant farm workers may not alter the conditions of their authorization, change occupations or take on additional employment without the written approval of a federal immigration official, and a transfer contract approved by a representative of their home government and the prospective employer.<sup>40</sup> Thus, while the use of migrant workers in the SAWP is organized around economic compulsion generally, migratory status is a core means of labour unfreedom. The pivotal instrument, the temporary work permit or authorization, subjects non-citizens to the constant threat of deportation.

The politico-legal regulation of migrant labour can be further conceptualized through the dynamic of “mobilize to immobilize”,<sup>41</sup> which captures the transnational regulatory contours. In other words, SAWP workers are mobilized to cross territorial borders only to be immobilized within Canada. The workers who make the annual trek to Canadian fields and greenhouses to harvest crops are governed by the regulatory dynamics of mobilization and immobilization which frame the specific relations and conditions of unfreedom in which they find themselves. The immobilization, which occurs in a number of political and legal respects, is primarily organized around the core SAWP agreements -- country-to-country agreements and the contract of employment<sup>42</sup> -- as well as immigration law, and labour and employment law. The work

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<sup>37</sup> See also Irving André, “The Genesis and Persistence of the Commonwealth Caribbean Seasonal Agricultural Workers Program in Canada.” (1990) 28 *Osgoode Hall Law Journal* 243; Basok, Tortillas, *supra* note 27; Vic Satzewich, “Business or Bureaucratic Dominance in Immigration Policymaking in Canada: Why was Mexico Included in the Caribbean Seasonal Agricultural Workers Program in 1974?” (2007) 8 *International Migration and Integration* 255.

<sup>38</sup> Satzewich, Racism, *supra* note 23 at 46 (“the process of racialization plays a key role in the state’s determination of the permeability of the boundaries of the nation state, and in the allocation and incorporation of foreign-born persons to positions in the division of labour”).

<sup>39</sup> In 2011, 18,710 of the total 28,845 positions available in Canada were located in Ontario. HRSDC (Human Resources and Skills Development Canada). Temporary Foreign Worker Program Labour Market Opinion Statistics. Annual Statistics 2008-2011, Table 10a. Released April 30, 2012. <[www.hrsdc.gc.ca](http://www.hrsdc.gc.ca)>.

<sup>40</sup> There is ample evidence that existing (or former) employers have a hand in the denial of worker transfer requests. The prerogative power of growers to repatriate workers amounts to an extension, expansion and privatization of the Canadian state’s deportation authority. Ultimately, the operation of immigration law undermines existing (and prospective) labour rights and protections.

<sup>41</sup> See Prabhu P. Mohapatra, “Assam and the West Indies, 1860-1920: Immobilizing Plantation Labour” in Hay & Craven eds., *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004) 455.

<sup>42</sup> The current annual contract is available at the HRSDC internet site <<http://www.hrsdc.gc.ca>>. For detailed -- if somewhat dated -- looks at the SAWP worker contracts see André, *supra* note ; Veena Verma, “The Mexican and

permit is instrumental in worker immobilization.<sup>43</sup> Thus, the Canadian state assumes a role of crucial importance in facilitating labour unfreedom and the transnational mobilization-immobilization regulatory dynamic.<sup>44</sup>

Agricultural employers recruit, exact and retain the labour power of workers through the use of economic coercion and through the additional use of work permits and deportation which serve to intensify the process of exploitation and immobilization shrouding it in the protective seal of law's violence. In this respect, the SAWP is not merely exploitative -- it is super or hyper-exploitative.<sup>45</sup> We could express this in any -- or perhaps all -- of three ways. First, by virtue of the added dimension of coercion, more surplus can be taken or exacted from migrant workers than from free wage labour. Second, migrant workers face both economic exploitation and extra-economic coercion in the ways they are recruited and retained within the labour market. A third manner of expressing labour unfreedom turns on the use of mechanisms of control not merely over labour power deployment but in fact over migrant workers themselves. In this it is evident that the work and wider social lives of these workers are governed by the dictates of labour unfreedom. It is this third expression of the hyper-exploitative nature of the SAWP which the analysis builds on below.

### **Housing Migrant Labour**

A key requirement under the SAWP employment contract is that growers must provide free housing accommodations for workers.<sup>46</sup> In fact the provision of "adequate housing" has served

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Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program under Unionization" North-South Institute (Ottawa, 2003).

<sup>43</sup> For an analysis of the use of work permits to enforce differential inclusion see Sharma, Home, *supra* note 21.

Luin Goldring, Carolina Berinstein and Judith Bernhard develop the idea of "precarious migrant status" — borrowing from the precarious employment context and from earlier work on the Live-In Caregiver Program — to capture variations in status for new immigrant, temporary migrant and undocumented workers. Goldring, Berinstein, & Bernhard, "Institutionalizing Precarious Migratory Status In Canada (2009) 13:3 Citizenship Studies 239 at 245. In their words, "precarious migratory status, like citizenship, is multi-dimensional and constructed by specific state policies, regulations, practices of policy implementation, activism, discourses, and so forth" (*Ibid* at 240).

<sup>44</sup> That said, I do not mean to downplay the "heavy lifting" performed through sending state apparatuses. It is instead to accept that, because the SAWP rests upon the hierarchies of the national state system and uneven capitalist development, the imperialist project of the Canadian state ultimately structures relations within the SAWP. From this perspective, any serious analysis must hold the role of the Canadian state to account. For the best point of departure on the role of the Canadian state in temporary labour migration see Satzewich, Racism, *supra* note 23. For a forceful and lucid intervention on contemporary imperialism of the Canadian state see Todd Gordon, *Imperialist Canada* (Winnipeg: Arbeiter Ring, 2010).

<sup>45</sup> Marxist thinkers such as geographer David Harvey use the term super-exploitation, for instance, to capture how capitalism's ongoing creation of a surplus population, a reserve army of labour, intensifies labour exploitation. See e.g. Harvey, *A Companion to Marx's Capital* (London; New York: Verso, 2010) at 145. Somewhat indiscriminately, Harvey deploys the term as an intensifier on Marx's foundational idea of labour exploitation (and Harvey even uses it to refer to land exploitation). In contrast, I find value in narrowing and specifying the terms usage. As argued in-text, the intensification of economic compulsion through forms of immobilization produces a qualitatively distinct form of labour exploitation -- unfreedom -- which, in line with the heightened emphasis on time-space compression in contemporary social theory, I prefer to characterize as hyper-exploitation. The proliferation of temporary labour migration-infused economic activities works to annihilate spatial barriers. On time-space compression see Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge, MA: Blackwell, 1990).

<sup>46</sup> SAWP Contract, section II 1. online:

<[http://www.hrsdc.gc.ca/eng/workplaceskills/foreign\\_workers/forms/sawpcc2012.pdf](http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/forms/sawpcc2012.pdf)>.

as a point of contention under the SAWP. Workers have complained publicly about “work-camp”, “ghetto” or “slum” living conditions typically in trailers located on growers’ farms. More specifically, the list of concerns include crammed bunk houses and overcrowded living areas, mould in bedrooms, sewage smells, a lack of indoor toilets, rodents, gas leaks and leaky roofs.<sup>47</sup> Fires present an additional hazard.<sup>48</sup> As well, the close proximity of worker accommodations to farm operations has led to serious health and safety concerns, specifically chronic exposures to pesticides.<sup>49</sup> Finally, employer surveillance of worker housing through electronic or visual means is also an ongoing concern. Therefore, the provision of housing appears to contribute to the immobilization of these workers.

A troubling consequence of all of this is that migrant workers toil and dwell in deep social isolation while in Canada. This serves growers’ demands for lengthy hours of work especially during peak harvest and, in trampling on any possibility for sustained leisure time, further exacerbates worker isolation. Yet another contributing factor is the spatial dispersal of workers on farms not usually in close proximity to each other and with typically only a smattering of workers at any given site. Already separated from family and community back home, workers live amongst each other often in tight quarters. Add to this the splintering of workers across the vast geographic expanse of rural southern Ontario (or other provinces for that matter). The mandatory housing provision on or near the farm, therefore, produces an enforced physical separation and social isolation of migrant agricultural workers from each other and from local community residents.

The sustained isolation coupled with the relatively close proximity to employers has several disturbing consequences. For one, the worker-employer relationship is characterized as paternalistic.<sup>50</sup> The structural features of the SAWP also are said to foster the need for workers,

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<sup>47</sup> Vidya Kauri, “Canada Migrant Workers Prone To Abuse, Exploitation Due To Lax Government Oversight: Advocates” *Huntington Post* (21 January 2012), online: <[http://www.huffingtonpost.ca/2012/01/21/canada-migrant-workers-abuse\\_n\\_1210725.html](http://www.huffingtonpost.ca/2012/01/21/canada-migrant-workers-abuse_n_1210725.html)>; Anonymous, “Mexican farm workers complain about substandard working conditions” *The Canadian Press* (20 May 2001); Amanda Truscott, “Foreign workers decry 'harsh' dismissals from farms” *The Globe and Mail* (12 Dec 2008) A13; Tony Van Alphen, “Employers are abusing farm workers, unions charge” *Toronto Star* (27 Oct 1994) A12; Kerry Preibisch & Jenna Hennebry, “Temporary Migration, Chronic Impacts: International Migrant Worker Health in Canada,” (2011) 183 *Canadian Medical Association Journal* at 1036. In the British Columbia context see *Justicia For Migrant Workers British Columbia, Housing Conditions for Temporary Migrant Agricultural Workers in B.C.* (October 2007), online: <<http://www.justicia4migrantworkers.org>>; British Columbia Ministry of Agriculture and Lands, *Regulating Temporary Farm Worker Housing In the ALR* (March 2009), online: <<http://www.agf.gov.bc.ca>>; Patricia Tomic, Ricardo Trumper & Luis L.M. Augiar, “Housing Regulations and Living Conditions of Mexican Migrant Workers In the Okanagan Valley, B.C.” (2010) *Canadian Issues* 78; Anonymous, “Improve Housing: Consulate” (2012) 28:8 *OH & S Canada* 6.

<sup>48</sup> Sarah Doktor, “Faulty water heater likely cause of blaze” *Simcoe Reformer* (17 June 2013), online: <<http://www.simcoereformer.ca/2013/06/17/faulty-water-heater-likely-cause-of-blaze>>; Ashley House, “Farm bunkhouse burns down” *Times-Reformer* (14 October 14 2008), online: <<http://www.simcoereformer.ca/2008/10/14/farm-bunkhouse-burns-down>>.

<sup>49</sup> For a recent look at the impacts of “pesticide drift” in California through an environmental justice lens see Jill Lindsey Harrison, *Pesticide Drift and the Pursuit of Environmental Justice* (Cambridge MA: MIT, 2011).

<sup>50</sup> For instance, Tanya Basok contends that “Mexicans assigned to individual growers often develop a paternalistic relationship with their employers. As a result, most of the workers feel loyal to their patrones (employers) and do not wish to abandon them”. Basok, “He Came, He Saw, He... Stayed. Guest Worker Programs and the Issue of Non-Return” (2000) 38:2 *International Migration* 215-238 at 217 [“He Came”].

especially women, to impress their bosses with high productivity.<sup>51</sup> In another respect, troubling social and economic consequences emerge out of popular cultural representations of migrant agricultural workers. Cultural geographer Harald Bauder has shown how discursive representations in mainstream newsprint media in rural Ontario legitimate migrant labour unfreedom.<sup>52</sup> These representations, according to Bauder, create social conditions ripe for the discriminatory treatment of migrant workers on farms and within rural communities. In striving to extend this insight to the impact of the proposed housing by-law amendment, I turn to the socio-legal concept of legal consciousness to evaluate the written opposition to the proposed bunk house.

## II. A Reconstituted Approach to Legal Consciousness

In deploying legal consciousness as an analytic tool for articulating how ordinary peoples' understandings of law shape expectations and behaviour, the analysis hinges on the assumption that Windham Centre community members are advancing a particular set of legal consciousness claims. These claims not only are informed by consciousness about the relations and conditions of the SAWP but in fact inform actions and enforce material practices. As a preliminary task, I sketch the basis of a reconstituted approach, what I term here a materialist approach to legal consciousness.

The study of legal consciousness has developed in a number of disparate strands.<sup>53</sup> As a useful point of departure, a basic distinction can be drawn in terms of two unique analytical orientations. The first category of studies emphasize the understanding and actions of legal insiders including lawyers, judges and other adjudicators. The second set of studies focus on the understandings of a host of outsiders or "ordinary people".<sup>54</sup> The insider-outsider distinction is forged on the characterization of insiders as "official" producers and purveyors of knowledge in law whereas outsiders are deemed "unofficial" sources.<sup>55</sup> Although admittedly quite

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<sup>51</sup> Janet McLaughlin, "Classifying the 'ideal migrant worker': Mexican and Jamaican Transnational Farmworkers in Canada" (2010) 57 *Journal of Global and Historical Anthropology* 79 at 84; Kerry L. Preibisch & Evelyn Encalada Grez, "The Other Side of El Otro Lado: Mexican Migrant Women and Labour Flexibility in Canadian Agriculture" (2010) 35:2 *Signs: Journal of Women in Culture & Society* 289. See also Basok, He Came, *ibid* at 217 (suggesting that "Growers' compliance with requirements for minimum working and living standards assures workers' loyalty").

<sup>52</sup> Harald Bauder, "Landscape and Scale in Media Representations: The Construction of Offshore Farm Labour In Ontario, Canada" (2005) 12 *Cultural Geographies* 41 at 43.

<sup>53</sup> For a critical -- albeit American-centric -- recounting of law and society or socio-legal approaches to legal consciousness see Susan S. Silbey, "After Legal Consciousness" (2005) 1 *Annual Review of Law and Social Science* 323. On the contrasting accounts of legal consciousness from within the critical legal studies movement see Karl Klare, "Contracts Jurisprudence and the First-Year Casebook" (1979) 54 *NYU L. Rev.* 876 (see especially note 2); Klare "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness" (1978) 62 *Minnesota Law Review* 265; Duncan Kennedy, "Toward An Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940" in S. Spitzer ed., *Research In Law and Sociology* (Greenwich, CT: JAI, 1980) 3. To situate these latter texts within historical and theoretical context see Robert W. Gordon, "Critical Legal Histories" (1984) 36: 1/2 *Stanford Law Review* 57 ["Critical"]; Gordon, "'Critical Legal Histories Revisited': A Response" (2012) 37:1 *Law & Social Inquiry* 200 ["Revisited"].

<sup>54</sup> See Lesley Jacobs, "Legal Consciousness and Its Significance for Law and Society Teaching Outside Canadian Law Schools" (2003) 18:1 *Canadian Journal of Law & Society* 61.

<sup>55</sup> For a socio-legal treatment of "official" and "unofficial" versions of law see Elizabeth Comack, *Locating Law: Race/Class/Gender/Sexuality Connections* 2nd ed., (Fernwood: Halifax, 2006) 20-24 citing Ngaire Naffine, "The Law and the Sexes: Explorations in Feminist Jurisprudence" (Sydney: Allen & Unwin, 1990) at 24-25.

simplified,<sup>56</sup> the distinction helps to situate the orientation and emphasis of the analytical framework developed herein, as this analysis fits within the latter category.

What precisely is meant by *legal consciousness*? What aspect of social life does it apprehend or highlight?<sup>57</sup> According to new legal consciousness studies,<sup>58</sup> ordinary people through a diversity of means seek to understand, make sense of and engage in the social context and activities in which they are situated. Of particular interest is the way understandings of, or consciousness about, law inform claims-making and, in turn, the impacts of these processes on existing relations and conditions. Reliant upon a “constitutive theory of social action”,<sup>59</sup> new legal consciousness studies views “legal consciousness as participation in the processes of social construction”.<sup>60</sup> In this way, consciousness forms part of “a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized and objectified”.<sup>61</sup> That said, it transcends the “individual” and ‘ideational’, representing instead “a type of social practice, in the sense that it both reflects and forms social structures”.<sup>62</sup> Legal consciousness, therefore, “cannot be understood independently of its role in the collective construction of legality”,<sup>63</sup> including its maintenance and enforcement.

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<sup>56</sup> I concede that this is an overly rigid distinction, and a rather simplified categorization of competing conceptions of legal consciousness, but it is not one that the core argument is meant to turn on. Nor is the distinction meant to do much more than clarify the starting focus of my particular take on the study of legal consciousness. Thus, while recognizing the salience of the view that legal knowledge is power, the study of legal consciousness is from this perspective meant to deeply complicate legal knowledge assertions. To say that mine is focused on outsider’s legal consciousness is not to suggest that all outsiders are created equal. Issues of positionality, situatedness and relativity are of crucial importance, although not taken up in the core analysis. An implicit analytical assumption is that the socio-legal location of rural citizen homeowners, although typically outside the legal regime, is closer to the core or inside than that of migrant workers. Nevertheless, attentiveness to the relative positioning of subjects does not preclude a universal claim about the marginalized location of those categorized as ‘outsiders’.

<sup>57</sup> Trevor Purvis & Alan Hunt, “Discourse, Ideology, Discourse, Ideology...” (1993) 44 *British Journal of Sociology* 473 at 474. My turn to ‘legal consciousness’ is based on a desire to bring some structure as well as conceptual and qualitatively-derived understanding to how processes of cognition and action work in relation to law. Legal consciousness is meant not as a total analysis or claim but as a conceptual tool aiming to highlight the existence of a link, albeit a complex one, between structure and agency, and as a descriptive aggregator of sorts utilized to convey the common assumptions of a given group of people.

<sup>58</sup> See e.g. Patricia Ewick & Susan S. Silbey, *The Common Place of Law: Stories From Everyday Life* (Chicago, IL: The University of Chicago Press, 1998); Patricia Ewick, “Consciousness and Ideology” in Austin Sarat ed., *The Blackwell Companion to Law and Society* (2004); Laura Beth Nielsen, “Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment” (2000) 34 *Law and Society Review* 1055. See also Susan Silbey, “After Legal Consciousness” (2005) 1 *Annual Review of Law and Social Science* 323-368 [“After”].

<sup>59</sup> Scholars such as Robert Gordon and Alan Hunt -- and in a certain respect E.P. Thompson before them -- have encouraged the development of a constitutive theory of law while warning against an overly broad and general construction which would render it virtually unhelpful if not meaningless. See Alan Hunt, *Explorations in Law and Society: Toward A Constitutive Theory of Law* (New York & London: Routledge, 1993); Gordon, *supra* note 53; Gordon, Revisited, *supra* note 53.

<sup>60</sup> Susan S. Silbey, “Legal Culture and Consciousness” in N.J. Smelser & P.B. Baltes eds., *International Encyclopedia of the Social and Behavioral Sciences* (Amsterdam: Elsevier Science, 2001) 8623 at 8627 [“Legal Culture”].

<sup>61</sup> *Ibid* at 8627.

<sup>62</sup> Silbey, *After*, *supra* note 58 at 334.

<sup>63</sup> *Ibid*.

A key dimension of legal consciousness analysis is that cognitive understandings translate into action. “The study of legal consciousness”, according to Susan Silbey’s critical account, “is the search for the forms of participation and interpretation through which actors construct, sustain, reproduce, or amend the circulating (contested or hegemonic) structures of meanings concerning law”.<sup>64</sup> My aim is to push the study of legal consciousness beyond a reformist policy preoccupation to attend to directly corporeal or embodied ways of knowing and acting.<sup>65</sup> If the study of legal consciousness is organizable around three critical elements of analysis -- discourse, ideology and material practices -- a “materialist legal consciousness studies” turns on the configuration of these elements through a reliance on anti-racist, historical materialist insights.<sup>66</sup> The unity of the whole is the crux on which I reconstitute legal consciousness studies. It provides a solid basis for clarifying the relationship between the core elements of discourse, ideology and action or practice within the analytic concept of legal consciousness. Generally put, these elements should be taken together to counter a fragmented and dichotomized explanation. Trevor Purvis and Alan Hunt have shown that ideology and discourse need not be “counterposed”.<sup>67</sup> Countering perceptions of an explanatory tension, they forge an explicit

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<sup>64</sup> *Ibid* at 334. “Law is a basic, constitutive attribute of our social consciousness. It is a particular way of organizing meaning and force” (*Ibid* at 359). That said, one could push this search beyond structures of meanings to encompass acting and deciding, in a variety of realms including legal-institutional. In this, then, the task is to examine how “what [people] think and do coalesces into a recognizable, durable phenomena and institution we recognize as the law” (*Ibid* at 347). There are a number of ways to access this. In text I describe the approach adopted in this analysis. Another approach might link more closely with an interrogation of the forms of action (and in this the legal consciousness) encouraged in a particular institutional adjudication such as the municipal one. When coupled with, for instance, the state administrative apparatus -- such as a municipal by-law amendment process and hearing - - how do understandings of legal consciousness relate to both acts of intervention, such as those in which Windham Centre residents engaged, as well as acts of adjudication?

<sup>65</sup> On the shift in legal consciousness research to a focus on policy reforms see *ibid*.

<sup>66</sup> In only sketching out their relationship, however, I admit to developing a stylized account. In this vein, I acknowledge the need to further unpack and clarify the interconnections and theoretical undercurrents. That said, I also wish to make clear that such an account owes its allegiances to anti-racist theory and Marxism. Nor, however, do I claim to advance a definitive Marxist account. Rather, I interject a reconstituted legal consciousness account informed by an anti-racist Marxist interpretation. An implicit claim of this work, therefore, is that anti-racist insights must be brought to bear on the study of legal consciousness, which calls for sustained emphasis on the racialized class dimensions of legal consciousness. My use of the term ‘anti-racism’ is meant to include anti-colonialism grounded in the insights of Fanon, for instance as set out in the epigraph, and C.L.R. James -- but, too, with an acknowledgement of the masculinist formulation of far too much of what passes as anti-colonial thought of the twentieth century. To this end, the interventions of scholars like Himani Bannerji prove incisive. See e.g. “Thinking Through: Essays on Feminism, Marxism and Anti-Racism (Toronto: Women’s Press, 1995); Bannerji, “Building From Marx: Reflections on Class and Race” (2005) 32:4 *Social Justice* 144. Here, for expediency, I collapse anti-colonialism into anti-racism. But I do not wish for this to be taken as neglect for recent calls to attend to the decolonization of anti-racism, even though the ways in which this should unfold, from my perspective, are properly contested. On this latter point see Bonita Lawrence & Enakshi Dua, “Decolonizing Antiracism” (2005) 32:4 *Social Justice* 120; Nandita Sharma & Cynthia Wright, “Decolonizing Resistance, Challenging Colonial States” (2008/2009) 35:3 *Social Justice* 120.

<sup>67</sup> Purvis & Hunt, *supra* note 57. As Purvis & Hunt note, contemporary deployment of the concept of ideology typically develop within or arise out of Marxism, whereas the concept of discourse has tended to be deployed through post-structuralist perspectives (*Ibid* at 474). In arguing for a unified approach the point is not to smooth over the rough edges between these sets of theoretical traditions. Indeed, very real and pivotal differences distinguish Marxist and so-called post-Marxist accounts. But Marxist theory need not yield the capacity to analyze discourse, especially as law’s authority has crucial discursive and wider communicative dimensions. That said, law’s effects do not stop at discourse. Fundamentally, material violence underwrites discourse as, for instance, “police use their rifle butts to ‘speak the language of pure force’ to the wretched of the earth” (Jeannine Purdy, “Postcolonialism: the Emperor’s New Clothes?” (1996) 5 *Social & Legal Studies* 405 at 420 citing Fanon, *The*



connection between ideology and discourse analysis yet also leave room to account for material practice.<sup>68</sup> Taking seriously this invitation, I adopt an approach attentive not merely to discourse and ideology, but fundamentally to their relationship with material dimensions of law.

Consciousness about work and social life under capitalism shapes and contains consciousness about law. A reconstituted legal consciousness offers an analytical framework that organizes the collective understandings and actions of ordinary people. Focus rests with the material effects of ordinary people invoking law to make sense of their everyday lives and to take action in the world. Their invocations of law, whether in terms of explicit references to ‘rights, property and legality’, to legal definitions, categories and meanings, and/or to deeply embedded perceptions of law, conveys understandings of law’s role in social life. But because analysis of discourse alone cannot suffice, because it must be further contextualized, the task becomes one of appreciating the material practices and effects of discourse especially as it relates to ideological representations of relations of domination and subordination.

Armed with the understanding of the unity of the whole, it becomes necessary to investigate law’s materiality. Both discourse and ideology address human participation in the construction of consciousness of how law shapes existing social relations. A crucial task, however, is “to continue to emphasize the directly coercive features of a legal regime that distinguish law from other discourses”.<sup>69</sup> For law’s “distinctiveness as discursive practice” rests on a foundation of coercive force and violence.<sup>70</sup> And so neither the discursive nor the ideological dimensions of law can be divorced from “law’s real impact on real people and real relations”.<sup>71</sup> To take seriously material impacts, and in so doing lived experience, meaningful analysis of ideological discourse must take seriously coercion while also avoiding ahistorical disembodied accounts. Following David McNally who argues “that any attempt to understand language in abstraction from bodies and their histories can only produce an impoverished knowledge”, “that the question of language is a question of the body[, a]nd that all body questions are questions of life and work -- and the prospects for their liberation”, I perceive the significance of re-unifying language with bodies and material conditions understood historically.<sup>72</sup> This “turn to the body”, however, is not a mere inversion of “the dualism of language and body”.<sup>73</sup> It is instead embedded within “emancipatory practice” which, in “return[ing] the body to language and language to the body”<sup>74</sup>, confronts the constraining and dehumanizing effects of capitalist social relations. “The

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Wretched of the Earth). See also Douglas Hay, “Time, Inequality, and Law’s Violence” in Austin Sarat & Thomas R. Kearns eds., *Law’s Violence* (Ann Arbor, MI: University of Michigan, 1992) 141.

<sup>68</sup> Purvis & Hunt, *ibid*.

<sup>69</sup> Judy Fudge & Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948* (Toronto: Oxford University, 2001) at 7.

<sup>70</sup> Hay, *supra* note 67; Purdy, *supra* note 67.

<sup>71</sup> Alan Hunt, “The Ideology of Law: Advances and Problems in Recent Applications of the Concept of Ideology to the Analysis of Law” (1985) 19:1 *Law & Society Review* 11 at 26.

<sup>72</sup> David McNally, *Bodies of Meaning: Studies on Language, Labour, and Liberation* (Albany, NY: State University of New York, 2001) at 10; 14. The privileging of discursive analysis similarly is “abstract and disembodied” (*Ibid* at 230). McNally mounts “a sharp critique of the tendency of major social theorists to abstract language from human bodies and their social practices” (*Ibid* at 1). Material feminist theorizing of the body also provides an incisive intervention. See e.g. Stacy Alaimo & Susan Hekman eds., *Material Feminisms* (Bloomington, IN: Indiana University, 2008).

<sup>73</sup> McNally, *ibid* at 230.

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

way labour is organized”, on this account, “becomes central to the histories of labouring bodies and their extensions”.<sup>75</sup> And through the construction of unfree labour, as already discussed, law and the state assume a pivotal role in the organization and regulation of labour migration and racialized migrant labouring bodies.<sup>76</sup>

### III. Legal Consciousness of Windham Centre Residents

In embarking on an examination of the written reactions of Windham Centre residents to the by-law amendment application, primary focus rests on the legal consciousness of respondents.<sup>77</sup>

The task is to view the written responses through the lens of legal consciousness to categorize and evaluate them, with particular attention placed on ascertaining what outcomes are produced. I undertook a process of coding using a three-pass procedure in which I reviewed the written submissions first to gain general familiarity, again to identify common themes and trends and a final time to categorize identified trends.<sup>78</sup> I concerned myself not with a clause-by-clause

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<sup>75</sup> *Ibid* at 8 (“The human body ... is inherently historical. True, bodies have a relatively fixed biological constitution. But the evolutionary history of the human body also involves the emergence of cultural practices and social history. To talk meaningfully about the human body is to talk about bodies that are the site of dynamic social processes, bodies that generate open-ended systems of meaning. It is, in other words, to talk about relations of production and reproduction, about languages, images of desire, technologies, and diverse forms of sociocultural organization. All of these things operate on the site of the body and its history. This is not to say they create the body. It is to insist, however, that they extend and modify bodily existence and experience. The constants of bodily existence take shape through manifold and pliable forms of social life. This is what it means to describe the human body as an indeterminate constancy; and it’s what it means to talk ... about historical bodies. For historical bodies are ... both linguistic and labouring ones” (*Ibid* at 7)).

<sup>76</sup> An important insight is that capitalist labour organization forms a centerpiece of the historical construction of labouring bodies. We must also account for the racialized class dimensions of these processes. Quite crucially, class is experienced through processes of racialization and so there is a need to appreciate the racialized nature of labouring bodies not as some sort of historical accident or coincidence, but as a pivotal feature of the continuing development of capitalism. A requirement is recognition of the racialized and racist ways in which capitalist social relations have unfolded. For instance, feminist geographers such as Alison Mountz and Geraldine Pratt attend to the racialized and gendered practices of the state in the context of the lived embodied experiences of migrant workers. Mountz, “Embodying the Nation-State: Canada’s Response to Human Smuggling” (2004) 23:3 *Political Geography* 323; Pratt & the Philippine Women Centre, *Inscribing Domestic Work on Filipina Bodies* in Heidi J. Nast & Steve Pile eds., *In Places Through the Body* (London & New York: Routledge, 1998) 283.

<sup>77</sup> The limitations of a textual analysis, including the display of elements of social censure but also the need for further contextualization, emerge here. Further contextualization of the written submissions through qualitative interviews of residents, may help to shed light on certain claims advanced within the submissions. An important query that needs further attention is: on what basis do the objections of residents rest? Are the objections based on past observation of migrant workers, implicit interpretations of the SAWP, explicit interpretations of the supposed ‘bunk house’ provisions in the City Plan, or a mixture of these, or perhaps another set of considerations altogether. Moreover, a range of advocacy techniques were deployed which, although forming an intriguing set of arguments and narrative worthy of deeper reflection, I largely ignore. Only a small set of responses expressed ambivalence on what decision should be reached, although even these pointed to negative features of the existence of workers in the community. A common refrain amongst respondents was that the entire community opposed the proposal. A review of the newsprint media stories at the time does not support or undermine that claim. In another respect, it might be useful to evaluate these written responses in terms of the forms of argumentation in which residents’ justifications are set within. As such, one could undertake a critical analysis of the land use planning regime as a site of legal argument production. On argumentation see Frans H. van Eemeren, Sally Jackson & Scott Jacobs, “Argumentation” in van Dijk ed., *Discourse Studies: A Multidisciplinary Introduction* 2nd ed., (London: Sage, 2011) 85.

<sup>78</sup> I supplemented the coding process with a review of local newspaper accounts of the Norfolk Potato migrant housing proposal. In addition, I engaged in a series of extensive discussions with members of Justicia For Migrant Workers, a Toronto and Vancouver-based activist collective that has worked in support of migrant worker justice for

dissection of the textual responses but, through the categorization of objections, with the broad patterns of responses. These patterns reflect assumptions and representations of particular dimensions of the social world which articulate a particular form of legal consciousness. In particular, we find representations of the Other and Self. I hone in on these representations as they relate to the overlapping relationships between migrant workers and growers, migrant workers and residents of Windham Centre, and to a lesser extent growers and residents.

My analysis of the written submissions is organized into two primary objections: (1) concerns related to the supervision and monitoring of migrant workers; and, (2) concerns about personal safety including fear of sexual harassment, physical violence and associated illicit activities.<sup>79</sup> The complexity of responses raises questions about whether the concern is with the re-constitution of the school or with the existence of migrant workers in the community and all that is perceived to entail. I maintain that, although bound up together, ultimately it is fear of the shared existence with these “foreign” labouring bodies -- the racialized and unfree, migrant Other -- that underwrites residents’ objections. Even where the interventions expressly concerned the bunk house rules, therefore, residents are opposed to the existence of racialized migrant workers in *their* community.

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now over a decade. Those discussions began as the events of the housing proposal unfolded and have continued up until the completion of this article. In particular I wish to acknowledge the involvement of Chris Ramsaroor and Tzazna Miranda Leal in helping me to formulate my thoughts on community responses to the housing proposal.<sup>79</sup> A chief focus of the analysis of the submissions is on the relationship between, on one side, objections about migrant worker supervision and monitoring and, on the other, personal safety, harassment and violence. These were identified during the coding process. A secondary set of concerns were identified in the coding process. These relate to the impact on, first, residential property values; second, the use and enjoyment of private premises; and, third, water usage, sewage and wider concerns of environmental impacts. These hold significance in the context of historical spatial matters (including racialized spatialization) relating to belonging and marginalization in Canadian settler colonialism.

It is useful to pause to reflect on the claims of the lone supporter. In a rhetorical flourish, the lone supporter bases his defense of the housing proposal on the economic benefits that accrue from migrant labour-subsidized, agricultural production in the area: “Ask the farmers (if you don’t already know) how valuable these workers are to Norfolk County -- and getting their crops planted, harvested. Ask the farmers, (if you don’t already know) why they find can’t [*sic*] reliable local workers to do he [*sic*] jobs; Ask the businesses in Norfolk (if you don’t already know) what it means to have these workers here, spending their money. You cannot, must not, reject a proposal based on centuries old prejudices. You cannot, must not, reject a proposal based [on] hypothetical fears and assumptions. Those are not facts”. The supporter’s intervention extends to encompass the economic benefits accruing from the potato growing operation, remarking that “The potato company provides jobs, pays taxes, has spent money on facilities -- and oh yes, grows food! The company pays significant money to bring these workers here and house them -- because they are a reliable work force. The school proposal will pay property taxes, provide housing for the workers willing to do the job and; The workers, as we all know, spend countless thousands of dollars in this community... Those are the facts”. The submission rejects outright claims about increased violent and illicit activities caused by the existence of migrant workers: “Please, don’t make Norfolk a laughing stock by listening and succumbing to unfounded talk of violence, vandalism and heaven’s knows what else”. Taken together, the lone supporter’s expressed claims, at first glance, challenge competing sentiments held more widely. Those sentiments posit, at once, the necessity of migrant labour in contemporary agricultural production and the security threat posed by invading outside forces on a pristine and unsuspecting local community. The co-existence of these seemingly conflictual sentiments owes to the capacity of capitalism to turn tension into productive value or utility primarily for the purpose of capital accumulation.

### **(1) Migrant Worker Supervision and Monitoring**

The first identified basis of objection relates to the supervision and monitoring of migrant workers by Norfolk Potato owners. One submission asked, “If the approval is passed, what measures will [be put] in place to monitor the number of workers that will be temporarily living at this location?”<sup>80</sup> Another expressed explicit need for supervision of workers: “I understand in a recent article that the co-owner of the Potato Company found it outlandish that one would suggest that direct supervision of these men is necessary. I find it absolutely naive to think that any large grouping of people will not have issues”.<sup>81</sup> Another submission, referenced at the outset of this piece, despite recognizing the exclusionary connotations of such a proposal, ultimately dismissed these concerns in favour of farmer supervision.

Remarking on the “need for armies of offshore labour” emerging out of the growth of large-scale farming operations, a resident asks: “Where do you put all these men?” “The answer”, as the resident responds, “is not in the middle of our beautiful hamlet of Windham Centre. If these big rich land owners want these big operations they should deal with the workers themselves on their own farms and not put them here out of their sight and supervision”.<sup>82</sup> Other responses justified the need for worker supervision by couching concerns about the destruction of the family environment in concerns about worker safety and well-being. A submission framed it in terms of an expectation of worker supervision: “... as far as I know offshore workers are suppose[d] to be supervised by their employer, well tell me this how are they suppose[d] to supervise them when they are not on the farmer[']s property and there is no one around to check on them”.<sup>83</sup> Others, while not explicitly referencing supervision, still expressed similar concerns.<sup>84</sup>

Another call for supervision emerges around the criminal activities that people visiting workers are said to be engaged in: “The migrant workers themselves may not be the evil that we residents fear, but the company that comes to visit the men from surrounding cities, bringing with them the drugs, prostitution and crime that many who live in rural hamlets had hoped to avoid by choosing to live here”.<sup>85</sup> A resident acknowledges that: “Over the years we noticed that the majority of workers were isolated from the community -- only a few workers became friendly faces who waved hello and stopped for a chat”.<sup>86</sup> Yet a set of responses point to the economic importance of migrant workers in rural development. Overall, as a respondent framed it, their “experiences with agricultural workers as neighbours is not negative. But the effect, within the

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<sup>80</sup> K.L. (5 December 2011).

<sup>81</sup> K.B. (2 December 2011). My search did not turn up a newspaper article to corroborate this claim.

<sup>82</sup> H.G. (30 November 2011). The resident goes on to note that “Here [in] Windham Centre, neighbours lean on fences talking about the weather and the children run and play freely. A great family environment will be destroyed, but what do these land owners care, we’re just the Little Man!!!” (Ibid.). Similarly, another resident notes that “This company has 800 acres and several farms, are you telling me that they cannot find a spot for their own men on some of their already owned land[?] This is a hamlet” K.B. (2 December 2011).

<sup>83</sup> A.S. (4 December 2011).

<sup>84</sup> A submission raised concerns about the changes that would come from rapid growth of the potato growing business and the challenges of assimilation: “What does an overnight population growth of 50% do to the hamlet? How can that many people possibly be assimilated into the community -- especially when they are temporary residents?”. E.D. & S.D. (29 November 2011).

<sup>85</sup> I.B. (22 November 2011). Not all of the responses made explicit reference to the involvement of workers or “their company” in supposedly illicit behaviour.

<sup>86</sup> E.D. & E.S. (29 November 2011).

hamlet, of workers who live on property where their employer also resides could be vastly different than the effect of workers living totally separate from their employer”.<sup>87</sup> Another resident depicts growers as serving a mediation or liaison role between workers and local residents:

“Migrant agricultural workers are valuable to our country, but the workers face unique challenges. These temporary residents, experience cultural differences, perhaps language barriers, and are unfamiliar with local laws and public services. A good employer acts as a sponsor for the workers -- ensuring the workers’ rights are protected, that their personal and medical needs are met. The farmer/employer also acts as a liaison between the community and the agricultural workers helping to resolve any disputes or misunderstandings between the workers and the community. An absent landlord/employer cannot possibly do that job adequately, thereby, placing the workers and the community at risk”.<sup>88</sup>

## **(2) Personal Safety, Sexual Harassment, Physical Violence and Other Illicit Activities**

The second categorical objection encapsulates concerns about personal safety generally and sexual harassment, physical violence and other illicit behaviour specifically. Residents’ personal safety concerns centre around the perception that the existence of migrant workers in the community will have a traumatic, destabilizing effect. In the words of a resident, “We moved to this lovely little hamlet of Windham Centre because it was so quiet, and safe for our children. ... Permission to turn this building into migrant housing would forever alter and ruin our lovely little hamlet”.<sup>89</sup>

Again, certain residents’ concerns are bound up in the claim that Windham Centre is idyllic and by extension that residents engage in safe and acceptable behaviours in contrast to the dangerous and destructive behaviours of workers.<sup>90</sup> A more pointed statement is expressed by another resident: “I should not have to be afraid every day for my safety and the safety of my children”. As that same resident explains, “My husband is a construction worker who is usually gone from dawn [un]til dusk during the same months these people come to work on local farms, can you assure our safety when nobody will even be watching over these men?” And she goes on to add:

“I read the statistics in the paper and our police force is not big enough to have officers on hand at all times to handle the caseload that will come out of this decision. Are you going to hire

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<sup>87</sup> E.D. & E.S. (29 November 2011).

<sup>88</sup> E.D. & E.S. (29 November 2011). Similarly articulated in terms of concern for worker well-being, a respondent remarked that “The migrant workers may or may not need to be supervised but someone has to be responsible for their health and welfare and this would probably not be the case if they were allowed to be housed in the former school” (22 November 2011). Another set of respondents at once registered disapproval while refraining from providing an explanation. “[We] feel that Migrant Workers are needed and are valuable to the Norfolk County farming community”. Yet, as the respondent continues on, “We strongly urge you not to allow the amendment to house agricultural workers ...” K.G. & L.G. (5 December 2011).

<sup>89</sup> P.M. (4 December 2011).

<sup>90</sup> As one resident put it: “This is a small community comprised of many elderly people with a few new families who have relocated here with children. I am sure many of them have moved here for the same reason as I did, to get back to what family is truly about and raise them in a safe environment”. T.P. & N.P. (4 December 2011). A respondent notes: “My next Biggest concern is the safety for my children and my neighbour[’]s kids. ... [R]ight now it is a safe place for my kids to ride their bikes or play with their friends [be]cause there is hardly any traffic ...”. A.S. (4 December 2011).

more officers and make sure that there is always officers on hand in Windham Centre to enforce the law and make sure they are following the laws and treating the people here how they deserve to be treated[?]"<sup>91</sup>

Whereas certain objections make general claims about the housing project's impact on the safety of residents, especially women and children, others also advance specific objections based on allegations of worker sexual harassment and physical violence (or the threat of it) against residents, again mostly young people and women, and engagement in illicit behaviour. To cite one respondent at length:

"... the behaviour of these people is truly frightening and morally wrong. For some reason every woman wants to be hit on, be touched walking by, talked to like we are pieces of meat and completely sexualized in many of these mens [sic] opinion, I know that this may sound harsh, however this is the majority opinion ...".<sup>92</sup>

In a particularly lengthy submission, a resident recounts a series of troubling stories to illustrate her claim that workers will disturb community order. As she puts it: "My 14 and 15 year old daughters were on a bike ride and several of these immigrant workers pulled down their pants and showed them their penises, grabbing themselves and making obscene gestures and comments to them...".<sup>93</sup> As the resident goes on to ask:

"Will I not be able to jog in the early morning or let my children play in the park after dark? Will I have to worry every moment my daughters are out of my sight because of the way these men sexualize the women in the communities they enter? I can promise that should you allow

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<sup>91</sup> T.P. & N.P. (4 December 2011).

<sup>92</sup> T.P. & N.P. (4 December 2011).

<sup>93</sup> According to the resident, "My son was biking with his sister to take her to a friends house and when he was on his return trip home a group of these workers were harassing him, trying to call him on to a fight, until the farmer came over to see what the commotion was and told them to get back to work". The resident also recounts a story of a woman store owner who "was accosted and sexually touched by a worker who came into the store". In a second story the resident recounts a situation where "my daughters were riding by and the men were advancing towards the road calling out to them and making obscene gestures and comments, another group of workers from another farm came and made sure they safely got by the farm". Another resident notes, "All of the women in my community are afraid for their safety, a lot of men have to work very long hours either on their farms or away all together from Windham Centre, how do we protect ourselves from these behaviours[?]" With reference to the surveillance of workers, a resident goes on to ask: "From what I understand [other local communities] have a curfew during farm season for the residents of the towns, will Windham Centre also have to have a curfew because of the behaviour of the people they are trying to house there?" (T.P. & N.P. (4 December 2011). "The men are worried because they will not be home to take care of their wives and dau[ght]ers". Or in the words of a respondent, "Why should the residents of Windham Centre have our lives turned upside down?" In expressing "fear" that the existence of the bunkhouse "would create more harm than good for everyone concerned", a noted long-time resident similarly states: "I enjoy living in Windham Centre because it is a peaceful, quaint village. Allowing a bunkhouse, especially of such a large size for migrant farm workers in the centre of the village[,] would change the atmosphere of this small residential village". I.B. (22 November 2011). Then the resident links their concern with the decline in housing property values; "All of my neighbours feel much the same way, not just in fearing the huge onslaught of migrant individuals in our community but in the resulting drop in property values as homes are sold or not sold after being put up for sale after such a change as this would take place, I don't know if I would want to continue to live here".

this bunkhouse to happen many things will change. Our community is so small and peaceful, why should that change so that some farmers from outside our community save some money”.<sup>94</sup>

A different resident suggests that “[i]ncreasing our population with these workers will only increase the possibility and opportunity for violence, vandalism, harassment and a number of other unwanted and undesirable scenarios”.<sup>95</sup> A resident asks a more pointed query: “Will they be bringing in young ladies for sexual gratification the way I have seen people bringing them into downtown Simcoe for the men?”<sup>96</sup>

According to another respondent, “the local polic[e] may as well set up a station here in our community to make it a shorter drive out here for all of the calls myself and the neighbours will be making everytime ourselves or one of children are sexually harassed, everytime [sic] there is drug use, everytime [sic] there is sexual solicitation by the women who come in to service these groups of men or any other type of illegal or disruptive, intolerable behaviour”.<sup>97</sup> That respondent went on to suggest “I know that when you get any large group of men, away from their families, there is a ‘mob mentality’ that can take effect. The ‘cat calling’ and aggressive behaviour can get out of control”.<sup>98</sup> And then, citing “concern for the welfare of my daughters and the many other young citizens of our small community”, she adds: “As a woman and a mother I am all too well aware of multiple instances of sexual harassment and lewd behaviour towards any woman. I myself have had an instance with a small group of four of these men trying to pick up my 12 year old daughter in our front yard!”<sup>99</sup>

#### **IV. The Material Effects and Context of Residents’ Responses**

In this final section I situate the written responses of community residents within material practices, outcomes and context. Reflecting on the identified grounds of objection, and attending to the discourses they draw upon and how they interact with each other, as well as to the meanings and understandings that can be drawn from these encounters, I read residents’ discursive objections as both ideological representations of the social world, in terms of how they classify productive and wider social relations, and as historical and ongoing material practices and effects of racialized Othering. Having broadly categorized the responses, patterns emerge that betray representations and assumptions of the Other and Self. In particular, these representations convey socio-historico-legal understandings of the overlapping relationships between migrant workers and growers, workers and Windham Centre residents and of growers and residents. More profoundly, these representations enforce racialized class relations.

Through the ideological discourse of worker supervision and monitoring, residents legitimate the subjugation of migrant workers to growers. This occurs in two intersecting ways. A merging of the subjectivities of migrant workers with growers constructs migrant labour in a particular social role, one which does not exist outside of a steep hierarchical relationship with the grower-employer. The worker supervision narrative also works alongside and in association with

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<sup>94</sup> T.P. & N.P. (4 December 2011).

<sup>95</sup> R.V. (22 November 2011).

<sup>96</sup> I have read this as a reference to migrant workers in another, nearby community.

<sup>97</sup> R.M. (4 December 2011)

<sup>98</sup> R.M. (4 December 2011)

<sup>99</sup> R.M. (4 December 2011).

concerns about worker safety and well-being. In this second way, the discourse bridges recognition of the need and value of migrant workers, expressed in terms of economic benefits accruing to the community, with a desire to disallow the zoning by-law amendment.<sup>100</sup> Even as certain residents acknowledge workers' economic contributions, or pose alternatives to the housing proposal, these interventions still maintain that growers hold ultimate responsibility for worker supervision. The housing proposal is viewed as allowing growers to shirk responsibility for *their* workers.<sup>101</sup> Even though it also appears that many residents perceive Norfolk Potato as an outsider, the particular process of Othering legitimates the idea that as an accepted segment of the propertied class, and as 'rightful' occupiers of the land, ownership gives growers control of land and by extension solidifies control over labouring bodies utilized to cultivate that land.

The ideological discourse of supervision functions together with the ideological discourse of personal and community safety and sexual harassment. When coupled with the former, expressions of deep concern for personal and community safety are discursively removed from negative connotations of work under the SAWP. Even on its own the personal safety discourse turns on, at best, a suspicious posturing toward workers. In its most vitriolic articulations, however, personal safety characterizes the existence of workers as a physical threat to local residents' well-being. Notwithstanding the complexity of responses, the concerns of residents focus on the prospective existence of migrant workers in Windham Centre. In the overwhelming expressions of opposition, the lives of workers are portrayed as, at once, insignificant and deviant. This portrayal constructs the existence and circulation of workers in the community as serving to disturb tranquility and to render the community unsafe. Workers therefore are largely objectified in the oppositional responses of residents. When they are granted subjectivity in residents' discourse, it occurs in ways that render them hyper-sexualized deviants or predators.

The intersecting ideological discursive framings of worker supervision and personal and community safety also work to construct the presence and involvement of local residents in terms that refrain from problematizing their relationship with workers. The responses demonstrate an almost universal unwillingness to question migrant labour unfreedom. In addition to largely negative representations of workers, local residents construct their own presence and involvement in unfreedom in contradictory terms. The persistent threat of deportation, the heavy constraints on worker mobility, are not addressed by the residents. Because the specific conditions of unfreedom are hardly referenced in residents' discursive

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<sup>100</sup> For a discussion of the "economic necessity" of migrant workers in Ontario agricultural production see Basok, supra note. For a critical political economic analysis see See Mark Thomas, "Labour Migration and Temporary Work: Canada's Foreign-Worker Programs in the 'New Economy'" in Norene Pupo, & Mark P. Thomas eds., *Interrogating the New Economy: Restructuring Work in the 21st Century* (Toronto: University of Toronto, 2009) 149. At best, certain respondents identify the economic contribution of migrant workers to the local economy. Even the lone supporter's intervention is framed on the "factual" premise of the economic benefits that derive for growers and local business and the need for these workers is also framed in these terms. The paradox between claims to the economic importance of these workers to farmers and local business owners and to the wider economic development of community is contrasted with regulatory immobilization which contributes to their relative social isolation from citizens and near citizens.

<sup>101</sup> But the representational defining of the Other is necessarily reciprocal or dialectical and thus is a defining of Self. Local residents are characterized as fair-minded, law-abiding and rightful inhabitants of the community. The discourse conveys a sense of belonging tied to processes of racialized Othering. Further, the community is portrayed as safe and problem-free, or idyllic. Workers, in reciprocal terms, are perceived as threats to the existing social order. In this framing, there is no sense of a collective obligation to provide adequate housing.



objections, these interventions amount to an erasure of hyper-exploitative work and living conditions. Labour unfreedom, instead, is mediated by and through discourses of personal safety of residents, especially of children and women, and of deviant sexual behaviours ranging from harassment to physical violence. Any uncertainty about workers is shrouded within these overwhelmingly fear-based inter-textual references and representations.

Finally, residents invoke at least two recurring racist colonial tropes: surveillance of the racialized Other (whereby that Other is an object of surveillance); and racialized worker sexual deviance —or what Angela Davis once referred to as “the timeworn myth of the Black rapist”<sup>102</sup>. In mirroring these long-standing tropes, residents’ responses demean migrant farm workers through gross characterizations and assertions linked to, in the first instance, shiftiness and, in the latter, hyper-sexualization. Taken together, these tropes, which assume a ‘victim blaming’ of sorts, are read from the racialized, unfree, migrant construction of labouring bodies in the SAWP.

The fears of community members are not merely gross generalizations conveyed to portray all migrant workers in highly charged, racist terms. They, in fact, are based on historically specific, hyper-exploitative practices of unfree labour relations. These include immobilization of workers through precarious migratory status and the fundamentally exclusionary impetus of territorial belonging which, in their own ways and together, work to distinguish a positively-defined “us” and Self, contingent upon racist formulations enforced through the SAWP, from an amorphously characterized “them” or Other. The hypothetical threat not of the existence and prevalence of sexual harassment or gendered violence in social life in Canada, but of the belief that *all* migrant workers necessarily are dangerous predators overwhelms claims about worker economic contributions, not that this should be the basis for justifying their existence, let alone about worker subsistence and survival. Or as geographer Don Mitchell once put it in an analogous context, “the question is whether [local residents’] fear or discomfort should be allowed to dictate the destruction of the means of survival for other people”<sup>103</sup> — it must not.

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<sup>102</sup> Angela Y. Davis, *Women, Race and Class* (New York: Vintage Books, 1983) at 182; and see generally chapter 11. On racist colonial tropes and their effects see Fanon, *Black Skin, White Masks* (New York: Grove, 1967), especially chapter 5. See also Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (New York: Routledge, 1995). On how these tropes have played out in mid-twentieth-century Canada see David Austin, *Fear of a Black Nation: Race, Sex, and Security in Sixties Montreal* (Toronto: Between the Lines, 2013), especially chapter 8. Davis should not be read as claiming that Black men do not engage in sexual violence and harassment against women, but as contesting that this is a naturalized extension of their racialized identities. The failure to take the personal safety and sexual harassment discourse seriously, threatens to ignore patriarchy and violence against women, in addition to forms of personal violence against children and other people, which are not insignificant within contemporary social life. The challenge, then, is not that these sorts of behaviours do not exist in contemporary rural -- or for that matter, urban -- Canada, but that overly broad claims work to portray *all* migrant workers in these terms. But, in a different respect, it should also be taken as a challenge to overly sterilized accounts of migrant worker lives which, notwithstanding how well-meaning, remove consideration of workers’ intimate engagements with community members and with each other. Little attention has been paid to the social reproduction dimensions of agricultural labour migration to Canada in relation to social provisioning back home and to how socially reproductive labour is attended to while in Canada, through intra-group relations of workers and relations between workers and community residents.

<sup>103</sup> Don Mitchell, “The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws” (1997) 29 *Antipode* 303 at 331 note 31.

The destruction of the means of survival — a deed integral to law’s violence — connotes both material effects as well as material context. Both sets of ideological discourses, supervision and personal/community safety, produce significant material effects. Residents’ oppositional responses provide an example of what might be termed “language-in-action” in that they are subsumed within a set of practices designed to enforce not only difference but subjugation.<sup>104</sup> These practices function to legitimate and sustain unfree labour relations and conditions in agricultural production. A crucial outcome is that workers are rendered as objects with negated subjectivities and their agency is effectively undermined.

With respect to material context, the challenge rests with characterizing residents’ legal consciousness as not sufficiently contextualized, as de-materialized in its deployment of racism and in its disregard for migrant labour unfreedom. In an effort to properly contextualize the interventions of Windham Centre residents in the lived existence of SAWP workers, we are confronted with the undeniable absence of migrant workers’ voices in urban planning and wider political democratic processes in Canada. The consultation did not meaningfully solicit the words, sentiments or understandings of workers. Nor in any way are they responsive to the material conditions of temporary labour migration. The crucial issue of the “control” of the production of public discourse on the migrant housing proposal, including “who has access to the fundamental power resource of public discourse”<sup>105</sup>, undeniably registers here. In the by-law amendment process, migrant workers are “talked about” but not heard from and they enjoy no direct or meaningful input into, not to mention control over, the “contents and style” of this particular production of legal discourse.<sup>106</sup> This silence is crucial to law’s violence.<sup>107</sup>

Here, the violence of law perpetuated on migrant workers is carried out through land use planning law. The public consultation process, which is linked to the planning regime’s emphasis on local autonomy in decision-making,<sup>108</sup> far from displacing the privileging of private property and *citizen* participation, solidifies what could be termed the racialized “propertied citizenship” foundations of the regime and wider social relations.<sup>109</sup> While the foundations are apparent in the planning regime’s adoption of participatory mechanisms devised on racialized propertied exclusionary terms, they also are evident in how a “bunk house” is defined in

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<sup>104</sup> The term “language-in-action” is borrowed from Jan Bloomaert, *Discourse: A Critical Introduction* (Cambridge, 2005) at 2.

<sup>105</sup> Teun A. van Dijk, *Discourse and Power* (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2008) at viii.

<sup>106</sup> *Ibid* (emphasis removed). The significance of this sort of directed discourse is that it does not merely capture “the public mind”, as Teun van Dijk suggests, it also has profound effects on shaping the representations, lived experience and social outcomes of migrant workers. An important dimension of the analysis relates to the deeply exclusionary structure of the planning legal regime. The privileging of residents’ voices over workers’ is evident in the explicit opportunity granted to, and solicitation of, existing community members for consultation and participation in the official process. This occurs to racialized effects.

<sup>107</sup> Hay, *supra* note 67.

<sup>108</sup> Ontario Ministry of Municipal Affairs and Housing, “Citizen’s Guide: The Planning Act” (2010), online: <<http://www.mah.gov.on.ca/>>.

<sup>109</sup> I have borrowed the term “propertied citizenship” from Ananya Roy who discusses the historical emergence of the American paradigm of propertied citizenship. See Roy, “Paradigms of Propertied Citizenship: Transnational Techniques of Analysis” (2002) 38:4 *Urban Affairs Review* 463. I deploy the term to refer to the intersection of national territorial conceptions of belonging, rights of private property ownership and processes of racialization and whiteness. These intersecting bases of authority are bestowed on private property owners in housing, land and labour power deployment.

planning law, absent meaningful engagement with the workers who are confined to it. Through the planning regime, ideological discursive representations of migrant labour are converted into material effects. The most obvious outcome, the withdrawal of the housing by-law amendment application,<sup>110</sup> materializes in the furtherance of worker immobilization. Just as private property ownership in capitalism grants growers the authority to determine the work and social lives of migrant workers, it too permits residents the authority to intervene in the by-law amendment application. A reliance on the authority of residents, a segment of the propertied citizenry, occurred over the authority of the specific grower Norfolk Potato. Residents' interventions collectively proved successful, for all but the dissenting resident, however as noted, it also served to perpetuate the authority of agri-capital over agri-labour more generally. Claims to the need for worker supervision and resident personal safety extended labour unfreedom from the employment sphere to wider living arrangements and practices. With the support of the planning regime, unfreedom has been stretched to encompass the whole of social life of migrant agricultural labour in Canada.<sup>111</sup>

Windham Centre residents collaborated to produce racist exclusion through the differential inclusion of agricultural labouring bodies from the Caribbean. However, to see outcome strictly as an attempt by local residential actors to govern another set of 'foreign' actors, without accounting for the formative role of the state, is to miss out on how labour unfreedom is constructed in, transmitted through and envelopes local and global scales. The bunk house rules cannot be read apart from the web of rules governing the full range of conditions and relations of labour unfreedom.<sup>112</sup> That residents' overwhelming opposition, coupled with a reliance on the provincial planning regime, re-inscribes and extends labour unfreedom does not give sufficient credit to the role of the nation state in laying the groundwork for these processes to occur. The planning regime — and the overarching project of Canadian national state formation and perpetuation — provides a crucial means for the continuing production of labour unfreedom. After all, the racist exclusionary outcome produced in Norfolk County remains consistent with the ongoing racialized hierarchies of the Canadian national state project. The Canadian state project, as evident in residents' legal consciousness, actively constructs the imagined community of Canada not just defined in terms of language as Benedict Anderson famously suggested, but on *racialized* grounds of national belonging.<sup>113</sup> This occurs through processes and practices which uphold differentials in work and social life on the basis of intersecting markers of racialization property ownership and citizenship status.

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<sup>110</sup> See Monte Sonnenberg, "Company puts kibosh on bunkhouse proposal" *Simcoe Reformer* (15 December 2011), online: <<http://www.simcoereformer.ca/2011/12/15/company-puts-kibosh-on-bunkhouse-proposal>>.

<sup>111</sup> There are analogous examples of this occurring elsewhere in the world in the contemporary moment. For instance, internal labour migrants in southeastern China find that the whole of social life is shaped through a "dormitory labour regime". Ngai Pun & Jenny Chan, "The Spatial Politics of Labour in China: Life, Labour, and a New Generation of Migrant Workers" (2013) 112:1 *South Atlantic Quarterly* 179.

<sup>112</sup> In this respect, the material production of labouring bodies in racialized, unfree and migrant terms flows out of, but are not relegated to, nor contained within, the legal regimes conventionally understood to govern immigration, employment, labour, and land use planning. Neither immigration law, employment law, labour law, or land use planning law, at least not as currently constituted, possess the conceptual capacity to fully account for the legal regulation of migrant labour.

<sup>113</sup> Satzewich, *Racism*, *supra* note 21 at 46 (revising Benedict Anderson's classic account by noting how certain states are conceived not only through language but in racialized terms).

It is in the extension of labour unfreedom from growers' labour power deployment to the entire social life of migrant workers that Canada's SAWP can be deemed to be creating "slave-like" or indentured conditions and relations. In the submissions, workers begin to resemble the personal or chattel property of growers, who in turn are portrayed as inevitably and necessarily in positions of domination over them. Local residents come to exist largely outside of this skewed relation of racialized propertied citizenship. However, the residents also insert their own subjectivity into these relations in defence of, not the subjectivity and agency of migrant workers, but their own property rights, a move occurring through an assertion of the propertied authority of growers over farm lands and chattel property. Residents' language-in-action reflects a desire to criminalize and police black migrant labouring bodies in ways that demonstrate a "racialized structural inequality" or economic apartheid in contemporary Canada and that harken back to new world regimes of enslavement.<sup>114</sup> In this respect, the outcome is not merely an objectification of the labouring efforts and capacities of workers, of labour power, a defining feature of capitalist relations of production. When understood as an attempt to undercut or negate the self-determined subjectivity and agency of migrant workers, residents' reliance on racist colonial tropes of surveillance and hyper-sexualization work to deepen the immobilization of workers. The immobilization of black labouring bodies betrays the deep impacts of an ongoing and renewed -- not dying -- colonialism.

What then are the prospects for the liberation of racialized, unfree migrant labouring bodies under the neo-colonial regime of the SAWP? Any meaningful challenge to residents' oppositional representations requires focus on the insular nature of their legal consciousness, which belittles migrant labour unfreedom. That insular-ized legal consciousness, forged on racialized propertied citizenship, may have gained momentum under neoliberal capitalism as ownership of single-unit family dwelling housing, and the monetary value of that property, mark defining characteristics of not only wealth but social belonging in Canada.<sup>115</sup>

Hence the racialized propertied citizenship basis of Windham Centre residents' legal consciousness has faced intensifying pressures under neoliberalism. Property holding residents of communities like Windham Centre entrench neoliberal capitalism coupled with the national territorial project of belonging in their efforts to preserve housing property values and to portray theirs as a tranquil hamlet. Intra-working class conflict plays out in and through a reactionary politics of exclusion designed to exile difference, NIMBYISM (Not In My Backyard) as it has come to be termed, in which the home-owning masses and their associations police the borders on their property fence lines.<sup>116</sup> A deep interplay is forged between policing at the territorial

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<sup>114</sup> Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars's Press, 2006).

<sup>115</sup> In the forty-year neoliberal assault, labouring communities across the urban-rural divide have become deeply indebted to finance capital through mortgages and consumer credit. This expansion of household credit, flowing from low interest rates, has meant dramatically rising personal debt levels with household debt-to-income ratios (i.e. after-tax income to total debts outstanding) growing rapidly. The existence of cheap, readily available credit backs consumption, and it is this debt-financed consumer spending which serves as a core driver of the macroeconomy. In the absence of an adequate monetary and social wage, and indeed faced with a four-decade long period of stagnating real wages, the deepening indebtedness of working-class communities is intertwined with consumer credit and mortgages. See e.g. Fletcher Baragar and Mario Seccareccia, "Financial Restructuring: Implications of Recent Canadian Macroeconomic Developments" (2008) 82 *Studies in Political Economy* 61.

<sup>116</sup> See Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (London; New York: Verso, 1990).

borders of the national state and at the housing property line. And here we see that racialization, and indeed racism, entrenched within the ongoing project of Canadian national state building, is drawn upon to mediate and enforce the value of private residential property over and against the value of the means of survival of migrant agricultural workers. It is in this material context that migrant workers must secure liberation.

One cannot contest the racialized class dimensions of residents' legal consciousness absent a focus on material context. Such an approach downplays or ignores the deep rootedness of labour unfreedom as a process of immobilization and hyper-exploitation, impeding local residents from developing understandings of how law subjugates migrant agricultural workers in Canada, and how, even in the face of certain residents' disdain for growers, it facilitates grower domination and migrant worker subjugation. An anti-racist historical materialist legal consciousness must work to re-position community residents to see how continuation of domination and hyper-exploitation undermine both their own life chances *and* those of migrant workers. It is on these terms that the transformation of residents' legal consciousness must occur and that (certain?) residents might transform their everyday practices to struggle through the complex and trying work of solidarity with migrant workers.

However, anti-racist, historical materialist analysis cannot focus solely and intently on the perpetrators and beneficiaries (however differential those benefits may be) without a commitment to opening space for the assertion of collective -- and, through this, individual -- human agency. That said, the glaring absence of migrant worker voices should not be taken as, nor elevated to, a liberal assertion of the need for greater voice or recognition in the absence of attentiveness to collective action. Indeed the normative goal of meaningful collective action is contingent on the encouragement of anti-racist and anti-capitalist oppositional praxis and struggle committed not "exclusively to persuad[ing] those who articulate racism that they are 'wrong'" but instead to the transformation of racialized economic and political relations endemic to capitalism.<sup>117</sup> What is needed, therefore, is to construct an explicitly confrontational politics committed to, if not driven by, a transformative agenda of sustained and concerted collective action aimed at contesting the entire gamut of working, housing and life conditions.<sup>118</sup> Elsewhere I have identified preliminary examples of the *actually existing resistance* of migrant farm workers, which occurs in typically disjointed and covert forms, and also called for a commitment to consolidating, broadening and fortifying that resistance.<sup>119</sup> At its heart, the

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<sup>117</sup> Miles & Brown, *supra* note 15 at 107.

<sup>118</sup> The limits of mainstream approaches has a great deal to do with the way in which, in the post-war period, legal scholars have come to understand how labour is regulated in law, or more properly labour law, solely through the legal regimes of the contract of employment, statutory collective bargaining and employment standards, the regulatory regimes seen to govern employment. Migrant labour, among other forms of labour, by virtue of their tangential relationship to the aforementioned legal regimes and to collective bargaining in particular, are relegated to the peripheral encounters at the edge of the scholarly field. This, as I argue elsewhere, stems from an epistemological politics uninterested in if not deliberately ignorant of the racialized and gendered impacts of workers' lived experiences. Support therefore must be given to the work of groups like Justicia For Migrant Workers, an anti-capitalist activist organizing collective which both supports migrant worker self-organization and fights against worker isolation, and others like Noone Is Illegal, which build grassroots opposition to the racist immigration policies and practices of the imperialist Canadian state. For an incisive account of Canadian imperialism and its effects at home and abroad see Gordon, *supra* note 44.

<sup>119</sup> Adrian A. Smith, "Racialized In Justice: The Legal and Extra-Legal Struggles of Migrant Agricultural Workers In Canada" (forthcoming) Windsor Yearbook of Access to Justice; "Legal Consciousness and Resistance in

agenda must centralize — but not essentialize — the role assumed by racism in capitalist valuation, in private property ownership, in the production of labouring bodies, in national territorial belonging; or, more succinctly, in the constitution of the social world.

### **Towards A Conclusion**

*Who live here in this cider house...? Who grind them apples, who press the cider, who clean up the mess, and who just plain live here... just breathin' in the vinegar? Somebody who don't live here made them rules. Them rules ain't for us. We the ones who make up them rules. We makin' our own rules, every day. Ain't that right...?*<sup>120</sup>

I have sought to demonstrate the ways in which written opposition to a migrant worker housing proposal in Ontario Canada draws on understandings and assumptions about the legal regulation of migrant agricultural labour. In this opposition, migrant workers have come face-to-face with the language of the civilizing nation. Extending beyond mere textual considerations to contextual matters, I undertake an anti-racist, historical materialist examination of law's violent effects and context. The overwhelming opposition of Windham Centre residents advances a particularly troubling pair of legal consciousness representational claims. Claims that migrant workers should or must be supervised and monitored by growers and that workers' presence in the community poses a physical, sexual or associated criminal threat, lend legitimizing support to the hyper-exploitative nature of Canada's seasonal agrarian migrant labour regime. These claims replicate expressed fears of Canadian state officials in the lead up to the creation of the Seasonal Agricultural Worker Program in 1966, where the introduction of black people into whitened Canadian social life was deemed socially divisive.<sup>121</sup> All of this harkens back to tired, racist colonialist tropes trading on the need for surveillance, and on the hyper-sexualization, of racialized labouring bodies.

Residents' legal consciousness encodes an acceptance of not merely the circumscribed legal rights and entitlements of migrant agricultural workers, but more profoundly the way migrant agrarian labour production is organized and labouring bodies are rendered racialized and unfree and, as such, subjugated to growers and dependent on capitalist market relations and exchange. The insular and restrained legal consciousness of residents legitimates, reproduces and, in important ways, extends labour unfreedom in all its forms, including social isolation and immobilization. Mediating and reproducing unfree labour relations and conditions of workers, residents' legal consciousness assumes a "colour-coded"<sup>122</sup> modality informed by racialized propertied citizenship. In Windham Centre a white propertied citizenship enforced a process of racialized Othering in which migrant labouring bodies were exorcised and exiled from both the imagined and actual community, not only of Windham Centre but of Canada at large.<sup>123</sup>

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Caribbean Seasonal Agricultural Workers" (2005) 20:2 Canadian Journal of Law and Society 95. As I argue in these articles, further research is needed on how workers respond to the racism they encounter.

<sup>120</sup> John Irving, *The Cider House Rules* (Screenplay: 1999), online: <<http://sfy.ru>>.

<sup>121</sup> Satzewich, *Racism*, *supra* note 23 at 191.

<sup>122</sup> See Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto, 1999).

<sup>123</sup> In line with the denial of decent housing to migrant workers, area residents give credence to the Canadian states intensified denial-of-services attack perpetuated against migrant workers in areas such as parental benefits under employment insurance. See Chris Ramsaroop, "The Case for Unemployment Insurance Benefits for Migrant

Residents' interventions bolster and preserve the coercive politico-legal practices of the Canadian state. And through their racialized representations of migrant worker housing, set within the ongoing context of racialized Canadian national state formation, residents extend the immobilization of labouring bodies. The material effect is the perpetuation of growers' control not merely of labour power but in fact *over* racialized and unfree migrant labouring bodies.

A great deal more needs to be contemplated here — the depths and complexity of the means of migrant worker survival, the construction of a neocolonial regime of foreign labour pacification, the Canadian state's claiming of sovereign authority within ongoing settler colonialism; and in this latter respect, fundamentally, how through the SAWP the 'unfree migrant Other' is foisted upon the 'Indigenous Other'. The need for deeper contemplation renders it difficult to arrive at a definitive conclusion. But the imposition of the bunk house rules, just like the cider house rules as the dialogue opening this penultimate section suggests, occurs on the basis of illegitimate authority of growers and the Canadian state. The denial of adequate housing to migrant agricultural workers, the destruction of their means of survival, forms the material context and basis for contestation and directed anti-racist class struggle. It is time for us to rethink and contest the racist propertied citizenship basis upon which the rules governing the lives of all of us persist. The challenge is for us all to support migrant workers and their allies in a transformative praxis that — if I can borrow something I once heard writer Isabella Allende say — aims not to make life better, but to make it *good*. And so, the task rests with confronting the racist class articulations of contemporary capitalism and to support worker self-organization and allied organizations committed not to betterment, but to making good on the promise of a life free of unfreedom.

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