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## The Bunk House Rules: A Materialist Approach to Legal Consciousness in the Context of Migrant Workers' Housing in Ontario

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# The Bunk House Rules: A Materialist Approach to Legal Consciousness in the Context of Migrant Workers' Housing in Ontario

## Abstract

In this article, I tackle the controversy surrounding an application to convert an abandoned school into housing for migrant agricultural workers in Ontario. I examine 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. Viewed through a legal consciousness analytical lens that has been reconstituted to attend to the material practices and contexts underpinning residents' responses (a materialist approach to legal consciousness), the submissions intervene in the organization and regulation of agricultural labour. While rehearsing well-worn, racist colonial tropes, these responses (re)produce material outcomes affecting the working and social lives of migrant farm workers. I argue that residents' overwhelming opposition to the bunk house proposal re-inscribes and even extends the unfree labour conditions in which these workers toil and dwell. In this way, residents perpetuate growers' control not merely of labour power but also of racialized labouring bodies, deepening workers' regulatory immobilization and hyper-exploitation.

## Keywords

Migrant agricultural laborers--Housing; Migrant agricultural laborers--Social conditions; Discrimination in housing; Ontario

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## The Bunk House Rules: A Materialist Approach to Legal Consciousness in the Context of Migrant Workers' Housing in Ontario

ADRIAN SMITH\*

In this article, I tackle the controversy surrounding an application to convert an abandoned school into housing for migrant agricultural workers in Ontario. I examine 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. Viewed through a legal consciousness analytical lens that has been reconstituted to attend to the material practices and contexts underpinning residents' responses (a materialist approach to legal consciousness), the submissions intervene in the organization and regulation of agricultural labour. While rehearsing well-worn, racist colonial tropes, these responses (re)produce material outcomes affecting the working and social lives of migrant farm workers. I argue that residents' overwhelming opposition to the bunk house proposal re-inscribes and even extends the unfree labour conditions in which these workers toil and dwell. In this way, residents perpetuate growers' control not merely of labour power but also of racialized labouring bodies, deepening workers' regulatory immobilization and hyper-exploitation.

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Dans cet article, j'aborde la contre-ense qui entoure un projet de transformer en Ontario une école désaffectée en pavillon d'hébergement pour travailleurs agricoles migrants. J'examine la manière dont les réactions par écrit de la population locale à une proposition d'amendement d'un règlement municipal de zonage représentent en l'invoquant leur interprétation du cadre juridique de la réglementation touchant la migration de la main-d'œuvre temporaire. Examinés sous le prisme analytique de la conscience juridique reconstitué pour expliquer la pratique et le contexte matériels qui sous-tendent la réaction des résidents (une approche matérialiste de la conscience juridique), ces éléments s'interposent dans l'organisation et la réglementation du travail agricole. Tout en rabâchant des tropes éculés racistes et coloniaux, ces réactions entraînent des conséquences matérielles qui affectent la vie professionnelle et sociale des travailleurs agricoles migrants. Je prétends que l'opposition démesurée des résidents à la proposition d'aménager un pavillon dortoir rétablit et même aggrave le manque de liberté des conditions de travail et d'hébergement de ces travailleurs. Les résidents perpétuent ainsi la mainmise des exploitants agricoles non seulement sur la main-d'œuvre, mais également sur son ethnicité, ce qui approfondit l'emprise de la réglementation sur les travailleurs et leur surexploitation.

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

**A CONTROVERSY OVER A PROPOSAL** to convert a former elementary school located in a small Ontario farming community 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") offered to purchase an abandoned school in the hamlet of Windham Centre in Norfolk County in rural Southwestern Ontario. The offer was conditional upon a Norfolk County zoning by-law

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1. Frantz Fanon, *Black Skin, White Masks* (New York: Grove, 1967) at 9 [Fanon, *Black Skin, White Masks*].

amendment to authorize the change in land use.<sup>2</sup> Local residents organized a letter writing campaign and secured ninety-three signatures on a petition opposing the bunk house. 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

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2. Michelle Ruby, "Migrant bunkhouse plan for Windham Centre meets with resistance," *Simcoe Reformer* (18 November 2011), online: <[www.simcoereformer.ca/ArticleDisplay.aspx?e=3375128](http://www.simcoereformer.ca/ArticleDisplay.aspx?e=3375128)>; Monte Sonnenberg, "Potato company defends bunkhouse plan for former school," *Simcoe Reformer* (22 November 2011), online: <[www.simcoereformer.ca/2011/11/22/potato-company-defends-bunkhouse-plan-for-former-school](http://www.simcoereformer.ca/2011/11/22/potato-company-defends-bunkhouse-plan-for-former-school)>; Monte Sonnenberg, "Bunkhouse response called 'xenophobic,'" *Simcoe Reformer* (11 December 2011), online: <[www.simcoereformer.ca/ArticleDisplay.aspx?e=3399494](http://www.simcoereformer.ca/ArticleDisplay.aspx?e=3399494)>; Monte Sonnenberg, "Company puts kibosh on bunkhouse proposal," *Simcoe Reformer* (15 December 2011), online: <[www.simcoereformer.ca/2011/12/15/company-puts-kibosh-on-bunkhouse-proposal](http://www.simcoereformer.ca/2011/12/15/company-puts-kibosh-on-bunkhouse-proposal)> [Sonnenberg, "Bunkhouse proposal"].
  3. Email from HG to Norfolk County Council (30 November 2011) in Norfolk County Planning & 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 to 13, Part Lot 16, Block 3, Plan 48B, Geographic Township of Windham, Norfolk County to permit housing of agricultural workers and address inconsistencies in zone mapping" (12 October 2007), online: <[norfolk.civicweb.net/FileStorage/005FC8DD8DA0490CA9067233F330BF5D-WorkspacePED%2011-173.pdf](http://norfolk.civicweb.net/FileStorage/005FC8DD8DA0490CA9067233F330BF5D-WorkspacePED%2011-173.pdf)> [*Application*]. 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.
  4. Email from PM to Norfolk County Council (4 December 2011) in *Application, supra* note 3 [emphasis in original].

react to what is nothing less [than] 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 framing of local opposition. However, my 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, the specific framings of residents’ opposition within the material context of the proposed amendment, the rules for siting bunk houses, and wider relations prove deeply contentious. By functioning to legitimate and enforce highly unequal relations, residents’ responses intervene to intensify migrant labour unfreedom.

The analysis develops in four parts. Part I 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 long-standing temporary labour migration scheme serving horticultural production. Part II 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 that underpin, and the contexts that surround, cognitive understandings and translate into action. In Part III, 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

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5. Email from RK to Norfolk County Council (23 November 2011) in *Application*, *supra* note 3.

power and especially the perpetuation of growers' control. In Part IV, I attend to these effects.<sup>6</sup>

## I. URBAN PLANNING AND THE REGULATION OF MIGRANT LABOUR

As noted in the introduction, Norfolk Potato's offer to convert a shuttered school building into housing for migrant workers was conditional upon 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 were permitted.<sup>8</sup> "Bunk houses" are listed, and thus would constitute a permitted use, but only on the 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>

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6. 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 bunkhouse. Indeed, I largely remain silent on the relative merits of the proposal.
  7. 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*. See *Planning Act*, RSO 1990, c P13 [*Planning Act*].
  8. Norfolk County, by-law No 1-Z-2011, Comprehensive Zoning By-Law, (2011), s 7.5.
  9. *Ibid*, s 7.5.1(e) [emphasis omitted].
  10. *Ibid*, s 2.23 [emphasis in original].
  11. 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 the full application materials, see *Application*, *supra* note 3.
  12. *Planning Act*, *supra* note 7, ss 10-14.

Once notified, local residents undertook a letter writing campaign directed at the municipality, which included the submission of a ninety-three signature petition.<sup>13</sup> All but one of the seventeen letters expressed unequivocal opposition to the application,<sup>14</sup> leading Norfolk Potato to withdraw its application.<sup>15</sup>

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 the inaction of Norfolk Potato and Canadian state officials in the failure 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 exclusionary practices that those representations serve(d), or on both. In the second framing, 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 that are ascribed negative values or deemed to produce negative outcomes.<sup>16</sup> Second, as ideological

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13. 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.” See Letter from KG & LG to Norfolk County Council (5 December 2011) in *Application*, *supra* note 3.
  14. Email from RK to Norfolk County Council (23 November 2011) in *Application*, *supra* note 3.
  15. Sonnenberg, “Bunkhouse proposal,” *supra* note 2.
  16. Robert Miles & Malcolm Brown, *Racism*, 2nd ed (London: Routledge, 2003) at 103-104. As Miles and Brown stress, “[T]here 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).



content, racism may produce the conditions that create unfreedom in the labour market.<sup>17</sup> These two logics of racism, although typically “complementary and inseparable,” must be demonstrated, not assumed.<sup>18</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, an evaluation of the content of those submissions must be undertaken to determine whether they adhere to racist representations or exclusions.

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17. As Miles and Brown put it, “[I]ts articulation as an ideology has legitimated the mode of production and racialised ... the labour market.” See Miles & Brown, *ibid* at 120.
18. *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,” Miles and Brown are right to stress that the linkage must be demonstrated and not merely taken as given (*ibid*). 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 Part I, 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 the laudable intentions of Miles and Brown, inductive reasoning cannot be jettisoned altogether. As such, the approach adopted here may appear more consistent with Miles in his earlier work, but it more properly follows the insights of Terry Eagleton and in a certain respect Slavoj Žižek. See Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity?* (London: Tavistock, 1987).

Because racism takes on different meanings across space and time,<sup>19</sup> a contextualized analysis also is needed. Racism therefore is about both content and context.<sup>20</sup>

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 that 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 act 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>21</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 upon whether it works to extend, uphold, tinker with, or break down 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>22</sup>

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19. See Miles & Brown, *supra* note 16, ch 1.

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

21. Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991) at 40. See also Slavoj Žižek, *The Sublime Object of Ideology* (London: Verso, 1989) at 36 [emphasis in original] (“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 EJIL 109.

22. See e.g. Abigail B Bakan, “Reconsidering the Underground Railroad: Slavery and Racialization in the Making of the Canadian State” (2008) 4:1 Socialist Stud 3; Todd Gordon, “Towards an Anti-Racist Marxist State Theory: A Canadian Case Study” (2007) 91 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 Press, 2006). 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

Situated within a general historical pattern of racist exclusion from the territory now known as Canada,<sup>23</sup> in specific ways the SAWP functions through a form of differential inclusion or incorporation.<sup>24</sup> How one situates the self in the evaluation is a crucial if unacknowledged point. Typically, the inclusion-exclusion distinction is understood in terms of a self-defining process of Othering from the standpoint of the dominant self.<sup>25</sup> It is on this basis that racism proves effective at “mak[ing] sense of the world and provid[ing] a strategy for political action”<sup>26</sup> through its capacity to address and deflect “conditions, contradictions and problems”<sup>27</sup> of capitalism. And while racism often marks an attempt to address “the concrete problems” of a given social group, Frantz Fanon, among other anti-racist thinkers, invites us to take seriously the standpoint of the colonial,

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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” (see Miles & Brown, *supra* note 16 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 groups 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.

23. 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 *Stud Pol Econ* 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* (Montreal: McGill-Queen’s University Press, 1993) 349.
24. Sharma, *supra* note 22; Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada since 1945* (London: Routledge, 2001) [Satzewich, Racism].
25. Frantz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963) [Fanon, *The Wretched*].
26. Miles & Brown, *supra* note 16 at 107.
27. Stuart Hall, “Racism and Reaction” in *Five Views of Multi-Racial Britain: Talks on race relations broadcast by BBC TV*, 2nd ed (London: Commission for Racial Equality, 1978) 23 at 35, cited in Miles & Brown, *supra* note 16 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 in the same moment” (*ibid* at 35).

racialized Other.<sup>28</sup> In this, the evaluative judgment 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.

#### A. "UNFREE"-ING MIGRANT FARM WORKERS

Within capitalist societies, ordinary people are more or less compelled to seek paid work.<sup>29</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 is 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>30</sup> Where unfree labour exists,

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28. *The Wretched*, *supra* note 25. Following Miles and Brown, racialization "refers to a process of categorization, a representational process of defining the Other" or "a dialectical process of signification." See Miles & Brown, *supra* note 16 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: "[T]o define the Other necessarily entails defining Self by the same criteria" (*ibid.*).
29. 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 labouring population, as well as constantly to posit a part of it as surplus population." See Karl Marx, *Grundrisse*, translated by Martin Nicolaus (London: Penguin, 1973) at 399 [Marx, *Grundrisse*], cited in Satzewich, *Racism*, *supra* note 24 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 already in the swamp of pauperism." See Karl Marx, *Das Kapital* (Washington: Regnery, 2009) at 283. 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 Satzewich, *Racism*, *supra* note 24; Vic Satzewich, "Unfree Labour and Canadian Capitalism: The Incorporation of Polish War Veterans" (1989) 28 *Stud Pol Econ* 89 [Satzewich, "Unfree Labour"]. See also H Clare Pentland, *Labour and Capital in Canada: 1650-1860*, ed by Paul Phillips (Toronto: James Lorimer, 1981).
30. See *e.g.* Miles, *supra* note 18. For a different definition, see Tom Brass, *Towards a Comparative Political Economy of Unfree Labour: Case Studies and Debates* (London: 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 24. See also Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal: McGill-Queen's University Press, 2002) [Basok, *Mexican Harvesters*].

therefore, compulsion occurs through economic, politico-legal, and physical means, capturing the use of a range of coercive practices.

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>31</sup> It is best, then, to see the free-unfree relationship as fitting along an intricate and nuanced continuum of coercion.<sup>32</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>33</sup> So too are characterizations of free labour as, in Friedrich Engels’s and later in Karl Marx’s words,<sup>34</sup> wage slavery, although not as synonymous or indistinguishable but as kindred.<sup>35</sup>

Sociologist Vic Satzewich’s account of the political economy of migration addresses the incorporation of foreign labour into agricultural production relations in Southwestern Ontario.<sup>36</sup> On numerous occasions during the twentieth

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31. For the perspective of social historians, see Douglas Hay & Paul Craven, “Introduction” in Douglas Hay & Paul Craven, eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill, NC: University of North Carolina Press, 2004) 1. For the perspective of a socio-legal theorist, see Alan Hunt, *Explorations in Law and Society: Toward a Constitutive Theory of Law* (New York: Routledge, 1993) at 64 [Hunt, *Law and Society*].
32. See e.g. Hay & Craven, *supra* note 31 at 27.
33. This is a charge consistently levelled by workers and organizers alike—for instance, by Justicia For Migrant Workers—and by researchers as well. See e.g. *El Contrato*, 2003, DVD (Montreal: National Film Board of Canada, 2003 (Min Sook Lee’s award-winning documentary). 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 delivered at the 10th National Metropolis Conference, Halifax, 5 April 2008) at 15-19, online: <archives.cerium.ca/IMG/pdf/Article\_Depatie-Pelletier\_Metropolis\_2008.pdf>.
34. Marx, *Grundrisse*, *supra* note 30 at 36; Karl Marx, *Wage-Labour and Capital*, translated by JL Joynes (London: Twentieth Century Press, 1893) at 3.
35. Friedrich Engels, *The Condition of the Working Class in England*, translated by WO Henderson and WH Chaloner (Oxford: Blackwell, 1958) at 92-94.
36. *Racism*, *supra* note 24.

century, the Canadian state sought to mobilize both internal<sup>37</sup> and external<sup>38</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-World War II period.<sup>39</sup> Following many failed attempts, and under ongoing pressure from several sources since the late 1940s,<sup>40</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 parts of the Caribbean and Mexico.<sup>41</sup> The differential incorporation of these workers, as Satzewich makes clear, has been structured through processes of racialization and racism.<sup>42</sup>

Under the SAWP, migrant workers are deployed in Canadian agricultural production for anywhere from several weeks to upwards of eight months in a

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37. During World War II, the Canadian state sought to mobilize “unfree wage labour,” including German prisoners of war, Japanese internees, and conscientious objectors (especially people of Doukhobor and Mennonite faith). See Satzewich, *Racism*, *supra* note 24 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 ten- to sixteen-year-old children (with the assistance of the YWCA and YMCA), Indigenous peoples, mental health patients, military personnel, and high school students (*ibid* at 69, 77-81).
38. 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 United States, and Caribbean workers (as unfree migrant labour). See Satzewich, *Racism*, *ibid*, ch 4. See also Satzewich, “Unfree Labour,” *supra* note 26.
39. See Satzewich, *Racism*, *supra* note 24, ch 4. Although Satzewich identifies these four forms, his analysis indicates that all but free migrant labour were deployed in the twentieth-century Canadian context.
40. *Ibid*. Political pressure derived from three sources: growers in Canada, Caribbean state officials, and British officials on behalf of Caribbean states.
41. See also Irving André, “The Genesis and Persistence of the Commonwealth Caribbean Seasonal Agricultural Workers Program in Canada” (1990) 28:2 Osgoode Hall LJ 243 at 256-57; Basok, *Mexican Harvesters*, *supra* note 30 at 18; 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) 8:3 Int'l Migr & Int 255 at 256.
42. Satzewich, *Racism*, *supra* note 24 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”).

year.<sup>43</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 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>44</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 what I term the dynamic of “mobilize to immobilize,”<sup>45</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 that 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

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43. Employment and Social Development Canada, “Labour Market Opinion Statistics – Annual Statistics” (28 January 2014) at n 4, online: <[www.esdc.gc.ca/eng/jobs/foreign\\_workers/lmo\\_statistics/annual-agriculture.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/lmo_statistics/annual-agriculture.shtml)>. In 2012, 18,500 of the total 29,025 positions available in Canada were located in Ontario (*ibid*).

44. 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.

45. An illustration of this dynamic is found in the work of Prabhu Mohapatra. See Prabhu P Mohapatra, “Assam and the West Indies, 1860-1920: Immobilizing Plantation Labour” in Hay & Craven, eds, *supra* note 31, 455.

agreements—country-to-country agreements and the contract of employment<sup>46</sup>—as well as immigration law and labour and employment law. The work permit is instrumental in worker immobilization.<sup>47</sup> Thus, the Canadian state assumes a role of crucial importance in facilitating labour unfreedom and the transnational mobilization-immobilization regulatory dynamic.<sup>48</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

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46. The current annual contract is available through the Employment and Social Development Canada website. See Employment and Social Development Canada, "Hiring Seasonal Agricultural Workers" (25 June 2015), online: <[www.esdc.gc.ca/eng/jobs/foreign\\_workers/agriculture/seasonal/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml)>. For detailed—if somewhat dated—looks at the SAWP worker contracts, see André, *supra* note 41; Veena Verma, "The Mexican and Caribbean Seasonal Agricultural Workers Program: Regulatory and Policy Framework, Farm Industry Level Employment Practices, and the Future of the Program under Unionization" (1 December 2003), online: <[oppenheimer.mcgill.ca/IMG/pdf/csawp\\_verma\\_final\\_report-1.pdf](http://oppenheimer.mcgill.ca/IMG/pdf/csawp_verma_final_report-1.pdf)>.
47. For an analysis of the use of work permits to enforce differential inclusion, see Sharma, *supra* note 22. 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. See Luin Goldring, Carolina Berinstein & Judith K Bernhard, "Institutionalizing Precarious Migratory Status In Canada" (2009) 13:3 *Citizenship Stud* 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).
48. 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 24. For a forceful and lucid intervention on contemporary imperialism of the Canadian state, see Todd Gordon, *Imperialist Canada* (Winnipeg: Arbeiter Ring, 2010) [Gordon, *Imperialist Canada*].



respect, the SAWP is not merely exploitative—it is super- or hyper-exploitative.<sup>49</sup> We can express this proposition 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 the deployment of labour power but in fact over migrant workers themselves. In this connection, it is evident that the work and wider social lives of these workers are governed by the dictates of labour unfreedom. The analysis below builds on this third expression of the hyper-exploitative nature of the SAWP.

## B. HOUSING MIGRANT LABOUR

A key requirement under the SAWP employment contract is that growers must provide free housing accommodations for workers.<sup>50</sup> In fact, the provision of “adequate housing” has served 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, rodents, gas leaks, leaky roofs, and a lack of

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49. 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.* David Harvey, *A Companion to Marx’s Capital* (London: 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 term’s usage. As this article argues, 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 David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge, Mass: Blackwell, 1990), ch 15.

50. Employment and Social Development Canada, “Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico – 2013” (16 May 2013) at para II(1), online: <[www.esdc.gc.ca/eng/jobs/foreign\\_workers/agriculture/seasonal/sawpmc2013.pdf](http://www.esdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/sawpmc2013.pdf)>.

indoor toilets.<sup>51</sup> Fires present an additional hazard.<sup>52</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>53</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.<sup>54</sup> This isolation 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.

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51. Vidya Kauri, "Canada Migrant Workers Prone To Abuse, Exploitation Due To Lax Government Oversight: Advocates," *The Huffington Post* (21 January 2012), online: <[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)>; "Mexican farm workers complain about conditions," *The Globe and Mail* (21 May 2001), online: <[www.theglobeandmail.com/incoming/mexican-farm-workers-complain-about-conditions/article1182607](http://www.theglobeandmail.com/incoming/mexican-farm-workers-complain-about-conditions/article1182607)>; Amanda Truscott, "Foreign workers decry 'harsh' dismissals from farms," *The Globe and Mail* (12 December 2008), online: <[www.theglobeandmail.com/news/national/foreign-workers-decry-harsh-dismissals-from-farms/article664850](http://www.theglobeandmail.com/news/national/foreign-workers-decry-harsh-dismissals-from-farms/article664850)>; Tony Van Alphen, "Employers are abusing farm workers, unions charge," *Toronto Star* (27 October 1994) A12; Kerry Preibisch & Jenna Hennebry, "Temporary Migration, Chronic Effects: The Health of International Migrant Workers in Canada" (2011) 183:9 *Can Med Assoc J* 1033 at 1036. For the British Columbia context, see Justicia for Migrant Workers, "Housing Conditions for Temporary Migrant Agricultural Workers in B.C." (October 2007), online: <[www.justicia4migrantworkers.org/bc/pdf/Housing%20Report%20-%20Oct%2007.pdf](http://www.justicia4migrantworkers.org/bc/pdf/Housing%20Report%20-%20Oct%2007.pdf)>; Sustainable Agriculture Management Branch, *Regulating Temporary Farm Worker Housing In the ALR: Discussion Paper and Standards* (March 2009), online: British Columbia Ministry of Agriculture and Lands <[www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/strengthening-farming/800-series/800221-1-temp\\_farm\\_worker\\_housing\\_mar09.pdf](http://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/strengthening-farming/800-series/800221-1-temp_farm_worker_housing_mar09.pdf)>; Patricia Tomic, Ricardo Trumper & Luis LM Aguiar, "Housing Regulations and Living Conditions of Mexican Migrant Workers in the Okanagan Valley, B.C." (Spring 2010) *Can Issues* 78; Anonymous, "Improve Housing: Consulate" (2012) 28:8 *Occupational Health & Safety Can* 6.
52. Sarah Doktor, "Faulty water heater likely cause of blaze," *Simcoe Reformer* (17 June 2013), online: <[www.simcoereformer.ca/2013/06/17/faulty-water-heater-likely-cause-of-blaze](http://www.simcoereformer.ca/2013/06/17/faulty-water-heater-likely-cause-of-blaze)>; Ashley House, "Farm bunkhouse burns down," *Times-Reformer* (14 October 2008), online: <[www.simcoereformer.ca/2008/10/14/farm-bunkhouse-burns-down](http://www.simcoereformer.ca/2008/10/14/farm-bunkhouse-burns-down)>.
53. 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, Mass: The MIT Press, 2011).
54. The argument in this paragraph draws from three sources: my ongoing personal observation of migrant workers in Southwestern Ontario since the early 2000s, my ongoing personal communications with migrant workers over the same period, and the experiences of organizers in Justicia for Migrant Workers. See e.g. Adrian A Smith "Legal Consciousness and Resistance in Caribbean Seasonal Agricultural Workers" (2005) 20:2 *CJLS* 95.

Yet another contributing factor is the spatial dispersal of workers on farms that are often far apart and typically house only a smattering of workers each. Already separated from family and community back home, workers live among 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>55</sup> The structural features of the SAWP also are said to foster the need for workers, especially women, to impress their bosses with high productivity.<sup>56</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 unfree migrant labour.<sup>57</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.

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55. 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.” See Tanya Basok, “He Came, He Saw, He ... Stayed. Guest Worker Programmes and the Issue of Non-Return” (2000) 38:2 *Int'l Migr* 215 at 217 [emphasis in original] [Basok, “Guest Worker Programmes”].

56. Janet McLaughlin, “Classifying the ‘Ideal Migrant Worker’: Mexican and Jamaican Transnational Farmworkers in Canada” (2010) 57 *Focaal J Global & Hist Anthropology* 79 at 84; Kerry L. Preibisch & Evelyn Encalada Grez, “The Other Side of *el Otro Lado*: Mexican Migrant Women and Labor Flexibility in Canadian Agriculture” (2010) 35:2 *Signs* 289. See also Basok, “Guest Worker Programmes,” *supra* note 55 at 217 (suggesting that “[g]rowers’ compliance with requirements for minimum working and living standards assures workers’ loyalty”).

57. “Landscape and Scale in Media Representations: The Construction of Offshore Farm Labour in Ontario, Canada” (2005) 12:1 *Cult Geographies* 41 at 43.

## II. A RECONSTITUTED APPROACH TO LEGAL CONSCIOUSNESS

The deployment of legal consciousness as an analytical tool for articulating how ordinary peoples' understandings of law shape expectations and behaviour 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 that I term a "materialist approach" to legal consciousness.

The study of legal consciousness has developed in a number of disparate strands.<sup>58</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 emphasizes the understandings and actions of legal insiders including lawyers, judges, and other adjudicators. The second set of studies focuses on the understandings of a host of outsiders or "ordinary people."<sup>59</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>60</sup> Although admittedly

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58. 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 *Ann Rev L & Soc Sci* 323 [Silbey, "After Legal Consciousness"]. For the contrasting accounts of legal consciousness from within the critical legal studies movement, see especially Karl E Klare, "Contracts Jurisprudence and the First-Year Casebook," Book Review of *Problems in Contract Law: Cases and Materials* by Charles L Knapp, (1979) 54:4 *NYU L Rev* 876 at 876-77, n 2; Karl E Klare, "Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941" (1978) 62:3 *Minn L Rev* 265; Duncan Kennedy, "Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940" in Susan S Silbey, Steven Spitzer & Austin Sarat, eds, *Research in Law and Sociology: A Research Annual*, vol 3 (Greenwich, Conn.: JAI Press, 1980) 3. For situating these latter texts within a historical and theoretical context, see Robert W Gordon, "Critical Legal Histories" (1984) 36:1&2 *Stan L Rev* 57 [Gordon, "Critical Legal Histories"]; Robert W Gordon, "'Critical Legal Histories Revisited': A Response" (2012) 37:1 *Law & Soc Inquiry* 200 [Gordon, "Revisited"].
59. See generally Lesley A Jacobs, "Legal Consciousness and Its Significance for Law and Society Teaching Outside Canadian Law Schools" (2003) 18:1 *CJLS* 61 at 63.
60. For a socio-legal treatment of "official" and "unofficial" versions of law, see Elizabeth Comack, "Theoretical Excursions" in Elizabeth Comack, ed, *Locating Law: Race/Class/Gender/Sexuality Connections*, 2nd ed (Halifax: Fernwood, 2006) 19 at 20-24. In her analysis, Comack cites Ngaire Naffine. See Ngaire Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence* (Sydney: Allen & Unwin, 1990) at 24-26, 48, 51-52.

quite simplified,<sup>61</sup> the distinction helps to situate the orientation and emphasis of the analytical framework developed herein, as it fits within the latter category.

What precisely is meant by legal consciousness? What aspect of social life does it apprehend or highlight?<sup>62</sup> According to new legal consciousness studies,<sup>63</sup> ordinary people seek through a variety of means 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 this consciousness on existing relations and conditions. Reliant upon a constitutive theory of social action,<sup>64</sup> new legal consciousness studies view “legal consciousness as participation in the

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61. 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 on which the core argument is meant to turn. 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 an 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.”
62. Trevor Purvis & Alan Hunt, “Discourse, Ideology, Discourse, Ideology, Discourse, Ideology...” (1993) 44:3 *Brit J Soc* 473 at 474. My turn to “legal consciousness” is based on a desire to bring some structure as well as a 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.
63. See e.g. Patricia Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: The University of Chicago Press, 1998); Patricia Ewick, “Consciousness and Ideology” in Austin Sarat, ed, *The Blackwell Companion to Law and Society* (Malden, Mass: Blackwell, 2004) 80; Laura Beth Nielsen, “Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment” (2000) 34:4 *Law & Soc’y Rev* 1055. See also Silbey, “After Legal Consciousness,” *supra* note 58.
64. Scholars such as Robert Gordon and Alan Hunt—and in a certain respect EP Thompson before them—have encouraged the development of a constitutive theory of law while warning against an overly broad and general construction that would render it virtually unhelpful if not meaningless. See Hunt, *Law and Society*, *supra* note 30; Gordon, “Critical Legal Histories,” *supra* note 58; Gordon, “Revisited,” *supra* note 58.

processes of social construction.”<sup>65</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>66</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>67</sup> Legal consciousness therefore “cannot be understood independently of its role in the collective construction of legality,”<sup>68</sup> including its maintenance and enforcement.

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>69</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>70</sup> If the study of legal consciousness can be organized around three critical elements of analysis—discourse, ideology, and material practices—a materialist approach to legal consciousness studies fuses these elements through a reliance on

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65. SS Silbey, “Legal Culture and Legal Consciousness” in Neil J Smelser & Paul B Baltes, eds, *International Encyclopedia of the Social & Behavioral Sciences* (Oxford: Elsevier Science, 2001) 8623 at 8627 [Silbey, “Legal Culture”].

66. *Ibid.*

67. Silbey, “After Legal Consciousness,” *supra* note 58 at 334.

68. *Ibid.*

69. *Ibid.* “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 this article, 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?

70. For the shift in legal consciousness research to a focus on policy reforms, see Silbey, “After Legal Consciousness,” *ibid.*

anti-racist, historical materialist insights.<sup>71</sup> The unity of the whole is the crux on which I reconstitute legal consciousness studies. This unity provides a solid basis for clarifying the relationship between the core elements of discourse, ideology, and action or practice within the analytical 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>72</sup> Countering perceptions of an explanatory tension, they forge an explicit connection between ideology

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71. 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 CLR 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.* Himani Bannerji, *Thinking Through: Essays on Feminism, Marxism, and Anti-Racism* (Toronto: Women’s Press, 1995); Himani Bannerji, “Building from Marx: Reflections on Class and Race” (2005) 32:4 Soc Just 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. For this latter point, see Bonita Lawrence & Enakshi Dua, “Decolonizing Antiracism” (2005) 32:4 Soc Just 120; Nandita Sharma & Cynthia Wright, “Decolonizing Resistance, Challenging Colonial States” (2008-09) 35:3 Soc Just 120.
72. *Supra* note 62. As Purvis and Hunt note, contemporary deployment of the concept of ideology typically develops within or arises 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.” See Jeannine Purdy, “Postcolonialism: The Emperor’s New Clothes?” (1996) 5:4 Soc & Leg Stud 405 at 420. For the source that Purdy quotes, see Fanon, *The Wretched*, *supra* note 25 at 38. See also Douglas Hay, “Time, Inequality, and Law’s Violence” in Austin Sarat & Thomas R Kearns, eds, *Law’s Violence* (Ann Arbor, Mich: The University of Michigan Press, 1992) 141 [Hay, “Law’s Violence”].

and discourse analysis yet also leave room to account for material practice.<sup>73</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. The focus is on the material effects of ordinary people's invocations of law to make sense of their everyday lives and to take action in the world. These invocations—whether in terms of explicit references to rights, property, and legality; to legal definitions, categories, and meanings; or to deeply embedded perceptions of law—convey 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>74</sup> for law's “distinctiveness as discursive practice” rests on a foundation of coercive force and violence.<sup>75</sup> As a result, neither the discursive nor the ideological dimensions of law can be divorced from “law's real impact on real people and real relations.”<sup>76</sup> To take seriously material impacts, and in so doing, lived experience, a 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,”<sup>77</sup> “that the question of language is a question of the body[, a]nd that all body questions are

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73. Purvis & Hunt, *supra* note 62.

74. Judy Fudge & Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto: Oxford University Press, 2001) at 7.

75. Hay, “Law's Violence,” *supra* note 72 at 141. See also Purdy, *supra* note 72.

76. 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 & Soc'y Rev* 11 at 26.

77. *Bodies of Meaning: Studies on Language, Labor, and Liberation* (Albany, NY: State University of New York Press, 2001) at 10 [McNally, *Bodies of Meaning*].



questions of life and work—and the prospects for their liberation,”<sup>78</sup> I reunify language with bodies and material conditions—conditions that are understood historically.<sup>79</sup> This “turn to the body,”<sup>80</sup> however, is not a mere inversion of “the dualism of language and body.”<sup>81</sup> It is instead embedded within an “emancipatory practice ... [which, in] return[ing] the body to language and language to the body,”<sup>82</sup> confronts the constraining and dehumanizing effects of capitalist social relations. “The way labor is organized,” on this account, “becomes central to the histories of laboring bodies and their extensions.”<sup>83</sup> And through the construction of unfree labour, as already discussed, the law and the state assume a pivotal role

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78. *Ibid* at 14.

79. The privileging of discursive analysis similarly is “abstract and disembodied.” See McNally, *Bodies of Meaning*, *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, Ind: Indiana University Press, 2008). While I am reluctant to term it “historical materialist,” the approach articulated here marks an initial attempt to move in such a direction. In future work, I hope to develop more fully a historical materialist approach to the study of legal consciousness.

80. McNally, *Bodies of Meaning*, *supra* note 77 at 230 [emphasis omitted].

81. *Ibid.*

82. *Ibid.*

83. *Ibid* at 8. McNally goes on to suggest that:

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 laboring ones (*ibid* at 7).

in the organization and regulation of labour migration and racialized migrant labouring bodies.<sup>84</sup>

### III. LEGAL CONSCIOUSNESS OF WINDHAM CENTRE RESIDENTS

The primary focus of my examination of the written reactions of Windham Centre residents to the by-law amendment application rests on the legal consciousness of respondents.<sup>85</sup> The task is to view the written responses through the lens of legal consciousness so as to categorize and evaluate them, with particular attention placed on ascertaining what outcomes are produced. I undertook a

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84. 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. See Alison Mountz, "Embodying the nation-state: Canada's response to human smuggling" (2004) 23:3 *Political Geography* 323; Geraldine Pratt & Philippine Women Centre, "Inscribing Domestic Work on Filipina Bodies" in Heidi J Nast & Steve Pile, eds, *Places Through the Body* (London: Routledge, 1998) 211.
85. The limitations of a textual analysis emerge here, including the display of elements of social censure but also the need for further contextualization. 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 and are the objections based on past observation of migrant workers, implicit interpretations of the SAWP, explicit interpretations of the supposed "bunkhouse" provisions in the City Plan, 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 among 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. 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.

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>86</sup> I concerned myself not with a clause-by-clause 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 that 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, between migrant workers and residents of Windham Centre, and to a lesser extent between growers and residents.

I analyze the objections voiced in the written submissions in two primary groups: (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>87</sup> The complexity of responses raises questions about whether the concern is with the reconstitution of the school

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86. 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 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 Ramsaroop and Tzazna Miranda Leal in helping me to formulate my thoughts on community responses to the housing proposal.

87. 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. See Email from RK to Norfolk County Council (23 November 2011) in *Application, supra* note 3. It states:

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 [can't find] reliable local workers to do [the] jobs; [a]sk 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.

or with the existence of migrant workers in the community and everything this is perceived to entail. I maintain that, although bound together, ultimately it is fear of the shared existence with these “foreign” labouring bodies—the racialized, unfree, migrant Other—that underwrites residents’ objections. Even where the interventions expressly concern the bunk house rules, I argue that residents are opposed to the existence of racialized migrant workers in *their* community.

#### A. 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>88</sup> Another expressed explicit need for supervision of the 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>89</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.<sup>90</sup>

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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; [t]he workers, as we all know, spend countless thousands of dollars in this community. Those are the facts (*ibid*).

The submission rejected 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” (*ibid*). 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.

88. Letter from KG & LG to Norfolk County Council (5 December 2011) in *Application, supra* note 3.

89. Email from KB to Norfolk County Council (2 December 2011) in *Application, supra* note 3. My search did not turn up a newspaper article to corroborate this claim.

90. Letter from KG & LG to Norfolk County Council (5 December 2011) in *Application, supra* note 3.

Remarking on the “need for armies of offshore labour” emerging out of the growth of large-scale farming operations, one 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>91</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: “[A]s far as I know offshore workers are suppose[d] to be supervised by their employer ... 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>92</sup> Others, while not explicitly referencing supervision, still expressed similar concerns.<sup>93</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>94</sup> Two residents acknowledge 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>95</sup>

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91. Email from HG to Norfolk County Council (30 November 2011) in *Application, supra* note 3. The resident goes on to note, “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, “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.” See Email from KB to Norfolk County Council (2 December 2011) in *Application, supra* note 3.
92. Email from AS to Norfolk County Council (4 December 2011) in *Application, supra* note 3.
93. One 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?” See Letter from ED & SD to Norfolk County Council (29 November 2011) in *Application, supra* note 3.
94. Letter from IB to Norfolk County Council (22 November 2011) in *Application, supra* note 3. Not all of the responses made explicit reference to the involvement of workers or “the company” in supposedly illicit behaviour.
95. Letter from ED & SD to Norfolk County Council (29 November 2011) in *Application, supra* note 3.

At the same time, they point to the economic importance of migrant workers in rural development. Overall, their “experiences with agricultural workers as neighbours is not negative. But the effect, within the 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>96</sup> They go on to depict growers as serving a mediation or liaison role between workers and local residents:

Migrant agricultural workers are valuable to our county, 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>97</sup>

#### B. PERSONAL SAFETY, SEXUAL HARASSMENT, PHYSICAL VIOLENCE, AND OTHER ILLICIT ACTIVITIES

The second category of objection encapsulates concerns about personal safety in general and sexual harassment, physical violence, and other illicit behaviour in particular. Residents’ personal safety concerns centred around the perception that the existence of migrant workers in the community will have a traumatic, destabilizing effect. In the words of one 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>98</sup>

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96. *Ibid.*

97. *Ibid.* Similarly articulated in terms of concern for worker well-being, a respondent remarked, “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.” See Letter from IB to Norfolk County Council (22 November 2011) in *Application, supra* note 3. 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, “We strongly urge you to not allow the amendment to house agricultural workers ...” See Letter from KG & LG to Norfolk County Council (5 December 2011) in *Application, supra* note 3 [emphasis omitted].

98. Email from PM to Norfolk County Council (4 December 2011) in *Application, supra* note 3.

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>99</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."<sup>100</sup> 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?"<sup>101</sup> 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 more officers and make sure that there [are] 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>102</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 sexual harassment and physical violence (or the threat of it) by workers against residents, again mostly young people and women, and workers' engagement in illicit behaviour. To cite the above respondent at length:

[T]he 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 men[']s opinion. I know that this may sound harsh, however this is the majority opinion ... .<sup>103</sup>

In a particularly lengthy submission, a resident recounted a series of troubling stories to illustrate her claim that workers will disturb community order. As she

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99. 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." Letter from TP & NP to Norfolk County Council (4 December 2011) in *Application, supra* note 3. Another respondent notes: "My next [b]iggest concern is the safety for my children and my neighbours['] 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 ... ." See Email from AS to Norfolk County Council (4 December 2011) in *Application, supra* note 3.

100. Letter from TP & NP to Norfolk County Council (4 December 2011) in *Application, supra* note 3.

101. *Ibid.*

102. *Ibid.*

103. *Ibid.*

put 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>104</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 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 of our community save some money[?]<sup>105</sup>

A different resident suggests that “[i]ncreasing our population with these workers will only increase the possibility and opportunity for violence, vandalism,

104. *Ibid.* According to the resident, “My son was biking with his sister to take her to a friend[']s 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” (*ibid.*). 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” (*ibid.*). 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” (*ibid.*). The resident also 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[?]” (*ibid.*). With reference to the surveillance of workers, the 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 here?” (*ibid.*). The resident goes on to say, “The men are worried because they will not be home to take care of their wives and daughters. Why should the residents of Windham Centre have our lives turned upside down?” (*ibid.*). 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.” See Letter from IB to Norfolk County Council (22 November 2011) in *Application, supra* note 3. Then the resident links this 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” (*ibid.*) [emphasis omitted].

105. Letter from TP & NP to Norfolk County Council (4 December 2011) in *Application, supra* note 3.



harassment and a number of other unwanted and undesirable scenarios.”<sup>106</sup> Another 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>107</sup> According to another respondent,

the local police 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 every[]time ourselves or one of [our] children are sexually harassed, every[]time there is drug use, every[]time 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>108</sup>

That respondent also suggests “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>109</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 4 of these men trying to pick up my 12 year old daughter in our front yard!”<sup>110</sup>

#### IV. THE MATERIAL EFFECTS AND CONTEXT OF RESIDENTS’ RESPONSES

In this final section, I situate the written responses of community residents in terms of 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 these responses, we can begin to see patterns emerge that betray representations and

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106. Email from RV to Norfolk County Council (22 November 2011) in *Application, supra* note 3.

107. Letter from TP & NP to Norfolk County Council (4 December 2011) in *Application, supra* note 3. I take this as a reference to migrant workers in another, nearby community.

108. Email from RM to Norfolk County Council (4 December 2011) in *Application, supra* note 3.

109. *Ibid.*

110. *Ibid.*

assumptions of the Other and Self. In particular, these representations convey socio-historico-legal understandings of the overlapping relationships between migrant workers and growers, between workers and Windham Centre residents, and between 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. First, a merging of the subjectivities of migrant workers with growers constructs migrant labour in a particular social role, one that does not exist outside of a steep hierarchical relationship with the grower-employer. Second, the worker supervision narrative also works alongside and in association with concerns about worker safety and well-being. In this way, the discourse bridges recognition of the need for and value of migrant workers on the one hand, expressed in terms of economic benefits accruing to the community, with a desire to disallow the zoning by-law amendment on the other.<sup>111</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>112</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, growers have control of land.

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111. For a discussion of the economic "necessity" of migrant workers in Ontario agricultural production, see Basok, *Mexican Harvesters*, *supra* note 30 at 4. For a critical political economic analysis see Mark Thomas, "Labour Migration and Temporary Work: Canada's Foreign-Worker Programs in the 'New Economy'" in Norene J Pupo & Mark P Thomas, eds, *Interrogating the New Economy: Restructuring Work in the 21st Century* (Toronto: University of Toronto Press, 2010) 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 that contributes to their relative social isolation from citizens and near citizens.

112. 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.

By extension, their ownership solidifies their control over labouring bodies utilized to cultivate that land.

This 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 towards workers. In its most vitriolic articulations, 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 and the heavy constraints on worker mobility are not addressed by the residents. Because the specific conditions of unfreedom are hardly referenced in residents' discursive objections, these interventions amount to an erasure of hyper-exploitative work and living conditions. Labour unfreedom is instead mediated by 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 intertextual 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 Y. Davis

once referred to as “the timeworn myth of the Black rapist.”<sup>113</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. In fact, they are based on historically specific, hyper-exploitative practices of unfree labour relations. These include the immobilization of workers through precarious migratory status and the fundamentally exclusionary impetus of territorial belonging that, individually 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. As geographer Don Mitchell once put it in an analogous context, “the question is whether [local residents’] fear or discomfort

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113. *Women, Race & Class* (New York: Vintage Books, 1983) at 182. On racist colonial tropes and their effects, see Fanon, *Black Skin, White Masks*, *supra* note 1, ch 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), ch 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.

should be allowed to dictate the destruction of the means of survival for other people”<sup>114</sup>—it must not.

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 or 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>115</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 dematerialized 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 are Canadian planning and political processes 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>116</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>117</sup> This silence is crucial to law’s violence.<sup>118</sup>

114. “The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws” (1997) 29:3 *Antipode* 303 at 331, note 31.

115. The term “language-in-action” is borrowed from Jan Bloomaert. See Jan Bloomaert, *Discourse: A Critical Introduction* (New York: Cambridge University Press, 2005) at 2.

116. Teun A van Dijk, *Discourse and Power* (Hampshire, UK: Palgrave Macmillan, 2008) at viii.

117. *Ibid* [emphasis omitted]. The significance of this sort of directed discourse is that it does not merely capture “the public mind,” as 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.

118. Hay, “Law’s Violence,” *supra* note 72.

In this case, the violence of law perpetuated on migrant workers is carried out through land use planning law. Far from displacing the privileging of private property and *citizen* participation, the public consultation process (which is linked to the planning regime's emphasis on local autonomy in decision making<sup>119</sup>) solidifies what could be termed the racialized "propertied citizenship" foundations of the regime and wider social relations.<sup>120</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 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>121</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 also gives 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. These residents' interventions collectively proved successful. Nonetheless, for all but the dissenting resident, the interventions also served to perpetuate the authority of agri-capital over agri-labour more generally. Claims of 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>122</sup>

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119. Ontario Ministry of Municipal Affairs and Housing, "Citizens' Guide: The Planning Act" (2010), online: <[www.mah.gov.on.ca/AssetFactory.aspx?did=5920](http://www.mah.gov.on.ca/AssetFactory.aspx?did=5920)>.

120. I have borrowed the term "propertied citizenship" from Ananya Roy, who discusses the historical emergence of the American paradigm of propertied citizenship. See Ananya Roy, "Paradigms of Propertied Citizenship: Transnational Techniques of Analysis" (2003) 38:4 *Urb Aff Rev* 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.

121. See Sonnenberg, "Bunkhouse proposal," *supra* note 2.

122. 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 labor regime." Ngai Pun & Jenny Chan, "The Spatial Politics of Labor in China: Life, Labor, and a New Generation of Migrant Workers" (2013) 112:1 *S Atlantic Q* 179.

Windham Centre residents collaborated to produce racist exclusion through the differential inclusion of agricultural labouring bodies from the Caribbean. However, to see this 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 how labour unfreedom is constructed in, is transmitted through, and envelops 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>123</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>124</sup> This occurs through processes and practices that uphold differentials in work and social life on the basis of intersecting markers of racialization property ownership and citizenship status.

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 residents’ submissions, workers begin to resemble the personal property or chattel 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 not of the subjectivity and agency of migrant workers but of their own property rights. This move occurs through an assertion of the propertied authority of growers over farm lands and

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123. In this respect, the material production of labouring bodies in racialized, unfree, and migrant terms flows out of, but is not relegated to, nor contained within, the legal regimes conventionally understood to govern immigration, employment, labour, and land use planning. These legal regimes largely are regarded as distinct spheres and thus lack the conceptual capacity to fully account for the legal regulation of migrant labour.

124. Satzewich, *Racism*, *supra* note 24 at 46. This discussion revises Benedict Anderson’s classic account by noting how certain states are conceived not only through language but in racialized terms.

chattel property. The 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>125</sup> In this respect, the outcome is not merely an objectification of the labouring efforts and capacities of workers. The objectification of labour power is, after all, 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 works 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 a focus on the insular nature of their legal consciousness, which belittles migrant labour unfreedom. This insular legal consciousness, forged in racialized propertied citizenship, may have gained momentum under neo-liberal 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>126</sup>

Hence the racialized propertied citizenship basis of Windham Centre residents' legal consciousness has faced intensifying pressures under neo-liberalism. Property-holding residents of communities like Windham Centre entrench neo-liberal 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. This difference has come to be termed NIMBYism (Not In My Backyard-ism), in which the

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125. Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars' Press, 2006) at xiii-xiv.

126. In the forty-year neo-liberal 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 that 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 & Mario Seccareccia, "Financial Restructuring: Implications of Recent Canadian Macroeconomic Developments" (2008) 82 *Stud Polit Econ* 61.



home-owning masses and their associations police the borders on their property fence lines.<sup>127</sup> A deep interplay is forged between policing at the territorial 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 reposition community residents to see how the 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, an 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>128</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,

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127. See Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (London: Verso, 1990).

128. Miles & Brown, *supra* note 16 at 107 [emphasis omitted].

housing, and life conditions.<sup>129</sup> Elsewhere, I have identified preliminary examples of the actually existing resistance of migrant farm workers, which occurs typically in disjointed and covert forms. I have also called for a commitment to consolidating, broadening, and fortifying that resistance.<sup>130</sup> At its heart, the agenda must centralize—but not essentialize—the role assumed by racism in capitalist valuation, in private property ownership, in the production of labouring bodies, and in national territorial belonging; or, more succinctly, in the constitution of the social world.

## V. 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>131</sup>

I have sought to demonstrate the ways in which written opposition to a migrant workers' housing proposal in Ontario 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

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129. 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 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 that both supports migrant worker self-organization and fights against worker isolation, and others like No One 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, *Imperialist Canada*, *supra* note 48.
130. Adrian A Smith, "Racialized In Justice: The Legal and Extra-Legal Struggles of Migrant Agricultural Workers In Canada" (2015) 31:2 Windsor YB Access to Just 15; Adrian A Smith "Legal Consciousness and Resistance in Caribbean Seasonal Agricultural Workers" (2005) 20:2 CJLS 95. As I argue in these articles, further research is needed on how workers respond to the racism they encounter.
131. John Irving, "The Cider House Rules," Screenplay (1999), online: Screenplays for You <sfy.ru/?script=cider\_house\_rules>.

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 the 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 SAWP in 1966, when the introduction of black people into whitened Canadian social life was deemed socially divisive.<sup>132</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. As such, labouring bodies are 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 for workers, the residents' legal consciousness assumes a "colour-coded"<sup>133</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>134</sup> Residents' interventions bolster and preserve the coercive politico-legal practices of the Canadian state. 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

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132. Satzewich, *Racism*, *supra* note 24 at 191.

133. See Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: University of Toronto Press, 1999).

134. In line with the denial of decent housing to migrant workers, area residents give credence to the Canadian state's 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 Agricultural Workers in Canada" in Aziz Choudry & Adrian A Smith, eds, *Unfree Labour? Struggles of Migrant and Immigrant Workers In Canada*, [unpublished].

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 neo-colonial 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 final 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, including especially the gendered and racialized nature of social reproduction, forms the material context and basis for contestation and for directed anti-racist class struggle. It is time for us to rethink and contest the racist propertied citizenship basis upon which the rules governing all our lives persist. The challenge is for us all to support migrant workers and their allies in a transformative praxis that—if I can borrow something the writer Isabel Allende once said—aims not to make life better, but to make it *good*.<sup>135</sup> 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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135. Ted Talks, “Tales of Passion” (March 2007), online: <[www.ted.com/talks/isabel\\_allende\\_tells\\_tales\\_of\\_passion?language=en#t-186036](http://www.ted.com/talks/isabel_allende_tells_tales_of_passion?language=en#t-186036)> (discussing the need for a deepening of feminist energy among women and young men to create “an almost perfect world”).