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Gender-Based Administrative Violence as Colonial Strategy

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ABSTRACT. There is a growing trend across North America of women being criminalized for their pregnancy outcomes. Rather than being a series of aberrations resulting from institutional failures, we argue that this trend is part of a colonial strategy of administrative violence aimed at women of color and Native women across Turtle Island. We consider a range of medical and legal practices constituting gender-based administrative violence, and we argue that they are the result of non-accidental and systematic production of population-level harms that cannot be disentangled from the goals of ongoing settler occupation and dispossession of Indigenous lands. While white feminist narratives of gender-based administrative violence in Latin America function to distance the places where such violence occurs from the ‘liberal democratic’ settler nation-states of the U.S. and Canada, we hold that administrative forms of reproductive violence against Latin American women are structurally connected to efforts in the U.S. and Canada to criminalize women of color and Indigenous women for their reproductive outcomes. The purpose of these systemically produced harms is to sustain cultures of gender-based violence in support of settler colonial configurations of power.

In January 2019, 29-year-old Dafne McPherson was released from prison after serving three years of a 16-year sentence. She was charged with murdering her newborn after paramedics found her unconscious and suffering from massive blood loss from undergoing a miscarriage in a department store bathroom in San Juan del Río, Mexico. At the time, McPherson did not know she was pregnant. Prosecutors made no effort to find out what had actually happened. “They didn’t investigate—they didn’t do a thing,” McPherson reported. They nonetheless claimed that she had induced labor and attempted to suffocate her baby in the toilet, describing these alleged actions as “something not even a dog would do” (Agren 2019). Activist Maricruz Ocampo, of the *Comité Promotor para la Activación de la Alerta de Género*, argued that McPherson was punished for failing to live up to the mythical expectation of women as naturally selfless and maternal. Said Ocampo, “It was treated as an abortion, but it was also treated as a deficiency of her as a mother,” she said. “They said that she had to react as a ‘super woman’ because ‘that’s what every mother does’” (Agren 2019). As a result of her time spent in jail, McPherson did not see her six-year-old daughter Lía for three years.

The administrative violence that McPherson suffered as a result of her miscarriage is not an aberration. It is part of a growing trend across Latin America of women being criminalized for losing pregnancies or accessing nonmedical abortions (especially those induced by oral misoprostol and mifepristone) by volition or coercion (Brigida 2018; Carpenter 2019; Mellen 2019). In some cases, women have been sentenced to as much as life in prison, undergoing court-prescribed psychological treatments designed to “awaken maternal instincts” and have been held in jail awaiting charges alongside their minor children, some as young as three years of age (Carpenter 2019). One woman, who also did not know she was pregnant, was charged with aggravated homicide after the pregnancy borne from her rape resulted in miscarriage and the age of the fetus made it nonviable *ex utero*; another woman was charged with attempted homicide after she received an overdose of misoprostol from her married sexual partner when he learned of her pregnancy. In another reported case, an adolescent victim of incest whose pregnancy resulted in a stillbirth was prosecuted for failure to protect the life of a fetus, yet forensic testing was never done to establish paternity or prosecute the perpetrator of her statutory rape.¹

Rather than being a ‘broken’ system that inadvertently produces negative health outcomes for women of color and Indigenous women, we argue that the medical and legal practices considered here are the result of nonaccidental and systematic production of institutional violence that cannot be disentangled from the goals of

1. El Salvador (followed by Nicaragua, Honduras, Mexico, and Ecuador) has received the majority of recent coverage on reproductive rights abuses. Since El Salvador made all abortions illegal in 1998, at least 25 women have been incarcerated for what prosecutors contend are late-term obstetric emergencies or stillbirths (Brigida 2018).

the ongoing settler occupation and dispossession of Indigenous lands.² We hold that the legal punishments and obstetric violence Latin American women have been subjected to cannot simply be conceived of as the result of ‘administrative failures’ and ‘entrenched machismo’ in what are commonly referred to as ‘low-income LDCs’ (less developed countries), as some journalists have reported. Rather, these practices are part of an intentional strategy of colonial violence aimed at women of color and Native women across Turtle Island. Further, as Shannon Speed (2019) argues, strategies of settler colonial administrative violence are not bound by settler border configurations, nor should we expect them to be. Since settler colonial violence preceded settler colonial borders, the flow of colonial power strategies is not restricted to movement within the boundaries of settler nation-states. We thus hold that cases of obstetric violence against Latin American women are structurally connected to efforts in the United States and Canada to criminalize women of color and Indigenous women for their pregnancy outcomes, and that the purpose of such structurally produced patterns is to sustain cultures of gender-based violence in support of settler colonial configurations of power.

REPRODUCTIVE VIOLENCE IN LATIN AMERICA

Historically, most women (nearly 98 percent) in Latin America (including South America and the Caribbean) have lived under some form of restrictive abortion laws, ranging from total bans (e.g., in Nicaragua, El Salvador, Honduras, Haiti, Jamaica, Dominican Republic, Suriname) to limited exceptions for rape (Chile, Mexico, Panama, Brazil) or to save the life of the mother (Mexico, Guatemala, Panama, Venezuela, Brazil, Paraguay, Chile).³ However, until recently, abortion has been functionally accessible to varying degrees throughout the region and

2. By ‘nonaccidental’ we mean that these forms of structural violence continue to be produced because they are inherently linked to the genocidal goals of settler colonialism and its corresponding logic of elimination (Wolfe 1999). They continue to occur not primarily because of implicit bias, ignorance, lack of attention, or systemic failures in government. They persist because they support settler colonial white supremacy’s goals of Indigenous land dispossession and population control for people of color. As Wolfe emphasizes, settler colonialism is an ongoing structure, not a historical event. As such, it requires a variety of social practices, processes, and myths for its continuation. One such myth is that the phenomena characterized in this paper as patterns of obstetric and administrative violence are the result of ‘mistakes’ or the failure of a generally reasonable policy to apply equally to all people even though it is in some sense “supposed to.” On the contrary, we contend that these patterns of violence are produced and maintained because of the purposes they serve for particular populations, namely white settlers reproducing and raising their families on Indigenous lands using the spoils of intergenerational wealth that would never have been attainable without chattel slavery and the ongoing exploitation of Black labor.

3. Center for Reproductive Rights, <https://apnews.com/fc09ad4643844f03b8e1175cc0f5c1ce>. To date, Cuba has led with the longest history of decriminalized access to free and safe abortions; in Mexico City, the Mexican State of Oaxaca, and Uruguay, abortion is decriminalized under all rationales for the first 12 weeks of pregnancy.

rarely prosecuted despite widespread antiabortion laws. While clandestine abortions pose serious health risks and disproportionately disadvantage health outcomes for Indigenous women and poor racialized women, the maternal mortality rate from unsafe abortions had been in steady decline for nearly two decades.⁴ By 2008, it had decreased by almost a third from 1990 levels.⁵ Antiabortion laws—some of which date as far back as the nineteenth century when new state constitutions were drafted—have remained largely unenforced under civil doctrines of desuetude. The longstanding popular belief that reproduction is a ‘private’ matter enforceable by catholic doctrine rather than civil law has also played a role. This does not show that these laws have failed to severely restrict access to abortions nor that women’s lives have not hung in the balance for decades because of such laws. It shows that the recent spike in criminalization of obstetric emergencies and induced abortions is an *administrative practice of enforcement* that can be measured in upticks in medical administrative reporting and prosecutorial caseloads and decision making, not statutory precedent. It is alarming, but it is not inconsistent with the structure of gender-based administrative violence in the Americas.

One way to look at this alarming phenomenon from a social-scientific perspective would be to read historical absences in prosecutions of suspected abortions as evidence of lower levels of reproductive rights abuses related to administrative policing of pregnancy outcomes. Another would be to limit or withhold inferences altogether and report only on the narrowly identified phenomenon (solely understood as the recent spike in prosecutions) and possible proximate causes. Contra such approaches, we think it is critical to strongly connect antecedent practices of gender-based administrative surveillance of women’s pregnancy outcomes with the current ‘spike’ in prosecutions. This is because the ‘spike’ signals a *restructuring* of targeted gender-based colonial violence rather than the burgeoning of a new phenomenon. It is also indicative of the ways that future downturns in prosecutions will most likely merely reflect the ability of colonial violence to restructure and resurface anew under different socioeconomic conditions, all while achieving the same ends in different form.

Consider, for example, the rise in the 1980s of human capital development reforms such as conditional cash transfer programs (CCTPs), which distributed monetary stipends to predominantly poor and Indigenous women in exchange for state surveillance of their reproductive and infant health outcomes. Such programs constituted a structural prelude to the current administrative practices of prosecuting women for pregnancy outcomes. The 1980s was a critical decade for

4. It is worth emphasizing that while women are generally the targets of state efforts to criminalize and restrict abortions, they are not the only ones affected. Trans men and nonbinary people of all genders are affected by restrictions on abortion access and by limited access to reproductive health care more generally.

5. Trends in unsafe abortion incidence 1990–2008, WHO, *Unsafe abortion incidence and mortality, Global and regional levels in 2008 and trends during 1990–2008*. Available at https://apps.who.int/iris/bitstream/handle/10665/75173/WHO_RHR_12.01_eng.pdf.

women in Latin America on at least two fronts: (i) women gained increased access to democratic institutions following the fall of foreign-backed dictatorships, and (ii) they faced disparate exposure risks from the economic downturn that paralyzed national infrastructures carrying billions in debt from foreign and multinational restructuring loans. At a time when women's health outcomes were on the world stage due to increased emphasis on development indexes tied to these loans, yet cash-strapped treasuries could scarcely afford to redistribute funds outside of settler economic interests, CCTPs were developed as a method of welfare reform and a tool of population control.

CCTPs targeted women's reproductive cycles as a form of national human capital development and, when fully implemented in the 1990s, allowed state health and administrative officials unprecedented surveillance over women's reproductive lives. They also provided a way to place blame on women for adverse pregnancy outcomes caused by macro-level structural and population-wide phenomena, such as poverty and malnutrition. Initially popular in Mexico and Brazil and now extensive throughout the region, the programs made receipt of monetary stipends contingent on close state monitoring of pregnancy and infant health outcomes through education and nutrition metrics. The programs were billed as antipoverty parental investments in children's health and education, which helped countries modernize under the guise of welfarism while privatizing responsibility for adverse juvenile health outcomes in low-income communities of color. In *Shaping the Motherhood of Indigenous Mexico*, Smith-Oka (2013) explains how state health administrations forced on Indigenous women prenatal and postnatal health practices that were based on assumptions of western, upper-middle-class parenting practices as normative. Such programs actively suppressed Indigenous child-rearing practices, functioning as a coercive mechanism of cultural assimilation—a key component of settler colonial genocide.⁶

Despite the fact that many academics now recognize these programs as ineffective antipoverty instruments that expose vulnerable populations to settler colonial state modernization efforts, CCTPs currently cover what is estimated to be nearly a quarter of the world's poor.⁷ The practice of using CCTPs is merely one incarnation of the colonial strategy of reproductive coercion as a method of population control. The current trend of incarcerating women of color and Indigenous women for their pregnancy outcomes is another.

Like the 'covert' racism characteristic of the so-called post-racial era in multicultural democracies (Bonilla-Silva 2003) and the resurgence of 'overt' racism flourishing under the Trump administration (Ruíz 2019), reproductive violence in Latin America has undergone shifts, restructurings, and realignments in conjunction

6. Nerli Paredes Ruvalcaba's work with Zapotec women further extends this finding to coercive practices of cultural assimilation by the Mexican settler state through administrative access to Indigenous women's reproduction.

7. See Millán et al. (2019).

with changing economic forces and technological factors. Despite global changes in international economic circumstances, the phenomenon of reproductive violence has remained a core foundation underlying structural oppressions across shifts and variations in the systems that manifest them. It is found, for instance, in institutions and practices such as chattel slavery (Davis 1983), forced sterilization (Roberts 1997), state surveillance of pregnant women's behavior, welfare reform (Collins 2000), the so-called soft eugenics of the medical industry (Gubrium et al. 2016), and administratively documented crackdowns on abortions.⁸ We thus hold that a cycle of continuity exists among colonial methods of Indigenous depopulation and settler nation-states' methods of using gender-based administrative violence to enforce cultural assimilation, Indigenous land appropriation, and control over populations of color. As the literature on neoliberal policy, transnational extractive industries, and sexual violence illustrates, this cycle is connected to centripetal economic forces that go beyond settler borders (Deer 2019). In fact, the structural character of state apparatuses built to criminalize pregnant women's reproductive outcomes is a colonial strategy of administrative violence aimed at controlling specific populations and not others, consistently and by design. Unsurprisingly, this is not captured in the growing US feminist coverage of reproductive rights abuses in Latin America that draw attention to the criminalization of miscarriages, stillbirths, and adverse pregnancy outcomes in the region.

COLONIAL NARRATIVES IN US REPORTING ON REPRODUCTIVE RIGHTS ABUSES IN LATIN AMERICA

US white feminist narrative reporting on administrative reproductive abuses in Latin America entrenches colonialism in two primary ways: (1) it ignores the role that settler colonial strategy plays in systematically producing these patterns in favor of a universalist single-axis narrative of "misogyny," and (2) it invokes common racialized tropes of Latin American countries as backward, barbaric, regressive, primitive, fanatical, and unenlightened, which allow white liberals situated in the global North to decry the horrors that women are subject to in 'less developed' countries while avoiding structural accountability and maintaining a veil of innocence. The purpose of our analysis of such reporting is not to condone or excuse the acts of administrative violence that pregnant people in Latin America have been systematically subjected to. Rather, it is to warn against the temptation to

8. Conditional cash programs also exist in the United States as work requirements in welfare instruments, like the Temporary Assistance for Needy Families (TANF) program. The global character of racial capitalism has a long history of using settler categorical constructions (and control of) gender to administer technologies of violence that advantage white settler populations and their descendants.

understand such practices as resulting solely or even primarily from the misogynistic attitudes of “those people” “over there.”⁹

Reporting for the *Washington Post*, Anna-Catherine Brigida tells the story of Alba Lorena Rodriguez, who has served nine years of her 30-year sentence in a women’s prison on the outskirts of San Salvador. At her trial, she was barely given the opportunity to speak. Her lawyer knew very little about her case; they had not met prior to the day of the trial. Rodriguez was convicted of aggravated homicide. Attorney Victor Hugo Mata, of the Citizens’ Group for the Decriminalization of Abortion, says that women who are charged with homicide in cases like these are not given the benefit of the doubt by the legal system, even when there is no strong prosecutorial history of enforcing abortion laws. Said Mata, “When [these types of miscarriages] happen to a woman, judges assume it’s because there’s something more there. To them, it’s not possible that they could be innocent” (Brigida 2018). Reporting for the *Nation*, Zoë Carpenter (2019) tells a similar story. In Ecuador, she reports, one judge mocked a rape victim’s fear of the perpetrator by brandishing a knife during the proceedings, while another asked the defense attorney to approach the bench and, holding a fetal photograph entered into evidence, said, “how do you defend these murderers? Look at these little feet” (2019). As Carpenter emphasizes, the judge was a woman.

US reporters have zeroed in on three primary causes of the crisis: administrative failures in Latin American civil society, entrenched cultural machismo spurring harsh reactions to the ‘green wave’ of feminist movements, and widespread misogyny throughout the legal system. The broad picture painted by these reports is one of an intractable landscape of psychologically internalized and institutionalized misogyny across Latin America that fails women generally and is specifically enabled by broken *local* administrative infrastructures more than anything else. Erika Guevara-Rosas (2019), also writing for the *Washington Post*, says, “Latin American authorities have shown alarming negligence in failing to protect women and girls from gender-based violence.” She further suggests that they should be seen as enacting torture on women. Of course, there can be no doubt Latin American women have been, and continue to be, terrorized through numerous forms of violence at many different scales, including femicide, forced disappearance, rape, and other socially institutionalized forms of violence (Fregoso 2009). What distinguishes these reports from the more sophisticated local, communitarian, and autonomous feminist analyses of violence in the region is the underlying conceptual framework that disappears the role of colonial violence from the account of what generates the harms and what the gearwork of misogyny traces back to.

The account of misogyny present in these US journalistic narratives is thus an instance of what Berenstain (forthcoming) calls *structural gaslighting*. More specifically, it is an instance of white feminist gaslighting. Berenstain defines structural

9. In a separate project, we develop this argument through in-depth reporting on US evangelical organizational efforts in Latin America and the financial interests tied to these efforts.

gaslighting as what results when conceptual work functions to obscure the causal relationship of a structure of oppression to a nonaccidental pattern of harm that it generates. She writes:

Structural gaslighting describes any conceptual work that functions to obscure the non-accidental connections between structures of oppression and the patterns of harm that they produce and license. Individuals engage in structural gaslighting when they invoke epistemologies and ideologies of domination that actively disappear and obscure the actual causes, mechanisms, and effects of oppression. Structural oppressions are maintained in part through systems of justification that locate the causes of pervasive inequalities in flaws of the oppressed groups themselves while obscuring the social systems and mechanisms of power that uphold it.

US feminist narratives of administrative reproductive violence against Latin American women thus constitutes structural gaslighting for two reasons: (i) they ignore the central role of colonial strategy in its ongoing perpetration and (ii) they locate the causes of such violence primarily in what are portrayed as the 'barbaric' and 'primitive' medical and legal practices in Latin American countries.

Consider how stories of administrative failures are told through narratives of professional incompetence so egregious that they are almost impossible to imagine in the United States. Such stories describe doctors who don't understand malpractice or privacy laws and therefore report obstetric emergencies as suspected abortions; nurses and medical staff who fail in their basic duties of care or rely on ineffective and antiquated forensic techniques to determine live births. Stories of misogyny in the legal system are told through *persistently race-neutral* analyses of sources that only highlight asymmetries in affected populations through a white feminist historical focus on class. These narratives focus heavily on the constructed category of 'poor women in rural areas' and inevitably default to universalist white feminist notions of sexism and class oppression. Often, the single-axis narratives of misogyny evade discussion of structural factors, relying instead on attributions of individualized 'prejudice'. Quoting a former defense attorney, Carpenter (2019) writes, "While the decision to pursue abortion-related cases rests with individual prosecutors, misogyny throughout the legal system causes miscarriages of justice. A lot of public prosecutors and judges haven't been able to detach themselves from their prejudices." Other investigative reporters have told similar stories of entrenched gender bias and epistemic bad luck.¹⁰

One notion that is frequently invoked in these narratives is that of *modernization*—proximity to and/or lack thereof by Latin American nations. Latin American nations are portrayed as not very far along in the linear ordering of civilized nations on the normative scale of liberal progress. This narrative buffer of exoticized barbarism allows the violence in question to be described through a lens

10. This is not unrelated to the fact that investigative reporters are subject to increasing budgetary constraints and commercial pressures in a declining print culture.

of white settler innocence (Mawhinney 1998; Tuck and Yang 2012) from the detached standpoint of an advanced industrial nation whose level of ‘civilization’ places it a safe distance from third-world infrastructures. This in turn enables the liberal reader to feel both a sense of moral outrage at the gender-based crimes that these ‘uncivilized’ nations commit against women and a sense of protection from having to give up anything of substance in order to address systemic colonial violence and bend the legal machinery toward justice by any means necessary.

On a larger scale, this is not functionally distinct from the way modernization narratives are wielded to pursue Indigenous depopulation and assimilationist agendas of racial hybridization in post-independence movements throughout Latin America. In fact, this has been *the standard narrative practice* since the political rhetoric of *Indigenismo* was invented to assimilate Indigenous peoples and the rural poor into the civil architecture of the settler nation-state and to steal Native lands. As Dian Million’s (2008) work illustrates, human rights reporting—when deployed uncritically through white feminist analyses—often produces functional narratives that facilitate the transmission of colonial harms. The notion of a *functional narrative* is based on the structural idea that what a story *does* can be completely independent of what a storyteller *intends*. It recognizes that what a story does has much more to do with how the elements of a story are set up to establish values, ideas, and relations at different scales—and which may not be explicitly stated in the narrative but are nonetheless purpose oriented and non-accidental. It is also tied to the idea that material conditions of infrastructural support and power generate probabilistic ecosystems where *some relations* (e.g., those that fortify gender-based racial capitalism intergenerationally) between narrative elements can be hermeneutically established over others and preserved (as functionally invariant) from one generation to the next. This structurally privileges functional narratives oriented toward colonial violence. Patterns of racial gendered profit over time establish this, as do patterns *across settler borders*.

REPRODUCTIVE VIOLENCE IN THE UNITED STATES AND CANADA

White feminist narratives of gender-based administrative violence in Latin America function to exoticize and distance the places where such violence takes place from the ‘liberal democratic’ settler nation-states of the United States and Canada. The reality, however, is quite different. The United States and Canada, like Latin America, are seeing an upswing in administrative efforts to criminalize pregnant women, especially women of color and Indigenous women, for health outcomes like miscarriage and for actions taken during pregnancy. As in Latin America, racialized notions of who is unfit for motherhood frequently appear in legislative and judicial reasoning used to justify the incarceration and state surveillance of women of color. We turn now to some of the practices of state-sponsored reproductive and

carceral violence with an eye toward recognizing the underlying structural continuities among these practices throughout Turtle Island. These mechanisms of state-sponsored sexual violence exist at several different scales and range from the legal strategies of requiring those who are pregnant to undergo medically unnecessary sexually invasive procedures before receiving an abortion (as in the states of Missouri, Tennessee, and Indiana)¹¹ to diffuse strategies of colonial genocide such as the continuing practice of forced sterilizations of Native women in the settler states of Canada and the United States. And, as is the case in Latin America, the systems that engender patterns of reproductive violence against women of color and Indigenous women in the United States and Canada are not new; they are simply the newest manifestations of these polities' oldest legacies—the legacies of gender-based administrative violence that have been central to the ongoing projects of settler colonialism on these lands since the fifteenth century.

In a study of over 400 cases reported in 44 states in which someone's pregnancy was used as a basis for depriving them of their physical liberty, Paltrow and Flavin (2013) found that the majority of those subjected to forced interventions were women of color. Fifty-two percent were Black women. Most were poor. Seventy-one percent, for instance, qualified for indigent defense. The majority of the cases also originated in the South, where Black women were especially overrepresented among those subjected to forced interventions because of their pregnancies. The authors also note that within states, cases often clustered in specific counties and even specific hospitals (Paltrow and Flavin 2013, 309). In Missouri, for instance, 26 of the 29 cases reviewed took place in Jackson County, and 20 of those came from only one hospital—Truman Medical Center. Twenty-five cases contained specific reference to mental health status, indicating a significant ongoing pattern of ableism in the state's efforts to control and punish reproduction through practices such as forced institutionalization, which has long been foundational to US state violence against disabled people. Ten percent of the cases specifically mentioned domestic violence against the pregnant person, reflecting the reality that the state often inflicts and/or compounds harms of intimate partner abuse by criminalizing women of color who are victims of domestic violence. We contend that the patterns reflected in these statistics are no mere accident; rather, they are expected, mundane, predictable, and predictive.

There are a number of patterns in these cases which, taken together, indicate that the actual outcomes of these acts of administrative subordination are not merely coincidental demographic patterns but are rather the intended functions of a state-sponsored tool of violence. These include patterns across cases such as those where:

- The state appoints legal representatives for the fetus but not the person carrying it (Eckholm 2013; Paltrow and Flavin 2013)

11. See, for instance, McNicholas (2019).

- The state enforces a drug regimen that could be just as harmful to the fetus as the drug use the pregnant woman is being punished for (e.g., Suboxone in the case of Alicia Beltran (Eckholm 2013), Xanax in the case of Rachael Lowe (Paltrow and Flavin 2013))
- The state requires a mother to undergo medical procedures, institutionalization, or incarceration that prevents her from caring for the children she already has (Amnesty International 2017)
- The state targets specific populations of women, such as those who are low income and/or of color (Goodwin 2017; Paltrow and Flavin 2013)

It is well established that criminalizing pregnant people for actions taken during pregnancy undermine rather than promote the health of pregnant people, their children, and their fetuses. In a number of the cases discussed here, attorneys and legal experts raised the concern that the prosecutorial practice of criminally charging pregnant women—often on the basis of information obtained through health-care appointments—would make those who are pregnant afraid to seek prenatal care. These issues have been raised publicly since 1990 by the American Medical Association (AMA) and the American Academy of Pediatrics. There is an “extraordinary consensus by public health organizations” that criminalization of pregnancy leads to worse health outcomes (Paltrow and Flavin 2013). The AMA specifically warned that such practices could lead those who are pregnant to procure (sometimes unsafe) abortions they otherwise would not seek out of fear of being criminally charged for actions taken during their pregnancy or for their pregnancy outcomes. The harms of criminalizing pregnancy have been empirically confirmed and widely publicized for over 30 years. Since this information has been in the public eye for three decades, it is only reasonable to conclude that policy makers who disregard and deny it do so willfully—and with a purpose.

In the state of Tennessee, efforts to criminalize women for their pregnancy outcomes have recently expanded beyond stillbirths and miscarriages. In 2013, the state legislature invented the crime of “fetal assault,” which has primarily served to punish women for drug use during pregnancy. The fetal assault law was one of the state’s efforts to address the opioid crisis in Appalachia. The law defines someone as guilty of fetal assault if they take a narcotic during pregnancy for which they do not have a prescription and their infant is harmed as a result. It is a notoriously difficult and unscientific process to determine if infant health outcomes are a direct consequence of in utero drug use. It has also been established that in utero drug use is no more harmful to infant health outcomes than a wide range of other factors including poverty, lack of access to adequate prenatal care, and criminalization of the pregnant parent. After the law passed, enacting a two-year trial phase, Tennessee became the only state to “explicitly criminalize in-utero transmission of illegally obtained opiates to a fetus” (Bach 2018, 814).

During its trial phase, the law primarily functioned to absorb poor women into the criminal justice system in order to funnel them through a newly created state apparatus of “care.” The initial entry point into this system was through surveillance

in a hospital setting, in which data was collected and shared with child welfare agencies, law enforcement, and prosecutors (Bach 2018, 815). This practice mirrors that of CCTPs in Latin America in that it creates a mechanism for state surveillance in order to exert coercive control over those who are pregnant. While the law was explicitly justified as a way to identify women in need of “care,” researchers found that the law did not prioritize the distribution of care or services; it simply functioned to entangle poor women in the usual web of state surveillance and exploitation that comes along with criminalization. Bach (2018, 816) writes, “the women faced what most people face when they are prosecuted: bail, jail, fees, tremendous pressure to plead guilty, then monitoring and, often, more jail and more fines.” She goes on to say that, “Although the law was described by its supporters as a ‘velvet hammer’ leading to care, the focus of the prosecution was, to put it bluntly, just a hammer.” The nature of law as “just a hammer” reflects its use as a blunt instrument whose purpose is to bludgeon.

In many ways, the Tennessee “fetal assault” law fits the larger pattern of efforts to criminalize pregnant people for actions taken during pregnancy. Several common features of the cases analyzed here reflect the real purpose of such state interventions. Their purpose is neither aligned with the state’s purported interest in protecting the sanctity of human life, nor is it to offer services to pregnant people who need them; it is rather to control specific populations of women through forcible subordination and physical punishment. Considered at a structural level, these strategies uphold the American legacy of eugenicist policies that are simultaneously guided by the goals of white supremacy and the settler colonial logic of elimination (Wolfe 2006).

The 1992 case of Martina Greywind, an unhoused Sioux woman living in North Dakota, reflects the settler state’s investment in this logic and offers a vivid illustration of how settler-state policies of targeted depopulation play out on and within the bodies of Indigenous women. Greywind’s story became a national headline when she was arrested for sniffing paint while pregnant. She was charged with reckless endangerment and spent two weeks in jail until she was able to secure a medical appointment at which time she received an abortion. After she notified the state of her abortion, the charges against her were dropped. The prosecutor stated that it was “no longer worth the time or expense to prosecute her.” Media coverage sensationalized the case and invoked the same racialized and anti-Indigenous tropes of criminality and drug addiction that have been repeatedly invoked to justify state policies of eugenics and enforced disruption of Indigenous families for centuries. One (1992) Associated Press headline announced, “Pregnant Paint Sniffer Decides on Abortion.” The undercurrent running through the narratives of both the prosecutor and the media is that Greywind posed a threat to (settler) society, which was neutralized as soon as she was coerced into making the ‘choice’ to have an abortion rather than face criminal charges. Settler practices of genocide via reproductive coercion of Native women continue today through the forced sterilizations of Indigenous women in Saskatchewan, Ontario, Alberta, Manitoba,

British Columbia, and Quebec (Longman 2018; Zingel 2019), though such practices are by no means exhaustive of settler colonial efforts to eliminate Indigenous peoples in the United States and Canada.

Racialized and gendered eugenics practices are often justified by representations of Black women, Native women, and Brown women as hypersexual, hyper-fertile, and not to be trusted with their own reproductive agency. These representations cannot be severed from the specific functions they serve in upholding settler colonial structures of white supremacist capitalist ableist cis-heteropatriarchy. Consider that the regime of coercive reproductive control of Black women by the state and the medical industry in the United States expanded as soon as their offspring no longer provided free forced labor to white settlers. State control of Black women's reproduction has been continually justified by portraying Black women as hypersexual and hyper-fertile, which began under slavery. Whereas Black women's fertility was considered to be economically beneficial to powerful whites during slavery, after emancipation it began to constitute a threat that needed to be subdued. In the 1980s, Ronald Reagan intentionally promoted public associations between the welfare state and Black women in order to incite white support for cuts to social welfare programs. He accomplished this by promoting the controlling image of Black women as 'welfare queens.' The image is constructed through derogatory rhetoric about promiscuous women with low morals who lack a work ethic and (re)produce criminality in Black children through their ineffective and unfit mothering. As Collins (2000, 86) notes, "When U.S. Black women gained political power and demanded equity in access to state services, the need arose for this controlling image." There was no need to invoke this controlling image until Black women actually began accessing the benefits of the welfare state to which they were legally entitled.

The 'welfare queen' image accomplished the further goal of locating the cause of the problems experienced by Black communities not in white supremacy or structural racism (and their many manifestations such as over-policing, lack of access to education, job discrimination, vulnerability to sexual violence, and enforced poverty via redlining and segregation) but in the purportedly defective bodies and mothering practices of Black women. If the problems of racism were caused by Black women having more children than they could responsibly and appropriately care for, then the obvious solution involved intervening in Black women's reproduction. Roberts (1997) catalogs the extensive list of efforts that the state has taken to coercively control Black women's reproduction, conceived of as a primary threat to social order. Christina Cross's (2019) research on Black family structure and educational disparities has further undermined the myth that two-parent homes buttress Black children's educational successes—a mainstay of misogynoiristic mythology about welfare recipients since Reagan.

The presumption of Black women's poor parenting capacities continues to underly state treatment of Black women (as well as of other women of color and poor women) who lose their pregnancies due to miscarriage or stillbirth in the

United States. In South Carolina, Regina McKnight, a 21-year-old Black woman, spent eight years in prison after the state alleged that her stillbirth was the result of cocaine use during her pregnancy. A jury found her guilty of homicide by child abuse after 15 minutes of deliberation. Her stillbirth was later shown to have been caused by an infection rather than cocaine use. The South Carolina Supreme Court later overturned her conviction, finding that she had received ineffective counsel at her trial. She still pleaded guilty to manslaughter in order to avoid being tried again with the possibility of receiving a more severe sentence (Paltrow and Flavin 2013).

In 2014, the case of Rennie Gibbs was dismissed after a nine-year legal ordeal. In 2006, when Gibbs was 16, she experienced a stillbirth. Her daughter Samiya was born with the umbilical cord wrapped around her neck and died without ever taking a breath (Martin 2014). Shortly after her death, the medical examiner came up with a different theory about its cause. Her blood testing revealed traces of a cocaine byproduct, and the examiner concluded that Samiya's death was caused by "cocaine toxicity." Gibbs, who is also Black, was charged with an act of murder "evinced a depraved heart." The charge carried a maximum sentence of life imprisonment. Her indictment claimed that she had caused her baby's death "unlawfully, willfully, and feloniously" by smoking crack during her pregnancy (Martin 2014).

The image of the drug-addicted baby born to the abusive mother who prioritizes her pleasure and addiction over her child is a classic white supremacist trope of unfit motherhood. Just as the Latin American portrayal of women who miscarry as deficient mothers works to place blame on the individual for health outcomes that are systemically produced, the 'Crack Mom' trope is a gendered and racialized controlling image that functions strategically to obscure the structural violence that Black women in the United States experience via the denial of access to quality reproductive and medical care. In Mississippi, the state where Gibbs was prosecuted, the infant mortality rate is one of the highest in the country with pregnancy outcomes predictably worse for women of color (Mississippi Infant Mortality Report 2013). Among other things, infant mortality rates reflect a population's access to quality prenatal and delivery care, as well as access to health care in general. Black women in Mississippi, for instance, experience stillbirths at twice the rate that white women do (Martin 2014). Just as Collins shows the content of the 'welfare queen' to be tied to a specific purpose, the 'Crack Mom' image functions to obscure the structured denial of reproductive health care to Black women while ascribing blame for their resulting poor pregnancy outcomes to them rather than to the state.

It is evidence of structural impunity that, while appellate courts frequently deny that state legislatures intend homicide and child abuse statutes to apply to fetuses, this has not prevented prosecuting pregnant women under such statutes. Nonetheless, policy makers on both the right and the left continue to maintain the pretense that such cases are aberrant or even nonexistent. Consider, for instance,

the public discourse surrounding Georgia's "fetal heartbeat" bill. In May 2019, Georgia Republican governor Brian Kemp signed into law HB 481, which criminalizes any attempt to end a pregnancy after six weeks. Like many recent abortion bans, the bill enshrines a notion of "fetal personhood" into law, invoking the same penalty for ending a pregnancy as for committing first-degree murder—namely, life imprisonment or the death penalty (Panetta 2019).

Predictably, this newly implemented mechanism of administrative violence was met with the usual white liberal skepticism that it would in fact play out exactly as we already know it will. After Slate ran a piece making clear that the bill paved the way for charging women who get abortions with murder and that it opened the door for prosecutors to claim that women who miscarry were attempting to self-induce an abortion, the *Washington Post* ran a story referring to the *Slate* headline as "not-entirely-accurate" and admonishing those who were concerned to just calm down (Paul and Wax-Thibodeaux 2019). The story included the following quote from Staci Fox, president and CEO of Planned Parenthood Southeast: "The news headlines and social media headlines that speculate about the bills' unintended consequences are—at the very least—not productive. At most, they're harmful." But Fox's admonition belies the fact that the bill has the consequences it does *by design*, and it obscures the harms that come from viewing colonial administrative strategies of violence through the rose-colored glasses of good intentions.

The predictable worst-case scenarios that the bill's opponents warn about are not speculation; *they are demonstratively well-established patterns*. Criminalizing women for pregnancy loss in the United States is nothing new, and this is especially true for women of color. In Indiana, Purvi Patel, an Indian American woman, received a 20-year sentence after being convicted of feticide after experiencing a stillbirth. Prosecutors claimed that she attempted to medically induce an abortion and, when that failed, left her baby to die after it was born alive. A witness for the prosecution, pathologist Joseph Prahlow relied on the debunked seventeenth-century pseudoscientific notion of a "lung float test" as evidence that the baby died after being born rather than in utero (Bazelon 2015). Patel's conviction was ultimately overturned by Appeals Court judge Terry Crone, who argued that the Indiana State Legislature never intended their fetal homicide law to apply to pregnant women (Redden 2016). A *New York Times* article on the case notes that the practice of charging pregnant women with feticide can easily become more widespread in the near future, as 38 states have fetal homicide laws on the books (Bazelon 2015).

Given the well-established patterns of state violence against pregnant women of color in the United States, it is clear that the mainstream liberal response to those ringing alarm bells about the inductively established threat of such laws qualifies as structural gaslighting. Rather than being mere "speculation," such patterns are structurally produced and empirically established. It is only rational to expect them to continue into the future barring extraordinarily radical changes in the structures

of settler colonial ableist white supremacist capitalist cis-heteropatriarchy that undergird our political system. We therefore strongly reject the affective framework of surprise that is entrenched in white liberal rhetoric surrounding what we characterize alternately as patterns of administrative and reproductive violence oriented toward settler colonial goals. While many are swift to dismiss the cases we discuss as extreme, fringe, atypical, and unexpected, we contend that they are instances of a form of racialized, gendered, settler colonial violence that is commonplace, ordinary, and utterly unsurprising.

CONCLUSION

We have argued that gender-based administrative violence across Turtle Island cannot be understood separately from the goals and strategies of settler colonialism. The notion of administrative violence shifts the salient locus of power away from individual aggressors and onto the norms that govern design-of-distribution strategies in settler colonial societies, which allow laws and their bureaucratic intermediaries to do the work of discrimination and violence with functional neutrality and, on our view, structural impunity. There are, of course, myriad colonial strategies of violence, as there are numerous ways to use settler configurations of gender to support racism, sexism, ableism, transphobia, and the criminalization of nonnormative sexualities, especially in public policy. We believe these strategies are connected to the social forces discussed here that target the life chances of women of color and Indigenous women through maternal and reproductive health violence.

What the patterns discussed in this paper show is that administrative gender-based violence must be looked at intra-hemispherically, rather than solely within state-specific contexts. Speed (2019) emphasizes that strategies of settler colonial administrative violence are not bound by settler border configurations, and the flow of colonial power strategies is not restricted to movement within the boundaries of settler nation-states. This is a critical insight for building coalitional feminisms beyond settler imaginaries of borders. It is also essential for thinking about gender-based violence alongside context-specific feminist movements and land-based struggles. Such a project requires renouncing white feminist frameworks that localize blame and pathologize affected populations as an epistemically exculpatory mechanism to avoid meaningful engagement with the global structure of settler-capitalism and its administrative vehicles—an avoidance from which global North feminists often benefit. There is profit to be had in the targeted management of populations, and this profit goes beyond the benefits to intra-state actors, religious organizations, and state officials who pursue antiabortion agendas. The global character of racial capitalism has a long history of using settler categorical constructions of gender (and the corresponding control of such categories) to administer technologies of violence that advantage white settler populations and

their descendants. We suggest that reproductive violence against women of color and Indigenous women on Turtle Island can be adequately theorized only within a framework that understands ongoing strategies of colonization as produced by nonaccidental, predictive, self-regenerating structures. Any effort to end gender-based violence in the Americas must therefore attend to the critical connections between the administrative violence of criminalizing women for their reproductive outcomes and larger patterns of state-enforced sexual violence within and across settler nation-states.

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